

# THE U.N. OIL-FOR-FOOD PROGRAM: THE INEVITABLE FAILURE OF U.N. SANCTIONS

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## HEARING

BEFORE THE  
SUBCOMMITTEE ON NATIONAL SECURITY,  
EMERGING THREATS, AND INTERNATIONAL  
RELATIONS

OF THE

COMMITTEE ON  
GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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## THE U.N. OIL-FOR-FOOD PROGRAM: THE INEVITABLE FAILURE OF U.N. SANCTIONS

TUESDAY, APRIL 12, 2005

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING  
THREATS, AND INTERNATIONAL RELATIONS,  
COMMITTEE ON GOVERNMENT REFORM,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 11 a.m., in room 2247, Rayburn House Office Building, Hon. Christopher Shays (chairman of the subcommittee) presiding.

Present: Representatives Shays, Kucinich, Duncan, Ruppertsberger, and Lynch.

Staff present: Lawrence Halloran, staff director and counsel; Thomas Costa, professional staff member; Robert A. Briggs, clerk; Andrew Su, minority professional staff member; and Jean Gosa, minority assistant clerk.

Mr. SHAYS. A quorum being present, the Subcommittee on National Security, Emerging Threats, and International Relations hearing entitled, "The U.N. Oil-for-Food Program: The Inevitable Failure of U.N. Sanctions" is called to order.

The Oil-for-Food Program was destined to degenerate into commercialism and corruption. As the humanitarian adjunct to a prolonged and notoriously leaky United Nations sanctions regime against Iraq, the Oil-for-Food Program inherited the habits of secrecy and self-interest that undermined international efforts to contain Saddam Hussein from the start.

Within days of adopting Security Council Resolution 661, imposing comprehensive economic sanctions on Iraq after the 1991 invasion of Kuwait, the committee formed to enforce the U.N. mandate began to receive requests from Member States for exceptions and waivers. Over the next 4 years, proposals to ease rather than enforce the sanctions would dominate deliberations of the so-called 661 Committee, which consisted of all permanent and rotating Security Council members.

But few governments beside the United States and the United Kingdom consistently reviewed the growing volume of trade proposals. Others, over time, appeared to tire of the effort, choosing economic gain over continued political cost. Saddam and his would-be trading partners intentionally swamped the panel with waiver proposals they knew would never be granted in an effort to portray the sanctions as both inhumane and unsustainable.

The U.N. was at war with itself. Despite Security Council directives, some U.N. agencies resisted sanctions enforcement as anti-

thetical to the institution's neutrality and humanitarian mission. Other U.N. sanctions regimes had foundered when dictators exploited this ambivalence by redirecting the intended coercive impacts of economic strictures onto oppressed civilian populations. It was a lesson Saddam learned well and followed.

So it should have been of no surprise to anyone familiar with the dynamics of the 661 Committee that the Oil-for-Food Program weakened rather than strengthened the Iraq sanctions as an alternative to armed conflict. According to the Duelfer Report, the program "rescued Baghdad's economy from a terminal decline created by sanctions. The Regime quickly came to see that the Oil-for-Food Program could be corrupted to acquire foreign exchange both to further undermine the sanctions and to provide the means to enhance dual-use infrastructure and potential WMD-related development."

Sitting on the 661 Committee, a blind man could have seen that outcome was inevitable. But for too long, we ignored the sordid realities of a U.N. security council mired in Saddam's anti-sanctions propaganda and the unseemly pursuit of commercial interests by some Member States.

Our purpose today is to help lift the shroud of secrecy that still blocks a complete view of the Iraq sanctions and the Oil-for-Food Program. Access to most U.N. records on these programs continues to be restricted. But thanks to Dr. Paul Conlon and the University of Iowa Library, summary minutes of the 661 Committee meetings from 1991 through 1994 and other U.N. documents are on the public record. They contain pointed references to Saddam's recalcitrance, to the scams and forgeries that became Oil-for-Food vouchers and kickbacks, to a U.N. bureaucracy ill-suited to complex trading regulation and to a Security Council politically unwilling to confront any of it.

Testimony today by our witnesses will provide unique perspectives on U.N. deliberations and bring additional transparency to a process that grew fetid in secrecy. We appreciate their time and expertise as we consider the origins and implications of the Oil-for-Food scandal.

[The prepared statement of Hon. Christopher Shays follows:]

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INDEPENDENT

**Statement of Rep. Christopher Shays**  
**April 12, 2005**

The Oil-for-Food Program (OFFP) was destined to degenerate into commercialism and corruption. As the humanitarian adjunct to a prolonged and notoriously leaky United Nations (U.N.) sanctions regime against Iraq, the OFFP inherited the habits of secrecy and self-interest that undermined international efforts to contain Saddam Hussein from the start.

Within days of adopting Security Council Resolution 661 imposing comprehensive economic sanctions on Iraq after the 1991 invasion of Kuwait, the committee formed to enforce the U.N. mandate began to receive requests from Member States for exceptions and waivers. Over the next four years, proposals to ease rather than enforce the sanctions would dominate deliberations of the so-called "661 Committee" which consisted of all permanent and rotating Security Council members.

But few governments beside the United States and the United Kingdom consistently reviewed the growing volume of trade proposals. Others over time appeared to tire of the effort, choosing economic gain over continued political cost. Saddam and his would-be trading partners intentionally swamped the panel with waiver proposals they knew would never be granted in an effort to portray the sanctions as both inhumane and unsustainable.

The U.N. was at war with itself. Despite Security Council directives, some U.N. agencies resisted sanctions enforcement as antithetical to the institution's neutrality and humanitarian mission. Other U.N. sanctions regimes had foundered when dictators exploited this ambivalence by redirecting the intended coercive impacts of economic strictures onto oppressed civilian populations. It was a lesson Saddam learned well.

So it should have been no surprise to anyone familiar with the dynamics of the 661 Committee that the Oil-for-Food Program weakened, rather than strengthened, the Iraq sanctions as an alternative to armed conflict. According to the Duelfer Report, the program "*rescued Baghdad's economy from a terminal decline created by sanctions. The Regime quickly came to see that ... [the Oil-for-Food Program] could be corrupted to acquire foreign exchange both to further undermine sanctions and to provide the means to enhance dual-use infrastructure and potential WMD-related development.*"

Sitting on the 661 Committee, a blind man could have seen that outcome was inevitable. But for too long we were all blind to the sordid realities of a U.N. Security Council mired in Saddam's anti-sanctions propaganda and the unseemly pursuit of commercial interests by some Member States.

Our purpose today is to help lift the shroud of secrecy that still blocks a complete view of the Iraq sanctions and the Oil-for-Food Program. Access to most U.N. records on these programs continues to be restricted. But thanks to Mr. Paul Conlon and the University of Iowa Library, summary minutes of 661 Committee meetings from 1991 through 1994 and other U.N. documents are on the public record. They contain pointed references to Saddam's recalcitrance, to the scams and forgeries that became Oil-for-Food vouchers and kickbacks, to a U.N. bureaucracy ill-suited to complex trade regulation and to a Security Council politically unwilling to confront any of it.

Testimony by all our witnesses will provide unique perspectives on U.N. deliberations and bring additional transparency to a process that grew fetid in secret. We appreciate their time and expertise as we consider the origins and implications of the Oil-for-Food scandal.

Mr. SHAYS. At this time the Chair would recognize the ranking member, Mr. Kucinich.

Mr. KUCINICH. Mr. Chairman, thanks for holding this hearing. I appreciate it very much.

I want to welcome all the witnesses and appreciate your participation.

I feel very strongly that the debate in Congress, the effect that it might be having on the United States, I'm deeply troubled by the fact that many Members on the other side of the aisle have already reached a conclusion before all the facts have been presented. Last week, the Senate voted along party lines to reduce U.S. funding for U.N. peacekeeping activities as punishment for the mismanagement of the Oil-for-Food so-called scandal. Critics have already called for the resignation of Secretary General Kofi Annan. They have attacked Paul Volcker's investigation before he has even issued his final report.

They want the U.N. to dissolve and stop resisting the administration's foreign policy goals. To do this, the White House nominated the most simplistic critic of the United Nations they could find, John Bolton, as our next Ambassador. He's famously used dismissive rhetoric of the international body, once claimed if you lopped the top 10 stories off the 38-story Secretariat building, it wouldn't make a bit of difference.

At his Senate confirmation hearings yesterday, he failed to show a thorough understanding of the international body, a respect for the U.S. binding obligations under international law, something this administration seems to have a serious problem with, and failed to show respect for the sovereignty of other nations.

Sadly, there were indeed mistakes made in the administration of the Oil-for-Food Program and in some instances, corruption by individual U.N. officials. The Secretary General himself could have been more forthcoming about his role.

But let's step back for a minute, and instead of pointing fingers, let's remind ourselves who and what the United Nations is. The United Nations is a multi-lateral organization composed of its Member States, and by far the most influential Member State continues to be the United States. We have a permanent seat on the security council, we have the largest mission of any country at the United States. We provide the most funding for U.N. programs. We review and have veto power over every single substantive decision made by the Secretary General and the U.N. Secretariat, including those made by the Oil-for-Food Program.

Even former Secretary of State Colin Powell admitted that the United States is partially to blame, when he stated that recently, "The responsibility does not entirely on Kofi Annan, it also rests on the membership and especially on the Security Council. And we are a member of the Security Council, it was the Security Council that had the responsibility for the day to day management of the program."

The Oil-for-Food Program was not a failure. And any attempts to characterize it as such is flat-out wrong and distorts the facts. The humanitarian program achieved its goals, which were to keep the Iraqi people from starvation. Caloric intake increased and communicable diseases declined significantly among the Iraqi popu-

lation. The program halved malnutrition among children, eradicated polio, improved access to fresh water, public transportation, electricity, cleared minds, helped rebuild schools, clinics, housing and other infrastructure.

We should be taking credit for the enormous success of the program, not pointing to it as an example of the U.N.'s shortcomings. In this case, the U.N. was dealt a lousy hand. Members of the Security Council differed on their support for sanctions and support for the Iraqi government. Sanctions weren't supposed to last for a decade. They did so only because the United States kept pushing for them while inspectors looked and looked for a WMD program.

The program was forced to make compromises with the corrupt regime of Saddam Hussein, allowing it to choose its own contractors. No one disputes that Saddam Hussein used every method at his disposal to bribe officials, smuggle oil, subvert and avoid sanctions and deceive the world in order to maintain a stranglehold on Iraq. We're all concerned at the alleged abuse of the program, from kickbacks and over-pricing of Oil-for-Food contracts.

I'm particularly disappointed that we were complicit in the Program's failure by allowing Saddam Hussein to sell \$8 billion worth of oil to Jordan, Turkey, Egypt and Syria in violation of the very sanctions we pressed to impose, money that could have been spent to better the lives of the Iraqi people. Before we go around blaming the United Nations, let me remind you that three administrations, both Democrat and Republican, said nothing about kickbacks and scanned each and every contract for dual-use items. Sixty U.S. officials were employed to scrutinize each and every contract. We placed holds, we delayed contracts, but never once did we use our veto power to stop a contract because of pricing concerns.

We share responsibility with the Secretariat for allowing the abuses that occurred. Mr. Chairman, our job as congressional overseers requires us, may require us to throw stones, but we live in a glass house. Let us not forget that the U.N. Oil-for-Food Program became the Development Fund for Iraq in November 2003, and was then turned over to the U.S.-led Coalition Provisional Authority.

According to the Special Inspector General for Iraq, Stewart Bowen, Jr., however, the Coalition Provisional Authority could not account, could not account for nearly \$9 billion in Iraqi reconstruction funds distributed in less than a year. And as we learned in our subcommittee hearing last month, nobody in the White House, the State Department or the Pentagon is even looking into this missing money. Where is the outrage? Why aren't there multiple committees looking into this scandal? Why hasn't the subcommittee called CPA head Paul Bremer to account for the \$9 billion?

This is what this oversight committee should be investigating. U.S. mismanagement, U.S. waste, U.S. fraud, and U.S. abuses. Notwithstanding, Mr. Chairman, I'm pleased to learn that you have agreed to hold such a hearing in June and that you have continued to work with the minority in asking for revealing documents.

As I conclude, I want to say that last month, another report was published which further destroyed what little credibility the United States has left at the United Nations. The bipartisan report of the Presidential Commission on Intelligence Capabilities of the United

States Regarding Weapons of Mass Destruction under the direction of former Judge Silberman and former Senator Robb stated that most of our intelligence about Iraq's WMDs was "dead wrong." Iraq's unmanned aerial vehicles pose no threat, they had no mobile biological weapons laboratories, aluminum tubes were not used to make centrifuges for the enrichment of uranium. These are the examples pointed to as evidence by Secretary Powell in his address to the United Nations, where he said, every statement I make today is backed by sources, solid sources, not assertions, what we're giving you are facts and conclusions based on solid intelligence.

So Mr. Chairman, as we go into these hearings, let's dismiss the hypocrisy. Some in the administration take a holier than thou pose, more holier than thou than the Vatican, without the credibility of the Vatican sponsor. We still don't know all the details of what happened with Oil-for-Food. Let's give Mr. Volcker an opportunity to finish the investigation, let's help further, not hinder, the much-needed institutional reforms that Secretary General Annan is attempting to make at the United Nations, and let's find an Ambassador to the U.N. who will inspire the body, not denigrate it.

The U.N. is not perfect, but it still needs the leadership and support of its most powerful member. Let's all work together to solve the many problems that still face Iraq. The U.N. needs to move involved in Iraq, not less. Thank you, Mr. Chairman. Welcome to the experts. I yield back.

[The prepared statement of Hon. Dennis J. Kucinich follows:]

Statement of Rep. Dennis Kucinich  
Ranking Minority Member  
House Subcommittee on National Security, Emerging  
Threats and International Relations  
Committee on Government Reform  
U.S. House of Representatives

Hearing on "Oil-for-Food: The Inevitable  
Failure of U.N. Sanctions"

April 12, 2005

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Good morning, Mr. Chairman. Thank you for holding this hearing. I would like to welcome all of the witnesses for appearing before the committee today, and for helping us clarify some of the many misconceptions that exist about the United Nations and the Oil-for-Food Program.

I feel very strongly that the debate that the Congress is having on the role of the United Nations is an important one. But, I'm deeply troubled by the fact that many members on the other side of aisle have already reached a conclusion before all the facts have been presented.

Last week, the Senate voted along party lines to reduce U.S. funding for U.N. peacekeeping activities, as punishment for mismanagement of the Oil for Food “scandal.” Critics have already called for the resignation of Secretary-General Kofi Annan. They’ve attacked Paul Volcker’s investigation, before he’s even issued his final report. They want the U.N. to dissolve and to stop resisting this Administration’s foreign policy goals.

And to do this, the White House has nominated the most simplistic critic of the United Nations that they could find, John Bolton, as our next Ambassador to the body. He has famously used dismissive rhetoric of the international body, as he once claimed that if you lopped off the top 10 stories of the 38-story Secretariat building “it wouldn’t make a bit of a difference.” At his Senate confirmation hearings yesterday, Mr. Bolton failed to show a thorough understanding of the international body, respect for the U.S.’s binding obligations under international law, and respect for the sovereignty of other nations.

Sadly, there were indeed mistakes made in the administration of the Oil-for-Food program, and in some instances, corruption by individual U.N. officials. The Secretary-General himself should have been more forthcoming about his own role and that of his son.

But, let's step back a minute and take a breath, instead of pointing fingers at others. Let's remind ourselves who and what the United Nations is.

The United Nations is a multilateral organization composed of its member states, and by far the most influential member state continues to be the United States. We have a permanent seat on the Security Council. We have the largest mission of any country at the United Nations. We provide the most funding for U.N. programs. We review and have veto power over every single substantive decision made by the Secretary General and the U.N. secretariat, including those made regarding the Oil for Food Program. Even former Secretary of State Colin Powell admitted that the U.S. is partially to blame when he stated recently that,

“The responsibility does not rest entirely on Kofi Annan. It also rests on the membership, and especially on the Security Council. And we are a member of the Security Council. It was the Security Council that had the responsibility for the day-to-day management of this program.”

The Oil for Food Program was not a failure, and any attempts to characterize it as such is flat out wrong, and distorts the facts. The humanitarian program achieved its goals, which were to keep the Iraqi people from starvation. Caloric intake increased and communicable diseases declined significantly among the Iraqi population. The program halved malnutrition among children, eradicated polio, improved access to fresh water, public transportation, electricity, cleared mines, and helped rebuild schools, clinics, housing, and other infrastructure. We should be taking credit for the enormous success of the Program, not pointing to it as an example of the U.N.'s shortcomings.

In this case, the U.N. was dealt a lousy hand. Members of the Security Council differed on their support for sanctions and

support of the Iraqi government. Sanctions weren't supposed to last for a decade – they did so only because the U.S. kept pushing for them while inspectors looked and looked for a WMD program.

The Program was forced to make compromises with the corrupt regime of Saddam Hussein, allowing it to choose its own contractors. No one disputes that Saddam Hussein used every means at his disposal to bribe officials, smuggle oil, subvert and avoid sanctions, and deceive the world in order to maintain his stranglehold on the Iraqi people.

We are all concerned at the alleged abuse of the Program, from kickbacks and overpricing schemes of Oil-for-Food contracts. I am particularly disappointed that we were complicit in the program's failure, by allowing Saddam Hussein to sell \$8 billion worth of oil to Jordan, Turkey, Egypt, and Syria in violation of the very sanctions we pressed to impose - money that could have been spent to better the lives of the Iraqi people.

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Mr. Chairman, our job as Congressional overseers may requires us to throw stones though we live in a glass house. But let us not forget that the U.N. Oil-for-Food Program became the Development Fund for Iraq (DFI) in November 2003, and was turned over to the U.S.-led Coalition Provisional Authority (CPA).

According to special inspector general for Iraq Stuart Bowen, Jr., however, the CPA could not account for nearly \$9 billion in Iraqi reconstruction funds distributed in less than a year. And as we learned at our Subcommittee hearing last month, nobody in the White House, the State Department or the Pentagon is even looking into this missing money.

Where's the outrage? Why aren't multiple Congressional committees looking into this scandal? Why hasn't this Subcommittee called CPA head Paul Bremer to account for the \$9 billion? This is what this oversight committee should be investigating – U.S. mismanagement, U.S. waste, U.S. fraud, and U.S. abuses.

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Last month, another report was published which further destroyed what little credibility the U.S. has left at the United Nations. The bipartisan report of the Presidential Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction under the direction of former Judge Laurence Silberman and former Senator Charles Robb stated that most of our intelligence about Iraq's WMDs was "dead wrong." Iraq's unmanned aerial vehicles posed no threat. They had no

mobile biological weapons laboratories. Aluminum tubes were not used to make centrifuges for the enrichment of uranium.

These are the examples pointed to as evidence by Secretary of State Powell during his address to the U.N. in February 2003.

He stated,

“Every statement I make today is backed up by sources, solid sources. These are not assertions. What we’re giving you are facts and conclusions based on solid intelligence.”

So, Mr. Chairman, let’s not behave like hypocrites. We still don’t know all the details of what happened with the Oil for Food Program. Let’s all give Mr. Volcker an opportunity to finish his investigation. Let’s help further, not hinder, the much needed institutional reforms that Secretary General Annan, is attempting to make at the United Nations. Let’s find an Ambassador to the U.N. who will inspire the body, not denigrate it.

The U.N. is not a perfect organization, but it still needs the leadership and support of its most powerful member. Let’s all

work together to solve the many problems that still face Iraq. The United Nations needs to be more involved in Iraq, not less.

Thank you, Mr. Chairman, and again, welcome to the experts before us today. I yield back.

Mr. SHAYS. I thank the gentleman.

Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman, and thank you for calling this hearing on this very important topic. First of all, I want to commend you because no one has looked into this scandal more than you have. Second, I want to commend you for the series of hearings that you continually hold through this subcommittee into many, many important topics, doing almost more with this subcommittee than I've ever seen any chairman do with any subcommittee in the Congress.

This Oil-for-Food scandal has been described by many people as an unprecedented level of corruption. Most of the reports have said it involves \$10 billion worth of corruption, some reports have said much more than that. I think the only reason that more people are not horrified by this is probably because of something I heard the very respected political analyst Charlie Cook say in a talk several months ago, he said that he thought it was impossible for any human being to comprehend any figure over \$1 billion.

But \$10 billion or \$20 billion, whatever it might be, is just an unbelievable, staggering amount of money. Apparently there is going to be an effort to try to excuse some of this or in some way justify it or gloss it over by saying that some good things were done with some of the money that came through this program. I think that's ridiculous. How anybody can attempt to defend what has gone on through this Oil-for-Food Program is beyond me.

And I think the people that are involved with this, in fact, the entire United Nations should be ashamed and embarrassed about this, but they probably aren't, because it's not money coming out of their pockets. I think that's the problem with so many things, so many wasteful things that we do through the Federal Government.

But I certainly hope we don't have to sit here and listen to an attempt to try to justify or gloss over what happened, and we don't have to listen to a lot of testimony about the good things that came out of this program. With every penny that was spent through this program, good things should have happened, and they didn't. So we need to, we don't need to find out what went right in this program. Everything should have been that way. What we need to find out is what went wrong and why, and what's being done about that to correct that situation, so that this level of corruption, this level of scandal, this unprecedented level, will not happen again.

Thank you very much.

Mr. SHAYS. I thank the gentleman very much.

I ask unanimous consent that all members of the subcommittee be permitted to place an opening statement into the record and that the record remain open for 3 days for that purpose. Without objection, so ordered.

I ask further unanimous consent that all witnesses be permitted to include their written statement in the record, and without objection, so ordered.

We have two panels. Our first panel is comprised of one individual, Mr. Thomas Schweich, Chief of Staff, U.S. Mission to the United Nations, U.S. Department of State. Our second panel will be Dr. Paul Conlon, Mr. Andrew Mack and Dr. Joy Gordon, who

was reluctant to give me a high-five, even though she is a constituent and from Fairfield University. [Laughter.]

Witnesses were told, the purpose of the hearing is to examine the U.N. Security Council management of the Iraqi sanctions and the Oil-for-Food Program, and the implications of U.N. failure to maintain the integrity of the sanctions regime. Witnesses were asked to provide their views.

Mr. Schweich, the State Department witness, was also asked to address: one, the Department's view of the Iraq sanctions in retrospect; two, the Department's view of how the 661 Committee functioned; three, the Department's view of how possible future sanction regimes might work; and four, the status of ongoing Department efforts to review and declassify U.S. Government reporting of the Iraq sanctions and Oil-for-Food.

Let me say that there is much of what my ranking member said that I happen to agree with. I don't take the position that the Secretary should resign. But what I do take, and I think the full committee takes this, that there needs to be transparency and that Members shouldn't be allowed to deny access to other Member States and their elected officials to examine how their money was spent and how their money was being used.

So at this time, Mr. Schweich, I would welcome you to stand so we can administer the oath to you.

[Witness sworn.]

Mr. SHAYS. And say to you that we have a 5-minute rule, but we will roll it over another 5 minutes, we'll stop you at 10. So if you're somewhere between 5 and 10, that's fine, you need to kind of put the ball in play here. Bottom line is, what Mr. Kucinich and I want, and what Mr. Duncan wants as well, we just want to understand the truth of this program. Then we will disagree on what those facts tell us. But we will have good information from you.

We appreciate your being here. The floor is yours.

**STATEMENT OF THOMAS A. SCHWEICH, CHIEF OF STAFF, U.S. MISSION TO THE UNITED NATIONS, U.S. DEPARTMENT OF STATE**

Mr. SCHWEICH. Mr. Chairman, distinguished members of the subcommittee, I welcome this opportunity to appear before you today to discuss the U.N. Security Council's management of the multi-lateral sanctions regime on Iraq, including the Oil-for-Food Program, to share with you our thoughts on how sanctions regimes might be made more effective.

I will also update you on the status of the Department's efforts to provide Congress with access to documents related to these matters.

Mr. Chairman, let me start by discussing why the Iraq sanctions were imposed and why the Oil-for-Food Program was established. Four days after Iraq invaded Kuwait, the Security Council adopted Resolution 661, in 1990, that imposed comprehensive trade and financial sanctions against the former Iraqi regime. The U.S. Government supported this measure as part of a larger strategy to force Iraq to cease hostilities and to withdraw its forces from Kuwait.

At the end of the Gulf war in 1991, the Security Council adopted Resolution 687, that extended comprehensive sanctions on Iraq to ensure that Saddam Hussein complied with the major provisions of the cease-fire. By retaining the sanctions, the Council also sought to deny Iraq the capability of rearming or reconstituting its weapons of mass destruction and other military programs. The sanctions were not anticipated to remain in place for more than a year or two before Saddam complied.

We now know that Saddam chose not to comply. By 1995, in the wake of deteriorating humanitarian conditions in Iraq, many in the international community called for an end to the restrictions, reflecting concern that the impact of the sanctions was being borne primarily by the innocent Iraqi civilian population. In April 1995, the Security Council adopted Resolution 986, establishing the Oil-for-Food Program, to alleviate the serious humanitarian crisis while maintaining comprehensive restrictive measures to deny Saddam access to items that he could use to again pose a threat to his neighbors in the region.

The sanctions committee that was established under Resolution 661 in 1990, the 661 Committee, monitored the implementation of the overall sanctions regime on Iraq and after the adoption of Resolution 986, it also monitored the implementation of the Oil-for-Food Program. The 661 Committee, like all sanctions committees, operated as a subsidiary body of the Security Council. Unlike the Council, decisions were made on a consensus basis, requiring the agreement of all parties and members.

In addition to providing general oversight of the Oil-for-Food Program and to monitoring Member State compliance with the sanctions, the committee through each of its members, was also responsible for reviewing humanitarian contracts, oil spare parts contracts and oil pricing submitted on a regular basis by Iraq to the U.N. for approval. The U.S. delegation was an active participant in all such reviews.

The efforts of the United States and United Kingdom to counter or address non-compliance were often negated by other members' desires to ease sanctions on Iraq. The atmosphere in the committee, particularly as the program evolved during the late 1990's, became increasingly contentious and polemic. The fundamental political disagreement between members over the Council's imposition of comprehensive sanctions was often exacerbated by the actions of certain key Member States in advancing self-serving national economic objectives.

In retrospect, although the consensus rule often stymied progress in the committee, that same consensus rule helped the United States achieve its objectives in a number of critical ways. The imposition of a retroactive pricing mechanism and our ability to place holds on humanitarian contracts that contain potential dual-use items were both made possible by the use of the consensus rule.

Judging the success or failure of the Iraq sanctions depends on the view of their objectives. Clearly, they failed to force the regime of Saddam Hussein to comply with its international obligations. But they did succeed in limiting Iraqi efforts to rebuild their military capabilities after the Gulf war.

As regards the Oil-for-Food Program, similar considerations apply. The major shortcomings of the program have been widely documented in recent months. But the Oil-for-Food Program did succeed in its humanitarian objective of ensuring that the Iraqi people were adequately fed, thus limiting the impact of sanctions on them.

Mr. Chairman, the U.S. Government believes that sanctions, appropriately structured and targeted, when accompanied by effective diplomatic and military pressure, whether they are imposed unilaterally or in concert with other nations, can serve as a valuable tool to minimize threats to international peace and security. Sanctions can significantly restrict access to arms, finances and political support by international actors, while raising the personal cost to the leadership of targeted sanctions.

Sanctions are measures meant to induce a change in the policies and actions of targeted actors. However, they are not a panacea. They depend for their full effectiveness on the ability and willingness of Member States to implement them. Sanctions must be part of a larger strategy to address threats to international peace and security.

In the wake of the comprehensive sanctions regime previously imposed upon Iraq, and given the history of the Oil-for-Food Program, we have identified a number of opportunities for improving the Security Council's use of multi-lateral sanctions. In particular, we believe: one, Member States must be held accountable for enforcing agreed-upon sanctions; two, sanctions committees and the U.N. Secretariat's proceedings should be more transparent; and three, there must be more independent and effective oversight of U.N. operations.

Under the U.N. charter, all Member States are obligated to implement Security Council Chapter VII decisions. However, certain states, either through lack of capacity or lack of political will, or both, have in a number of instances failed to fulfill their enforcement obligations. If sanctions are to be more effective, the United States and its allies need to increase the pressure brought to bear on those governments that failed to abide by the binding, multi-lateral sanctions adopted under Chapter VII by the Security Council.

Every Member State should be required to report on actions taken to enforce sanctions, including information on legislation enacted where necessary and administrative policies put in place that ensure a state is in full compliance with the decisions of the Council. Such certifications should be done on an annual basis. When states fail to report, and more importantly, fail to comply with the obligations to implement the measures authorized by the Council, appropriate follow-on actions should be considered.

That said, certain unusual circumstances may require the Council to consider authorizing possible modification of Member States' obligations to implement the measures it has imposed. Both the Jordanian and Turkish barter arrangements with Iraq violated UNSC sanctions against Iraq. But we recognize that both countries were acutely vulnerable to a cutoff in their trade with Iraq and that our strategic interests on balance argued against exposing them to that risk.

Accordingly, the President, on an annual basis, waived the prohibition on U.S. Government assistance to violators of the sanctions, and so notified Congress. These were carefully considered, deliberate decisions. They are in no way comparable the kind of corruption, bribery or kickbacks that this committee or other investigative bodies are now looking at.

Mr. Chairman, a key obstacle currently preventing improved Member State compliance has been the lack of sufficient capacity. This is particularly true in the context of border monitoring, where many states lack sufficient funds, technology and well-trained personnel to prevent the movement across national boundaries of certain individuals and prohibited goods. As in the case of the former Yugoslavia, we should employ sanctions assistance monitors to support and train national customs authorities and border monitors to improve their compliance with relevant Council resolutions.

Mr. Chairman, increased transparency in the development and implementation of sanctions regimes is essential. The U.N. Security Council Sanctions Committee should consider making minutes of committee meetings and committee reports available to all Member States. There should be increased interaction and dialog between each sanctions committee and Member States, including through participation of interested members in committee meetings.

The Secretariat also must operate with greater transparency. More publicly available information concerning the U.N. Secretariat's operations and decisionmaking processes will help strengthen program administration and allow Member States to exercise appropriate additional oversight. The U.N.'s Office of Internal Oversight Services, OIOS, is responsible for evaluating the efficiency and effectiveness of the implementation of U.N. programs and mandates.

In a U.S.-led initiative, the general assembly this past December, strengthened the regulations for OIOS reporting procedures by requiring OIOS to make original versions of its reports available to Member States upon request. We believe this represents a significant step forward. OIOS' current staff and funding levels are, however, inadequate to oversee a program on the scale of the Oil-for-Food Program. OIOS should be provided additional funds from proceeds of any similar sanctions regimes to fund expertise in auditing large-scale commercial operations and complex financial transactions.

Last, Mr. Chairman, you asked for an update on the status of ongoing Department efforts to review and declassify OFF related documents. The Department received numerous congressional requests to provide documents, as well as requests from the Independent Inquiry Committee into the Oil-for-Food Program, the Volcker Commission, and the Department of Justice. The Freedom of Information Act requests have also been received. In response, the Department initiated a comprehensive search of its files generating thousands of documents.

The Department has reviewed and processed a significant portion of these materials. We have provided copies of specifically requested documents to Congress and are continuing to make additional documents available on an ongoing basis. The Department

has also provided the IIC access to documents identified as relevant to its ongoing investigation.

Mr. Chairman, thank you for this opportunity to appear before the subcommittee. I now stand ready to answer whatever questions you and your fellow committee members may wish to pose.

[The prepared statement of Mr. Schweich follows:]

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STATEMENT BY  
THOMAS A. SCHWEICH  
CHIEF OF STAFF  
U.S. MISSION TO THE UNITED NATIONS  
U.S. DEPARTMENT OF STATE  
BEFORE THE  
HOUSE COMMITTEE ON GOVERNMENT REFORM  
SUBCOMMITTEE ON NATIONAL SECURITY,  
EMERGING THREATS AND INTERNATIONAL RELATIONS  
ON THE  
UNITED NATIONS OIL-FOR-FOOD PROGRAM  
  
FIRST SESSION, 109<sup>TH</sup> CONGRESS  
APRIL 12, 2005

Mr. Chairman, distinguished members of the Committee,

I welcome this opportunity to appear before you today to discuss the UN Security Council's management of the multilateral sanctions regime on Iraq, including the Oil-for-Food Program, and to share with you our thoughts on how sanctions regimes might be made more effective. I will also update you on the status of the Department's efforts to provide Congress access to documents related to these matters.

Mr. Chairman, let me start by discussing why the Iraq sanctions were imposed and why the Oil-for-Food Program was established. Four days after Iraq invaded Kuwait, the Security Council adopted Resolution 661 (1990) that imposed comprehensive trade and financial sanctions against the former Iraqi regime. The United States Government supported this measure as part of a larger strategy to force Iraq to cease hostilities and to withdraw its forces from Kuwait.

At the end of the Gulf War in April 1991, the Security Council adopted Resolution 687 (1991) that extended the comprehensive sanctions on Iraq to ensure that Saddam Hussein complied with the major provisions of the ceasefire. By retaining the sanctions, the Council also sought to deny Iraq the capability of re-arming or reconstituting its WMD and other military programs. The sanctions were not anticipated to remain in place for more than a year or two before Saddam Hussein complied.

We now know Saddam chose not to comply. By 1995, in the wake of deteriorating humanitarian conditions in Iraq, many in the international community called for an end to the restrictions, reflecting concern that the impact of the sanctions was being borne primarily by the innocent Iraqi civilian population. In April 1995, the Security Council adopted resolution 986 establishing the Oil-for-Food (OFF) Program to alleviate the serious humanitarian crisis while maintaining the comprehensive restrictive measures to deny Saddam access to items that he could use to again pose a threat to his neighbors and to the region.

The Sanctions Committee that was established under Resolution 661 in 1990 -- the 661 Committee-- monitored implementation of the overall sanctions regime on Iraq—and, after the adoption of Resolution 986, it also monitored implementation of the Oil-for-Food Program.

The 661 Committee-- like all sanctions Committees-- operated as a subsidiary body of the Security Council. Unlike the Council, decisions were made in the Committee on a consensus basis requiring the agreement of all members. In addition to providing general oversight of the Oil-for-Food Program and to monitoring member state compliance with the sanctions, the Committee, through each of its members, was also responsible for reviewing humanitarian contracts, oil spare parts contracts, and oil pricing submitted on a regular basis by Iraq to the UN for approval. The U. S. delegation was an active participant in all such reviews.

The efforts of the U.S. and the UK to counter or address non-compliance were often negated by other members' desire to ease sanctions

on Iraq. The atmosphere within the Committee, particularly as the program evolved during the late 1990's, became increasingly contentious and polemic. The fundamental political disagreement between members over the Council's imposition of comprehensive sanctions was often exacerbated by the actions of certain key member states advancing self-serving national economic objectives. In retrospect, although the consensus rule often stymied progress in the Committee, that same consensus rule helped the U.S. achieve its objectives in a number of critical ways. The imposition of a retroactive pricing mechanism and our ability to place "holds" on humanitarian contracts that contained potential dual-use items were both made possible by the use of the consensus rule.

Judging the success or failure of the Iraq sanctions depends on the view of their objectives. Clearly they failed to force the regime of Saddam Hussein to comply with its international obligations, but they did succeed in keeping Iraq from rebuilding its military capabilities after the Gulf War. As regards the Oil-for-Food Program, similar considerations apply. The major shortcomings of the Program have been widely documented in recent months. But the OFF Program did succeed in its humanitarian objective of ensuring that the Iraqi people were adequately fed, thus limiting the impact of the sanctions on them.

Mr. Chairman, the U.S. Government believes that sanctions, appropriately structured and targeted, and when accompanied by effective diplomatic and military pressure, whether they are imposed unilaterally or in concert with other nations, can serve as a valuable tool in minimizing threats to international peace and security. Sanctions can significantly restrict

access to arms, finances, and political support by international actors, while raising the personal costs to the leadership of targeted states. Sanctions are measures meant to induce a change in the policies and actions of targeted actors. However, sanctions are not a panacea. They depend for their full effectiveness on the ability and willingness of member states to implement them. Sanctions must be part of a larger strategy to address threats to international peace and security.

In the wake of the comprehensive sanctions regime previously imposed on Iraq, and given the history of the Oil-for-Food Program, we have identified a number of opportunities for improving the Security Council's use of multilateral sanctions. In particular, we believe:

(1) Member states must be held accountable for enforcing agreed-upon sanctions; (2) sanctions committees and the UN Secretariat's proceedings should be more transparent; and, (3) there must be more independent and effective oversight of UN operations.

Under the UN Charter, all member states are obligated to implement Security Council Chapter VII decisions. However, certain states, either through lack of capacity or lack of political will, or both, have in a number of instances failed to fulfill their enforcement obligations. If sanctions are to be more effective, the United States and its allies need to increase the pressure brought to bear on those governments that fail to abide by the binding multilateral measures adopted under Chapter VII by the Security Council. Every member state should be required to report on actions taken to enforce sanctions, including information on legislation enacted where

necessary, and administrative policies put in place that ensure a state is in full compliance with the decisions of the Council. Such certification should be done on an annual basis. When states fail to report, and, more importantly, fail to comply with the obligations to implement the measures authorized by the Council, appropriate follow-on actions, including subjecting the offending state to a possible loss of UN privileges or possible targeting for new measures, should be considered.

That said, certain unusual circumstances may require the Council to consider authorizing the possible modification of member state obligations to implement the measures it has imposed. Both the Jordanian and Turkish barter arrangements with Iraq violated UNSC sanctions against Iraq. But we recognized that both countries were acutely vulnerable to a cutoff of their trade with Iraq and that our strategic interests on balance argued against exposing them to that risk. Accordingly, the President on an annual basis waived the prohibition on USG assistance to violators of the sanctions and so notified the Congress. These were carefully considered, deliberate decisions. They are in no way comparable to the kind of corruption, bribery or kickbacks this committee or other investigative bodies are now looking at.

Mr. Chairman, a key obstacle currently preventing improved member state compliance has been the lack of sufficient capacity. This is particularly true in the context of border monitoring, where many states lack sufficient funds, technology, and well-trained personnel to prevent the movement across national boundaries of certain individuals and prohibited goods. As in the case of the former Yugoslavia, we should employ Sanctions Assistance Monitors to support and train national customs authorities and

border monitors to improve their compliance with relevant Council resolutions.

Mr. Chairman, increased transparency in the development and implementation of sanctions regimes is essential. UN Security Council sanctions committees should consider making minutes of committee meetings and committee reports available to all member states. There should be increased interaction and dialogue between each sanctions committee and member states, including through the participation of interested member states in committee meetings.

The UN Secretariat also must operate with greater transparency. More publicly available information concerning the UN Secretariat's operations and decision-making processes would help to strengthen program administration and allow member states to exercise appropriate additional oversight.

The UN's Office of Internal Oversight Services (OIOS) is responsible for evaluating the efficiency and effectiveness of the implementation of UN programs and mandates. In a U.S.-led initiative, the General Assembly this past December strengthened the regulations for OIOS reporting procedures by requiring the OIOS to make original versions of its reports available to member states upon request. This represents a significant step forward.

OIOS's current funding and staff levels are, however, inadequate to oversee a program on the scale of OFF. OIOS should be provided additional funding from proceeds of any similar sanctions regime to fund expertise in

auditing large-scale commercial operations and complex financial transactions.

Lastly, Mr. Chairman, you asked for an update on the status of ongoing Department efforts to review and declassify OFF related documents. The Department received numerous Congressional requests to provide documents, as well as requests from the Independent Inquiry Committee into the UN Oil-for-Food Program (IIC) and the Department of Justice. Freedom of Information Act requests have also been received. In response, the Department initiated a comprehensive search of its files, generating thousands of documents.

The Department has reviewed and processed a significant portion of these materials. We have provided copies of specifically requested documents to Congress and are continuing to make additional documents available on an ongoing basis. The Department has also provided the IIC access to documents identified as relevant to its ongoing investigation.

Mr. Chairman, thank you for this opportunity to appear before this Committee. I now stand ready to answer whatever questions you and your fellow Committee members may wish to pose.

Mr. SHAYS. I thank you very much.  
How long have you been at the U.N. in this capacity?

Mr. SCHWEICH. Nine months.

Mr. SHAYS. I'm going to run through a number of questions that we would like answered. First off, if you would state the reason why Saddam waited until 1995 to approve the Oil-for-Food Program? In other words, what concessions did we have to make in order to get him to approve it?

Mr. SCHWEICH. Mr. Chairman, as the subcommittee is aware, an Oil-for-Food Program was attempted much earlier than 1995 under Resolutions 706 and 712. And Saddam Hussein claimed that by not having the authority to approve contracts himself, oil and food contracts, it was an imposition on his sovereignty and he refused to abide or comply.

So the main concessions that were made to get an Oil-for-Food Program going was to allow Saddam to pick the people who he would be selling the oil to and to pick the companies that he would be buying the food and other goods from.

Mr. SHAYS. Which is basically how the scam occurred, he would undersell his oil and get a kickback, and he would overpay for commodities and get a kickback. And the key though, was, in order for him to do that, he had to be able to pick who he sold to and who he bought from. And you're saying that the agreement that occurred in 1995 enabled him to do that, is that correct?

Mr. SCHWEICH. That's correct.

Mr. SHAYS. OK. This may seem like an obvious statement in answer to the question, but let me just put it on the record. To what extent was Saddam responsible for the humanitarian crisis that affected the Iraqi people in the early 1990s?

Mr. SCHWEICH. Well, I think he was totally responsible for it. Because the sanctions would have been lifted had he complied with the requirements of the cease-fire. The sanctions were retained after the war was over in order to get him to comply with the various requirements of the cease-fire, including allowing inspectors to come in and check for weapons of mass destruction. Had he complied, the sanctions would have been lifted.

Mr. SHAYS. And the cease-fire occurred because there was an agreement he would do the following things, in other words, there wasn't a march to Baghdad, we didn't annihilate as we could have the Republican Guard, because he agreed to certain conditions which he then didn't follow up on, is that your—

Mr. SCHWEICH. That's correct, Mr. Chairman.

Mr. SHAYS. What was the responsibility of the 661 Committee members to carry out oversight of the Oil-for-Food Program? What was its responsibility?

Mr. SCHWEICH. Well, the 661 Committee's primary responsibility was to review the humanitarian contracts as they came in, to work with the oil overseers for oil pricing at the beginning of each month and to try to ensure those were done properly.

Mr. SHAYS. How did specific 661 Committee members respond to corruption concerns raised by the United States, U.K. and other governments?

Mr. SCHWEICH. Many of them demanded proof, excessive levels of proof. Some of them resisted the notion that there was any cor-

ruption going on at all. We had a lot of trouble getting retroactive pricing which we eventually did to eliminate some of the surcharges on the oil.

Mr. SHAYS. What kind of pricing again?

Mr. SCHWEICH. Retroactive pricing. Yes, once we learned that there was—

Mr. SHAYS. Just define retroactive pricing.

Mr. SCHWEICH. Retroactive pricing is pricing the oil contracts at the end of the month instead of the beginning of the month. The way the program was set up, Mr. Chairman, the oil overseers would recommend a price at the beginning of the month. Saddam Hussein would try to get as low of a price as possible so he would get that kickback you were talking about.

When we realized this was going on in 1998 and 1999, or maybe a little bit later than that, we withheld our consent to the pricing until the end of the month when we could see what the actual price of oil had been over the course of the month. That allowed us to eliminate the margin he had from about 50 cents a barrel down to about 5 cents a barrel, made it much harder for him to get his kickback.

Mr. SHAYS. When did that occur?

Mr. SCHWEICH. That was around the year 2000, early 2001.

Mr. SHAYS. The program began in 1996?

Mr. SCHWEICH. That's correct.

Mr. SHAYS. So around 1999, you said?

Mr. SCHWEICH. The first charges, some of the oil periodicals, some of the press started reporting on surcharges in 1999, I think, yes.

Mr. SHAYS. Which nations were more influenced by national economic objectives than making sanctions work? Can you identify any?

Mr. SCHWEICH. Mr. Chairman, it's hard to make generalizations like that. Certainly Syria would qualify, and then a lot of people have accused other countries as well. Some have said the French were interested in national economic objectives as well. That was less obvious than the Syrians.

Mr. SHAYS. It was pretty clear the Syrians were.

Mr. SCHWEICH. Yes.

Mr. SHAYS. How did Iraq influence the 661 Committee?

Mr. SCHWEICH. Well, they embarked on a campaign of claiming that the sanctions were killing their people, of course. There was some truth to that, but I think it was in some respects exaggerated.

The way they tried to influence the 661 Committee is, they recognized, Mr. Chairman, the inherent shortcomings in a committee that's just basically reviewing paper in New York. So what they did is they developed a whole pull-down menu of manipulative mechanisms in order to circumvent that paperwork. I have a list, if I can read it into the record.

Mr. SHAYS. Sure.

Mr. SCHWEICH. As I was preparing for this hearing, there were surcharges, topping off, influence peddling, product substitution, product diversion, phony service contracts, phantom spare parts, shell corporations, illusory performance bonds, hidden bank ac-

counts and then plain old-fashioned bribery and kickbacks to the tune of several billion dollars.

Mr. SHAYS. I'm going to ask you to read that over again, one more time, and read it more slowly. Is this my first 5 minutes or second? Roll it one more time.

Mr. SCHWEICH. Surcharges, topping off, influence peddling through the voucher system we all learned about, product substitution, product diversion, phony service contracts, phantom spare parts, shell corporations, illusory performance bonds, hidden bank accounts and a whole lot of bribery and kickbacks.

Mr. SHAYS. I'm going to ask you to read it one more time.

Mr. SCHWEICH. Surcharges, topping off, influence peddling, product substitution, product diversion, phony service contracts, phantom spare parts, shell corporations, illusory performance bonds, hidden bank accounts, bribery and kickbacks.

Mr. SHAYS. Still sounds the same the third time. Thank you.

How did Iraq influence the Secretariat? And define to me the Secretariat.

Mr. SCHWEICH. The Secretariat is the group of about 8,800 employees who work directly for the Secretary General of the United Nations, in the big tall building, 38 stories, in New York.

Mr. SHAYS. And can you describe how Iraq would have had influence over them?

Mr. SCHWEICH. Well, Paul Volcker is still investigating that and I don't think there are any definitive conclusions. One allegation is that certain members of the Secretariat actually got the oil vouchers in order to influence them to try to alleviate the sanctions. Benon Sevan is one of the people that's been accused of that. So that would have been one of the principal tactics.

Mr. SHAYS. OK. And describe to me how some of the 661 Committee members, and that's the permanent members of the Security Council and those that were assigned during—it was basically the Security Council but they were functioning as the 661 Committee, correct?

Mr. SCHWEICH. That's correct. It was a subsidiary body of the Security Council, Mr. Chairman, that was represented by each country on the Security Council.

Mr. SHAYS. So it was comprised of the same people. It's almost like on the House floor when we go from the Congress to what we call the committee of Congress, it's still the same people debating and articulating.

Mr. SCHWEICH. Well, they had a group of experts that were on the 661 Committee but they reported to their Ambassadors. So yes, that would be effectively the same.

Mr. SHAYS. Describe to me, though, how the 661 Committee members undermined the sanction process? What were some of the things that they would have done to undermine?

Mr. SCHWEICH. Well, they consistently pointed out the problems that were being incurred by the Iraqi people, and suggested that the sanctions regime was outdated. Mainly what they did was inaction. There was a consensus rule, Mr. Chairman, where everybody had to agree before any action could be taken. And if you look at the minutes, which I'm sure the committee has done, you see the same item on the agenda over and over and over again, week after

week. They can't get consensus because the parties just roll it over to the next meeting.

It was basically complacency and ambivalence, was their principal tactic.

Mr. SHAYS. OK. How did other nations influence the sanctions regime, outside the Security Council or the 661 Committee?

Mr. SCHWEICH. Mr. Chairman, I don't have a lot of information on that, except to say that there were continuous reports from various countries, organizations, non-government organizations affiliated with other countries, pointing out the severe adverse effect that sanctions were having on the Iraqi people.

Mr. SHAYS. What did the United States do to push the U.N. to investigate allegations of corruption? And I'm going to say that I suspect sometimes it was somewhat aggressive and sometimes it wasn't. Dissuade me if I'm wrong; I believe that it was pretty much a mixed bag. Is that an accurate feeling, or were we always aggressive, always pushing, always questioning or did we sometimes back off?

Mr. SCHWEICH. Well, the problem we had was getting concrete evidence. That's what Paul Volcker is having so much difficulty doing and spending so much time doing. A lot of people, for example, when we were told that there was kickbacks on the humanitarian goods said, where's the evidence. We tried to produce evidence but it was fairly circumstantial at the time.

Now, we did put holds on \$5.4 billion worth of contracts. So we did try to stop some of the contracts that looked most suspicious to us, particularly for dual use purposes. But the problem we had with the 661 Committee was, members would say, we've heard allegations, but can you show us any examples. And of course, the OIOS, which would have been the principal mechanism to do the auditing of these contracts and the bank accounts and the places where the kickbacks went did not have the authority to audit the actual contracts.

So we really were not able to come up with specific evidence of the kickbacks, only allegations and hearsay, which was not sufficient to convince other 661 Committee members. But I do think, Mr. Chairman, that the United States and the United Kingdom were fairly aggressive in placing holds on contracts, the whole retroactive pricing mechanism that I discussed with you, to try to keep the surcharges from putting extra money in Saddam Hussein's pockets. We did what we could, I think.

Mr. SHAYS. So if we saw a contract we were suspicious of and raised questions, if we couldn't show them the smoking gun, it became more rhetoric as far as the other members were concerned and then the committee chose not to act, is that your basic point?

Mr. SCHWEICH. That happened frequently, yes, Mr. Chairman.

Mr. SHAYS. Why did the United States accept the trade protocols signed between Iraq, Jordan and Turkey? Let me back up and say, this is an area where I have some background, and I need to put it on the record. When I met before the war with Iraqi officials and Turkish officials, there was no doubt, excuse me, when I met with Jordanian officials and Turkish officials, there was no doubt in our mind, the Government's mind that, forget the oil sanctions, but that there was smuggling going on to both countries, and that I

had the view that our country was somewhat tolerant of some smuggling to make up for their loss of trade with these two countries. In other words, these were two important countries whose support we needed in order to have some capability to contain Saddam.

Am I wrong in believing that the United States was aware that smuggling was occurring between—so it's a slightly different question—am I wrong in believing that the United States was aware that smuggling was occurring between Turkey and Jordan, and that there was tacit tolerance of some level of smuggling? This is different from the Oil-for-Food Program issue right now.

Mr. SCHWEICH. Right. Mr. Chairman, I'm glad you brought that up. If I can take a few minutes to explain the situation, it will take a little bit of time. When Iraq invaded Kuwait in 1990, a few days later, Jordan came to the Security Council and said, we have a big problem here. We do 10 to 20 percent of our business, national economic business, with the Iraqi government. And if we are forced to comply with the 661 Committee sanctions on Iraq, it will have a devastating effect on our economy.

They came with a formal request under Article 50 of the U.N. charter for relief, with a letter. This was not sort of an under the table deal. They came with sort of hat in hand and said, we've got a huge problem here. They provided an extensive amount of backup materials supporting that. So it was put on the 661 Committee's agenda that Jordan had a serious problem.

It was again, as I said with this problem with the consensus rule, it was rolled over for month after month after month without anybody doing anything about it. A mission was actually sent to Jordan to investigate the allegations that the Jordanians were making about the impact of this on their economy.

But nothing was done for many, many months. Finally, after 9 months of repeatedly asking the 661 Committee to do something about the problems it had, and asking specifically for Article 50 relief under the U.N. charter, again, not a back-room deal, the 661 Committee received a letter from Jordan saying, we are trying to comply with the sanctions, I have a copy of it here if the subcommittee would like it, we are trying to comply with these sanctions but we can't do it. So we are notifying you right now that we are resuming the importing of oil from Iraq to Jordan in order to prevent an economic catastrophe in our country. We will report to you regularly on what we're doing. And we're sorry, but that's just the way it's going to have to be. Because there's been no action by the 661 Committee to address our concerns.

Shortly thereafter, the 661 Committee sent a letter to the Jordanian Ambassador to the United Nations, a copy of which I also brought with me if the subcommittee would like to see it. And the letter said, we take note of the concern you have, and we take note of the serious economic impact that these sanctions are having on Jordan and we request that you do report to us on how much you're importing.

You can't really say it was consent, but it was something very close to that. Should we take note of it, we understand you're doing it, please tell us how much you're doing and don't do any more

than you have to. And this was in writing, again, from the 661 Committee back to the Jordanian Ambassador.

So at that point, the trade was started up at \$200 million or \$300 million a year. So it wasn't really secretive.

Then in the United States, of course, we had a law under the Foreign Operations Appropriations Act, that prohibited assistance to countries that were violating the 661 sanctions. And Section 531 of that law allowed a waiver to be granted. And in the case, over three administrations, starting with the first Bush administration, throughout the entire Clinton administration and then through the current Bush administration, a waiver was granted by the President and then eventually I think it was delegated to the Secretary of State and Deputy Secretary of State.

Congress was notified that there was a waiver granted here and that Jordan would be allowed to import the oil without incurring any problems with their foreign assistance. And it was published in the Federal Register. And the reason why I bring it up, a similar thing happened to Turkey about 5 years later, a similar type process, not exactly the same but analogous.

Mr. SHAYS. How much later?

Mr. SCHWEICH. About 5 years later, this happened in 1996. Turkey requested also similar Article 50 relief—

Mr. SHAYS. Hold on, back up. Jordan was 1996 and then—

Mr. SCHWEICH. Jordan was 1990, 1991 and Turkey in 1996. And they went through a similar process.

The reason why I'm very glad, Mr. Chairman, that you brought this up is, if you've been reading some of the press article, there are certain, former Secretary General of the United Nations, there are other U.N. officials and other countries that are trying to suggest that the U.S. acceptance of the Jordanian-Turkish protocols is somehow analogous to the things I just read off, the bribery, the corruption, the kickbacks, the things that were done for self-interest, secretly in a non-transparent manner that are really just acts of fraud and crime. And they're trying to suggest that the United States should just take a look in the mirror, you're here using the Oil-for-Food scandal as a pretext for reforming the U.N. when you were just as guilty by accepting the Jordanian and Turkish protocols.

And we at the State Department, Mr. Chairman, categorically reject that comparison. The Jordanian and Turkish protocols were done to alleviate economic hardship. It was an exception to the sanctions regime because of the severe consequences that a failing Jordanian and Turkish economy might have on the world. It was done transparently, openly with the knowledge of the entire 661 Committee and the international community and for a valid purpose.

And to allow other countries and individuals to equate that with the type of corruption that went on could seriously undermine our efforts to reform the U.N. that are going on now.

Mr. SHAYS. Let me say, Mr. Schweich, I particularly appreciate, and then I'm going to yield to my colleague for such time as he may want to consume, given I've probably done about, how much extra over my 10? OK. You're just very well prepared. And your answers are succinct. You're really an excellent witness. I just appreciate

the seriousness with which you are treating this hearing and the preparation you have done for it. I thank you for that.

At this time, Mr. Kucinich, you have the floor. My colleague, Mr. Duncan—do you have to go?

Mr. KUCINICH. If he has to go, I'll be glad to yield to him.

Mr. DUNCAN. Thank you. I've got less than 5 minutes, probably. Thank you very much.

Mr. Schweich, we noticed that when you were going through your testimony, you got to page 6 and you left out the words "including subjecting the offending state to a possible loss of U.N. privileges or possible targeting for new measures." What action is taken or do you think should be taken against Member States that don't enforce agreed-upon sanctions?

Mr. SHAYS. Before the gentleman responds, you had two letters that you had mentioned.

Mr. SCHWEICH. Yes.

Mr. SHAYS. I think, if you don't mind, we'll take those letters, we'll put them into the record. We'll reproduce those. So without objection, we are going to put those letters into the record, and we'll describe what those letters are, and we'll give you back your copies.

I'm sorry, do you want to repeat your question?

Mr. DUNCAN. Well, I just was curious why you left out those words, "including subjecting the offending state to a possible loss of U.N. privileges or possible targeting for new measures."

Mr. SCHWEICH. You're very observant, Congressman, that was changed this morning. Because originally, people thought it might imply that we could revoke the voting capability of other countries, which we really don't have the authority to do. But what we do think could be done is to impose similar types of sanctions, in other words, failure to abide by sanctions could result in similar sanctions, restricting travel, asset freezes and things like that we would be willing to consider.

Mr. DUNCAN. Restricting travel and asset freezes and what else?

Mr. SCHWEICH. Well, there's a wide variety, restricting trade in certain sectors, like we do in Sierra Leone and other countries. What we weren't willing to go so far is to say we would have the authority to revoke their vote.

Mr. SHAYS. Could the gentleman just suspend a second, because this is an important question. Mr. Kucinich and I were just saying something and we missed it. What was changed was you didn't read what from your statement which we will now make you read? When states fail to report, is that it? And it's because something—on page 6?

Mr. DUNCAN. Page 6, including—the bottom of the first paragraph, "including subjecting the offending state to a possible loss of U.N. privileges or possible targeting for new——"

Mr. SHAYS. Let me read the whole sentence. It says "When states fail to report, and more importantly, fail to comply with the obligation to implement the measures authorized by the Council, appropriate follow-on actions, including subjecting the offending state to a possible loss of U.N. privileges or possible targeting for new measures should be considered." And your response to Mr. Duncan——

Mr. SCHWEICH. Right. What we changed this morning, I said appropriate follow-on actions should be considered. And I left it more general. It didn't preclude anything. But the thought was possible loss of U.N. privileges might imply that we could revoke their ability to vote like occurs when you're in areas. We got a legal opinion that we probably wouldn't have the authority to do that, so that's why we changed it.

Mr. SHAYS. Thank you.

Mr. DUNCAN. Now, a similar type question, except not leaving out anything out of your testimony, but basically because the important part of that question was, what actions would you recommend. But there is something that is of concern to me. A later witness, the chairman's constituent will testify that contrary to common views, the Oil-for-Food Program did not give Saddam Hussein a free hand to use oil proceeds as he wished without oversight or monitoring. Rather, the OFF Program had multiple levels of oversight for both import contracts and oil sales involving scrutiny by U.N. staff and every member of the Security Council of nearly every aspect of every transaction. To the extent that there were kickbacks or other improprieties in the Program, these occurred despite an elaborate system of oversight.

Now, and yet you testified a few minutes ago that the OIOS did not have authority even to audit the contracts.

Mr. SCHWEICH. That's correct, yes.

Mr. DUNCAN. It almost sounds like, when I read the testimony of Professor Gordon, if there was such tremendous oversight, but then you say the OIOS did not have authority to audit the contracts, and one of the main purposes of this meeting should be to try to figure out how we can keep something like this from ever happening again.

Yet she says there is just all this oversight over every aspect of the program. So is it hopeless? Surely we're not going to say that, that we just can't stop things from happening again. She says there was elaborate oversight, an elaborate system of oversight.

Mr. SCHWEICH. Congressman, there was oversight. The way it worked was, with respect to the oil contracts, there were oil overseers that would review the contracts for pricing and approve of those contracts. With respect to the humanitarian contracts, the contracts would be signed by Saddam Hussein or his agents and they would be sent to the Office of Iraq Programs that would review them and send them to the 661 Committee. And the 661 Committee did review 36,000 contracts.

The problem was, when you have somebody that is so determined to circumvent it and willing to set up the shell corporations and the phony bank accounts and the things that the 661 Committee did not have insight into, just looking at the paper isn't enough to find the fraud. In fact, DCAA did an audit in 2003 of a bunch of the food programs. They said basically the same thing, on the surface of the contract, it's hard to see the fraud.

So yes, there was oversight, but Saddam Hussein had an aggressive assault on that process that managed to circumvent it.

Mr. DUNCAN. Well, are we giving people the authority now to, have any changes been made yet?

Mr. SCHWEICH. Yes, Congressman.

Mr. DUNCAN. I know some of this investigation is still going on. But surely some changes have been made.

Mr. SCHWEICH. Yes, Congressman. First of all, I'm not aware of any situation where a country that was the subject of the sanctions was allowed to approve and sign and negotiate the contracts. That was certainly one of the biggest flaws.

Now, as I said earlier, it was almost a necessity, because Saddam Hussein would have rather seen his own people suffer than not have that occur. But I don't think that mistake will be made again.

Mr. DUNCAN. My time is up, but one last question. Let me ask you this. What action is taken against contractors that have been involved in this scandal? Has action been taken? Are the contractors that have been involved in this scandal, are they still doing business with the United Nations, still making money off the U.N.?

Mr. SCHWEICH. My understanding is most of these are large and small international companies. I know that the Volcker Commission is working with the authorities in the various countries to try to get some of these people prosecuted.

Now, some of that will come out, I think in the next report. We know in this country, the U.S. attorney for the southern district of New York, Mr. Kelly, has already indicted one person who misused an oil voucher he got in the United States. This is an American citizen.

Unfortunately, Mr. Volcker has no prosecutorial authority, so he has to refer these to the authorities in the various countries. In one case I know, I think Mr. Samir Vincent already pleaded guilty of mis-using oil vouchers and agreed to cooperate with others. So I think there will be people brought to justice.

Mr. DUNCAN. I'm glad that they are prosecuting people, but we need to make sure that these contractors don't do business with the U.N. The United States pays by far the biggest share of U.N. costs in all kinds of ways. So we need to make sure these contractors don't do business with the U.N. in the future, if they've ripped us off in the past like this.

Thank you. Mr. Kucinich, thank you very much. And Mr. Chairman, thank you.

Mr. SHAYS. Thanks for being here.

Mr. Kucinich, you have the floor for give or take 15 minutes.

Mr. KUCINICH. Thank you very much, Mr. Chairman.

At the outset of my remarks I said, and I want to repeat, that we are all concerned about the alleged abuse of the program, from the kickbacks and overpricing schemes to the litany that the gentleman laid out. We're all concerned about that.

Mr. SHAYS. Do you want him to read it again? [Laughter.]

Mr. KUCINICH. No, actually I'm going to go over some of those elements in my questions. You'll know that I got it.

Were you at the U.N. a few days ago after the President's Commission on Intelligence Capabilities released their report?

Mr. SCHWEICH. I was at the United Nations, yes, but I haven't read the report.

Mr. KUCINICH. Well, can you say what the reaction was of some of your colleagues from other Member States to that report?

Mr. SCHWEICH. Mr. Chairman, I was at the U.N. with Ambassador Sharin Tahir-Kheli going over our proposals for reform and I did not cover that with anybody.

Mr. KUCINICH. So do you have any idea whether anyone was upset about it or—

Mr. SCHWEICH. I don't know.

Mr. KUCINICH [continuing]. That the United States had misled them?

Mr. SCHWEICH. I don't know.

Mr. KUCINICH. You don't know? Are you worried that the credibility of the State Department may have been undermined by the report of the Commission on Intelligence Capabilities?

Mr. SCHWEICH. Mr. Chairman, I am not familiar with the report and don't really have an opinion on that.

Mr. KUCINICH. Did you read any news stories about the report?

Mr. SCHWEICH. I think I probably did read a little bit about it, yes.

Mr. KUCINICH. But you haven't talked to anyone about it at all?

Mr. SCHWEICH. I honestly don't think I have, no.

Mr. KUCINICH. Does your job at the State Department depend on the credibility of the U.S. State Department with respect to its statements and what the present to the world?

Mr. SCHWEICH. It certainly does.

Mr. KUCINICH. Are you concerned that statements may, that were presented to the world through the State Department were later on found out not to be true?

Mr. SCHWEICH. Yes, and I'm very hopeful that Ambassador Negroponte, who I think is going through hearings right now, will be able to alleviate that problem.

Mr. KUCINICH. Have you ever had any discussion with anyone about Colin Powell himself being misled?

Mr. SCHWEICH. No. I arrived at the U.N. after all that had occurred, Congressman.

Mr. KUCINICH. Are you aware that Colin Powell feels that he's been misled?

Mr. SCHWEICH. I heard the statement that he made this morning, and I read some of those.

Mr. KUCINICH. Is it possible that in your statements today that you've been misled by the administration?

Mr. SCHWEICH. I don't think so.

Mr. KUCINICH. You don't think there's any chance of that, that any of the information you're presenting to this subcommittee will later on come back and prove not to be true?

Mr. SCHWEICH. Congressman, I think most of what I presented today is somewhere in the public record.

Mr. KUCINICH. Isn't it in the public record that there were about 60 U.S. officials employed to scrutinize each and every contract?

Mr. SCHWEICH. There was a large number. I wasn't aware it was 60, but yes.

Mr. KUCINICH. And those individuals had the ability to place a hold on a contract?

Mr. SCHWEICH. That's correct, and they did frequently.

Mr. KUCINICH. But they never used their veto power, am I correct, to stop a contract because of pricing concerns?

Mr. SCHWEICH. Actually, the vast majority of the holds, Congressman, were for possible dual use. But there were certain contractual irregularities, and I understand also some pricing concerns that were expressed.

Mr. KUCINICH. But they never vetoed something based on pricing?

Mr. SCHWEICH. Congressman, under the 661 Committee rules, no one actually had a veto. They could put a hold by withholding consensus, and they did do that.

Mr. KUCINICH. So they had holds based on pricing concerns?

Mr. SCHWEICH. I don't think it was a lot of them, but I think there were some, yes.

Mr. KUCINICH. Can you present this committee with information to support that?

Mr. SCHWEICH. I probably can. I don't have it right here in front of me. But I'd be happy to take that under advisement and get back to you, if you would like.

Mr. KUCINICH. Mr. Chairman.

Mr. SHAYS. That would be great, thank you. And if you could just submit it to me, we'll make sure Mr. Kucinich gets it.

Mr. KUCINICH. OK, thanks.

Do you think it's absolutely improbable that any U.S. official knew anything about the kickbacks that were going on?

Mr. SCHWEICH. I'm not aware of any U.S. official who knew about it. I think there were individual Americans, like Mr. Vincent who got a voucher, who knew something about the process.

Mr. KUCINICH. But the United States was totally surprised that there were kickbacks in this program, is that correct?

Mr. SCHWEICH. Well, Congressman, we're not even exactly sure when the kickbacks began. We don't think they started at the beginning of the program. They came to light in some press, some oil industry press in the late 1990's, and some of the evidence we have suggests that's around the time when it started.

Mr. KUCINICH. And do you have any information specifically about what Saddam Hussein specifically did with the money that was diverted? What did he do with it? What did he buy? What did he use the money for?

Mr. SCHWEICH. Well, money is fungible, so we think that the palaces, and there's a lot of—he could have bought pretty much anything with the money, because it was cash.

Mr. KUCINICH. What about the palaces? Tell me about that.

Mr. SCHWEICH. I don't know much more than he built very lavish palaces with money that we don't know where he got it.

Mr. KUCINICH. OK, let's get this, Mr. Chairman. We've got a person whose nation is under sanctions, there is an Oil-for-Food Program, and we do know that he's building these elaborate palaces. Did anyone think to ask where he's getting the money?

Mr. SCHWEICH. I think that there's a coincidence of the timing of when he was using this money for whatever purposes he used it for and when we first were aware of the kickbacks and things that were occurring.

Mr. KUCINICH. Well, it seems to me, to the gentleman, it seems to me that someone somewhere had to know that Saddam Hussein is building palaces and Iraq's under sanctions, that he's getting the

money from somewhere. So if there is physical, visible evidence of Saddam Hussein spending money, you would think that it would trigger some questions on the part of somebody somewhere about where the money is coming from, wouldn't you?

Mr. SCHWEICH. Yes, and I think the United States did raise those questions in 1999 and 2000 and 2001.

Mr. KUCINICH. And did they raise the questions that it could have been coming from the Oil-for-Food Program then?

Mr. SCHWEICH. Yes, I think that's when the surcharges and the kickbacks came to light and we were very concerned about it.

Mr. KUCINICH. But they never moved to aggressively block the program?

Mr. SCHWEICH. Well, they tried, but again they had the consensus rule in the committee, which precluded us from acting unilaterally. And they did place holds on contracts and did implement the retroactive oil pricing, which was something we used sort of our ability to block, being one of the 15 members, to do that retroactive pricing. That did really cut down on his extra revenue.

Mr. KUCINICH. So you're saying that the Security Council, of which the United States is a member, did or didn't have the responsibility for the day to day management of the Oil-for-Food Program?

Mr. SCHWEICH. They did have responsibility for the day to day management, yes, along with the Office of Iraq Programs and others.

Mr. KUCINICH. So do you then agree with Colin Powell when he says that the United States is partially to blame?

Mr. SCHWEICH. I'm not sure of the context in which Secretary Powell made that statement.

Mr. KUCINICH. Here's his quote. He said "The responsibility does not rest entirely on Kofi Annan. It also rests on the membership, and especially on the Security Council, and we are a member of the Security Council. It was the Security Council that had the responsibility for the day to day management of this program."

Mr. SCHWEICH. And Congressman—

Mr. KUCINICH. Do you agree with that statement?

Mr. SCHWEICH. I agree with the statement, but I also would point out the Security has 15 members. And I think the United States and the United Kingdom acted very honorably in trying their best to stop the corruption when it came to light.

Mr. KUCINICH. And what specific steps were taken when the corruption came to light?

Mr. SCHWEICH. As I said, the retroactive pricing was extremely effective, placing holds on goods that might have dual use items. And then in other cases, we were less successful. We tried, for example, something called smart sanctions, Congressman, where we were trying to get increased border patrols. We were not able to get that through because other committee members weren't interested in it.

Mr. KUCINICH. Isn't it true that the United States has veto power over every substantive decision made by the Secretary General?

Mr. SCHWEICH. No, over every resolution that's proposed to be passed by the Security Council.

Mr. KUCINICH. And the U.N. Secretariat, including those regarding the Oil-for-Food Program?

Mr. SCHWEICH. I don't think the United States has any veto power over decisions made by the Secretariat within the scope of the authority of the Secretariat.

Mr. KUCINICH. But within the scope of the management of specific programs, we sat and we had 60 people who were scanning all these documents, and you're saying we couldn't do anything about any of the kickbacks, we were powerless?

Mr. SCHWEICH. We actually did, as I said, with the retroactive pricing and the holds, we actually did a significant amount to try to stop it.

Now, I agree with you 100 percent, Congressman, that it was not a leak-free process. We definitely had problems, and there was definitely money that got through. But I think if you look through the 661 Committee minutes over an extended period of time that the conduct of the United States and the United Kingdom was honorable and we did our best.

Mr. KUCINICH. Isn't it true that the Oil-for-Food Program became the Development Fund for Iraq?

Mr. SCHWEICH. That's my understanding.

Mr. KUCINICH. And that happened in November 2003?

Mr. SCHWEICH. Right.

Mr. KUCINICH. And that Development Fund for Iraq was then turned over to the Coalition Provisional Authority?

Mr. SCHWEICH. That's my understanding, yes.

Mr. KUCINICH. Are you familiar with the report of the Special Inspector General for Iraq relating to the handling of \$9 billion in Iraq reconstruction funds?

Mr. SCHWEICH. Congressman, I don't want to not answer your question, but I have only very limited familiarity. Once it went over to the CPA, it became more of a DOD activity, and I haven't paid a whole lot of attention to it, to be honest with you.

Mr. KUCINICH. You're speaking to a certain fluency that existed at the State Department with respect to Oil-for-Food. Do you know if there is any such fluency at the State Department with respect to the missing \$9 billion?

Mr. SCHWEICH. I'm not aware of that.

Mr. KUCINICH. So you really don't know anything about it?

Mr. SCHWEICH. No, I don't.

Mr. KUCINICH. Are you interested in it?

Mr. SCHWEICH. Yes, sure.

Mr. KUCINICH. Do you feel that it would undermine the credibility of the United States on one hand to be raising questions about the accounting of the Oil-for-Food Program in which we discovered there were bribery kickbacks, and you went over the list, and on the other hand a program that we had direct responsibility for accounting for that \$9 billion is missing? Do you think that raises questions of our credibility before the United Nations?

Mr. SCHWEICH. Congressman, I just don't know enough about the issue to make any statement on that.

Mr. SHAYS. Would the gentleman just suspend 1 second? This will be on my time. We are going to have a hearing some time in

June on this specific issue of the \$9 billion. It is an issue of how was the money accounted for.

So it may be ultimately \$100 million are missing or \$10 million or whatever. It's not that \$9 billion can't be accounted for. It's that there was not proper accounting of the \$9 billion.

But the gentleman has raised absolutely the right question about this issue. And we'll be bringing in the experts to do that. We think it may be on June 21st, and we've got a sign-off on that hearing from those that we need to get sign-off on, at the gentleman's request. I haven't had a chance to—

Mr. KUCINICH. Well, you know, Mr. Chairman, when there was money missing at ENRON, we found out later it was stolen. So we don't know that any of that money hasn't been stolen. I'm not charging that it has been. But what I'm saying is that when you have money missing and you have a special investigation of it, and it raises the questions about \$9 billion missing, I mean, on one hand, if we're concerned about Oil-for-Food, and we ought to be, then we also ought to look at the handling of successor programs.

Mr. SHAYS. Would the gentleman allow me?

Mr. KUCINICH. Of course.

Mr. SHAYS. It's like saying that DOD is missing \$100 billion, because no part, frankly, very little part of DOD is accountable. In other words, at one point there was over a trillion dollars of transactions that were not properly being accounted. But that didn't mean we didn't know where a trillion dollars of transactions were. It's that they weren't being properly accounted for.

And the gentleman is right, they are not being properly accounted for. There's not \$9 billion missing, it's just not being accounted for. And when I say just, I mean it's serious. But this gentleman, nor do you or I really have the expertise yet to do it. But we will have a hearing, we will have witnesses that you would like us to get, and we will get an answer as to, of the failure to account for \$9 billion, how much is actually missing, where did it all go.

I thank the gentleman.

Mr. KUCINICH. What I'm getting at here, Mr. Chairman, is this. And I want to thank you, by the way, for being responsive and being willing to hold a hearing on that. What we're looking at here is a mentality. There was, you know, it's conceivable, when you consider that we had so many people who were involved in scrutinizing these contracts, it's conceivable that we had an anything goes approach, because it's Iraq. It's like a run-up to the signature line in the movie Chinatown. I mean, it's just Chinatown. Or maybe it's just Iraq.

So if it's in Iraq, anything goes. Anything goes, and all of a sudden you have this Oil-for-Food and all these kickbacks, it's Iraq. Then you have \$9 billion that hasn't been properly accounted for, it's Iraq.

Well, you know, that's not good enough. And you know why, and it's particularly not good enough, Mr. Chairman, when now you see the credibility not only of U.S. intelligence agencies under attack, but also the credibility of the State Department under attack.

Now, I'm going to, before I conclude, I just want to share this thought with you. It's no secret around the world, because we're talking about the world here, and I happen to believe there is a le-

gitimate role for the United Nations. My view is, I look at the world as one. I see it as being interconnected and interdependent. That's why we should be concerned with what's happening in different nations, as they should be concerned what happens here.

But when you see this whole story about Oil-for-Food here, and \$9 billion that can't be accounted for there, and you see the charade of the State Department taking the rap for a decision that was made by the White House to invade Iraq no matter what, when you see the intelligence community taking a rap for a decision that was made by the White House to attack Iraq no matter what, it leaves us here in a state where we're reviewing a farce. That is tragic.

So the buck has to stop at the administration. Colin Powell is one of the most honorable men who has served this country and he was basically put in an impossible position. We have some of the best people serving America in the State Department, and they have been put in an impossible position, because the administration made the decision to attack Iraq, notwithstanding the facts.

And the people in our intelligence community, I'm going to just say this and then let it go, the people in our intelligence community, we have some of the best people in intelligence, the career employees serving this country, and they are getting smeared, because this administration basically fed intelligence to certain people and told them this is what they had to say and later on it turned out not to be true.

Mr. Chairman, so much of what we're looking at here is not just a question of the credibility of the State Department or the United Nations or our intelligence capability. It goes right back to the administration. It's time for someone to dust off Harry Truman's old plate that said "The buck stops here." Because in this administration, it looks like the buck stops in somebody's pocket.

Thank you.

Mr. SHAYS. I thank the gentleman.

We've been joined by Mr. Ruppertsberger and Mr. Lynch. We thank both of them for being here, they have been very important members of the subcommittee.

Mr. RUPPERSBERGER. Mr. Chairman, first, I want to thank you for continuing to focus on this issue. It's extremely important as we deal with all of the issues facing us, including the security of our country and the world, basically.

I have just a quick statement, I want to read a couple paragraphs, and then just a couple basic questions. I'm sure a lot of this has been repeated.

Mr. SHAYS. The gentleman has 10 minutes.

Mr. RUPPERSBERGER. That's good, usually we have 5. That's good, Mr. Chairman, thank you.

First thing, I was struck last year at one of our Oil-for-Food hearings when it was first announced that the U.N. had agreed to an independent inquiry committee and Paul Volcker was appointed to lead it. I remember members on both sides of this dais commenting on Mr. Volcker, and that if he received the necessary cooperation from the United Nations, we believed the investigation would be thorough and productive.

As we know, the inquiry committee released its interim report on February 2, 2005. When it was released, Mr. Volcker commended the U.N. for its cooperation, saying that "Few institutions have freely subjected themselves to the intensity of scrutiny entailed in the committee's work. I don't know of any other institution that has been scrubbed quite as hard as this."

Now, like it or not, this is a global world today. Our economies, cultures and travels are linked with other nations and other parts of the world. Unfortunately, we have learned a terrible and difficult lesson: that terrorism is a global problem as well. When we face an enemy that is stateless, that can move people, money and weapons across borders with ease, peaceful and democratic nations must come together in some institution to face these global threats. I believe our relationship with our international partners is critical to our success in the global war on terror.

So when I look at the Oil-for-Food issue, of course I'm concerned about allegations of corruption. We all should be. And we need to deal with that. I'm concerned when laws are broken, I believe we should follow the facts and punish those proven guilty. We need to hold people accountable, including the leadership at the top, especially the United Nations, and also the Security Council, of which we are a member.

But beyond the punitive element, I am concerned with how we move forward and keep our eye on the ball, what we have learned from this and what constructive recommendations can we take from Mr. Volcker and others to strengthen the U.N. and move forward.

Now, Mr. Schweich, first thing, do you feel that based on the information that you have, and especially with the issue of Oil-for-Food, and other issues that are out there involving the U.N. that the U.N., can be successfully reformed to do the job that's needed to be done, that they need to do to pull our countries together and especially as it relates to the war against terror?

[The prepared statement of Hon. C.A. Dutch Ruppertsberger follows:]

Statement of  
Congressman C. A. Dutch Ruppertsberger  
Subcommittee on National Security, ET & IR  
The Oil-for Food Program: The Inevitable Failure of UN  
Sanctions”  
2247 Rayburn HOB  
April 12, 2005  
11:00 A.M.

Mr. Chairman, I want to thank you for calling this hearing today on the management of Iraq Oil proceeds and compliance with U.N. Resolutions. I hope we can learn more about what is going on, but more importantly we need to fix the situation so that Iraqi's can use the sale of oil to rebuild their country. The rebuilding of Iraq is a national security priority.

We moved funds from the mismanaged Oil-For-Food program to the Development Fund for Iraq. The Development Fund for Iraq is to be used for a good cause for the humanitarian and reconstruction needs of the Iraqi people. It is supposed to go to the needs of the people. This idea is something that I think a lot of Members support, the use of Iraqi oil to help rebuild their own country.

We need strong reconstruction in Iraq. We need to give the Iraqi people jobs so that they are part of the solution and more importantly that they are no longer a target for recruitment to attack U.S. and Iraqi Security forces trying to establish peace. We need those funds to rebuild the country so that we can show the world some progress in the country.

However mismanagement and a draw down of funds that have gone missing raises serious concerns about what is going on?

For example the interim government bartered petroleum products for electricity and other oil products from Syria in transactions worth \$461 million dollars. It later deposited \$97.7 million dollars from oil sales into its own bank accounts, a direct violation of the UN Resolution. KPMG in an audit of the development fund says the Coalition's poor management has left the Fund "open to fraudulent acts."

We turned money over to this new fund with the request that any transaction be transparent and in the open. We need an honest accounting and inventory of spending. The use and sale of oil in Iraq for their reconstruction and security is an important solution, but if the sale of oil is being mismanaged then we need to look into the problem and fix it.

How can we win in Iraq if their greatest resource is mismanaged? How can we expect to bring our soldiers home when the only income the country has is wasted? We need these funds to go to reconstruction. We need to allow the Iraqis to use their best asset, oil, to defeat the insurgents and to establish their own stability.

Mr. SCHWEICH. Congressman, yes, I do believe that the U.N. can be reformed. But it is a major undertaking, not only because the problems are so systemic and so deep with the oversight issue, the transparency issue, some of the things that we've discussed and I've alluded to in my statement, but also because you've got 191 countries with very differing interests and very different theories on what really needs to be reformed.

Right now there is a major reform initiative underway. The Secretary General released a report called, "Enlarge Our Freedom," which we're studying now, which contains some very good proposals. And things are moving in the right direction, but it's going to be fits and starts. Because getting consensus among that large of a group of people and countries is very, very difficult.

Mr. RUPPERSBERGER. Well, let's talk about some of the elements that need to be done. First thing, I think when you look at any management function, the president, CEO, whatever, it starts at the top. So in this situation, I believe, from what I know of the makeup of the United Nations, you have the leader, Kofi Annan, and then you also have the Security Council, which is the board. And they have a lot of power.

And really, they set the tone. Now, what would you recommend to them needs to be done? Do we need to change leadership at the top? Do we need to put together a plan? Because whether you're a government or in the military or whatever, you need to have a plan.

Now, what should our plan, based on your knowledge, before the U.N. to get off the bipartisan, the U.N.'s bad, the U.N.'s good, the U.N. shouldn't be here, whatever? Bottom line, our citizens want us to have a functional group, whether you call it the United Nations, but some group in a world economy that can come together, especially as we now focus on the war against terrorism.

So let's get more specific. What would you recommend be done?

Mr. SCHWEICH. Well, Congressman, let me start with, the Secretariat has claimed that the Secretary General does not have CEO-type authority and needs more. Can't control budgeting, can't control hiring and firing, can't get rid of the deadwood in the organization, certain things like that. I think we concurred with some of that.

Mr. RUPPERSBERGER. I hope we can learn from that for the new DNI, too, Director of National Intelligence.

Mr. SCHWEICH. I think we concur with some of that. The problem is, we are somewhat reluctant to give the Secretary General a lot more authority unless there is a lot more transparency and oversight. So what we're trying to do is reformulate our position, and we're only in the infancy of formulating those positions, so I really can't give you too many specifics.

But I think you will see very specific proposals coming out of the State Department in the coming weeks. But basically, balancing the idea of a Secretary that does not have enough ability really to influence the process, with the understanding that if you give somebody more authority and more power over hiring and firing and budget and those types of things, you're going to have to have a much more aggressive oversight system. There are whole parts of the Secretariat's operations and the U.N.'s operations that are

not even subject to OIOS review and audit. There are a lot of closed meetings we don't think should be closed. They're going to have to open it up.

So as we develop specific proposals, and I think we will, and unfortunately I'm not authorized, because they haven't been fully vetted yet with what those proposals are, you'll see our effort to balance the need for a stronger authority with greater oversight and greater transparency. Those are the objectives.

Mr. RUPPERSBERGER. I don't think there's any successful institution or entity that does not have strong leadership at the top. But what you need is a check and balance to make sure you hold that leader accountable.

Mr. SCHWEICH. Exactly.

Mr. RUPPERSBERGER. That's the format that you need.

Let me ask you this. Do you think we can get past the Oil-for-Food problem?

Mr. SCHWEICH. Yes, I do. It's going to take a long time, though, for several reasons. First of all, we're waiting on the major report of the Volcker Commission. They have released two reports, but they said the big report comes out in July or August. So we're going to have to see what that says.

Second of all, there are numerous other investigations going on, several congressional committees, U.S. Attorney's Office, other countries have numerous investigations going on. So we're going to have to see how it all falls out, just how bad it was, how much corruption occurred. But I do believe there are already reforms being implemented that will hopefully prevent something like that from happening again, like the increased power of the OIOS, like better sanctions regimes, more targeted sanctions. I think there are lessons being learned from this, and I think there are actions being taken to improve it.

Mr. RUPPERSBERGER. I respect Volcker, and I think he's done a lot for our country, he's a very intelligent man who has a high degree of integrity. Do you think he's on the right track, based on where he is and where his investigation is?

Mr. SCHWEICH. I do interact frequently with the Volcker people, and they are obviously a very hard-working, conscientious group of people that have already exposed a lot of problems with the Oil-for-Food Program.

One issue I raised with the chairman earlier was the issue of the Turkish and Jordanian protocols. And I'm interested to see how they treat that issue. They rightfully operate principally in secrecy. So how it's all going to turn out, I don't know. But I certainly think we were impressed with the first two reports.

Mr. SHAYS. If the gentleman wouldn't mind, just so I understand they, who is "they" operate?

Mr. SCHWEICH. The Volcker Commission, they don't give press conferences or report on exactly what their progress is. So I think we really have to wait and see what the big report says in July.

Mr. RUPPERSBERGER. But my question is, right now, based on what you know, do you think they are focused and they are on the right track? One of the reasons I ask this question is because unfortunately, certain people who respected Volcker now because he made the comment, the quote that I read, are attacking Volcker.

I want to make sure that from your perspective, do you feel that Volcker and his commission are on the right track in their focus on investigating the U.N.?

Mr. SCHWEICH. From what I've seen of the past, I think they are. I think we have expressed some concerns about their mandate and staying within their mandate. As long as they stay within the very specific mandate the Secretary General gave them, I think they've got a very talented group of people that will do an excellent job.

Mr. RUPPERSBERGER. OK, now, let's get back to specific recommendations. Because in the end, it's an end game, it's resolving this, it's working through this and getting where we need to be. First we have to deal with the corruption issue, and that has to move forward. But then we have to pull these nations together to, one of the major issues of concern to me is fighting the war against terrorism.

You mentioned the authority at the top and I think that's a very important issue. But we also have to make sure that person is held accountable. Second, what do you feel needs to be done with respect to the Council itself, the Security Council? It has a lot of power.

Mr. SCHWEICH. Yes, and right now again, there are a whole series of proposals for Security Council reform that we are evaluating, from expanding the membership with new permanent members with new non-permanent members to reflect regional interests more accurately, from changing their working methods, for more transparency.

And again, I'm in an awkward position here, because I was here to testify about Oil-for-Food. I will say, Congressman, that we are very actively considering the exact issue that you discussed and what proposals we are going to come out in favor of and which ones will be—

Mr. RUPPERSBERGER. What issue that I discussed?

Mr. SCHWEICH. About Security Council reform, which is a very, it's extremely active. The U.S. mission to the United Nations, the State Department and virtually every Member State is almost preoccupied in New York with Security Council reform and how to make it a better Security Council.

Mr. RUPPERSBERGER. The credibility of a union of nations, whatever you call it, is extremely important. And again, I'm going to focus on the war against terror. If we don't pull it together, the United States and Great Britain can't do it alone. We need help.

Thank you.

Mr. SCHWEICH. Thank you.

Mr. SHAYS. I thank the gentleman very much. Appreciate his being here.

Mr. Lynch, you have the floor for 10 minutes.

Mr. LYNCH. Thank you, Mr. Chairman. I appreciate that.

Mr. Schweich, I want to thank you for coming here to help this subcommittee with its work. I just returned from Iraq last week, and I must say that it would be enormously helpful if we had a competent and reliable U.N. ready at this stage to help this new Iraqi government with its new responsibilities.

Let me followup on what Mr. Ruppertsberger asked you. He asked if we could get through this Oil-for-Food Program. Let me ask you

more pointedly, can Kofi Annan survive this Oil-for-Food Program controversy, in your estimation?

Mr. SCHWEICH. In our estimation, we continue to support the Secretary General and his work. Obviously as Ambassador Danforth said several months ago, the chips have to fall where they may, there is more reporting to come. But at this point, we are supportive of the Secretary General, yes.

Mr. LYNCH. OK. I've got to tell you, I don't share your confidence. I really don't. I guess we'll all wait for Mr. Volcker's report this summer.

In your earlier testimony you mentioned the Article 50 waiver that was granted to, I think it was granted to Jordan and Turkey.

Mr. SCHWEICH. Turkey and Jordan requested relief under Article 50. It was not actually formally granted. There was a letter sent to Jordan basically acknowledging the situation. There was really no action taken on Turkey. But the waiver was actually granted by the U.S. Government under the Foreign Operations Appropriations Act.

Mr. LYNCH. To Jordan?

Mr. SCHWEICH. To Jordan and to Turkey.

Mr. LYNCH. And to Turkey?

Mr. SCHWEICH. Yes.

Mr. LYNCH. OK.

So are there any other countries out there—so they were allowed to, because they claimed hardship under that article, they were allowed to be outside the sanctions, am I understanding this correctly?

Mr. SCHWEICH. What we did was, under the Foreign Operations Appropriations Act, we are not allowed to provide foreign aid to countries that are in violation of the sanctions. And a waiver to that was granted, recognizing that there was extreme hardship to their economies in complying.

Mr. LYNCH. OK. And you've basically said that affected Jordan and Turkey. Are there any other countries that requested waiver in some form or other?

Mr. SCHWEICH. Not on a large scale like that. I think there might have been some smaller requests. But I'm not even aware that there were any. I think I did read at one point that other countries did ask for certain targeted relief.

But no, it was basically Jordan and Turkey.

Mr. LYNCH. OK. You're saying you heard some smaller requests from other countries? What other countries?

Mr. SCHWEICH. I've read that, and I don't know much more about it. If it was, it was minor, and I think it would be fair to say that it was Turkey and Jordan that requested the relief.

Mr. LYNCH. OK. It goes to the issue of our credibility in terms of asking for support for the sanctions, and then we have, we're granting waivers. I understand. I understand.

But if there are other countries that have been requesting waivers, I need to know that.

Mr. SCHWEICH. Yes, I'm being advised by one of my advisors that there were numerous other countries that requested relief, but not on the scale of Turkey and Jordan.

Mr. LYNCH. I'm not worried about scale. I'm worried about if it's a small hole in the sanction that we're asking to be placed against Iraq, it doesn't matter the size. Let me ask you again, what other countries asked for even small relief from the sanctions, and what countries, no matter what size of relief, what other countries got relief from the sanctions?

Mr. SCHWEICH. I don't think any of them were actually officially granted relief. What I'll do, if it's OK, Congressman, I'll take it under advisement and send you a letter with the exact names of the countries. It was in 1991, early in the sanctions regime. I recall reading that a number of countries asked for some kind of relief. But these were on a very small scale compared to Turkey and Jordan.

I'd be happy to get back to you on that.

Mr. LYNCH. All right, and I understand you're here for limited purposes, for the Iraqi Oil-for-Food Program. However, in previous hearings I've asked this question. We had a situation, and this was several months ago I asked for the information and I understand we're just getting some response now. We had some Halliburton employees who were involved with, I believe it was Kuwaiti businessmen who, there were some sizable bribes involved, and we recently were given names of those Halliburton employees. Am I getting this right? Yes.

Any information that you could provide?

Mr. SCHWEICH. Regretfully no, Congressman. I don't know about that.

Mr. LYNCH. I'm sorry?

Mr. SCHWEICH. No, I don't know about that issue.

Mr. LYNCH. OK. All right, Mr. Chairman, I'm going to yield back. Thank you.

Mr. SHAYS. I thank the gentleman.

I do want to go through a few more questions and take advantage of your expertise. I mean, you are, no one is questioning your devotion to the U.N. and your devotion to our country and your responsibility in the U.N. We're very grateful for your service there, and we're grateful that you would take time to come down to help us understand the system. I don't want you to leave before we have gone through some of these questions.

You've explained why the United States accepted the trade protocol signed between Iraq and Jordan and Turkey. You've made it clear that basically, Turkey and Jordan were saying that a huge amount of their gross domestic product was trade with Iraq, and now, we had these sanctions, and that they were asking the 661 Committee to address that; 661 wasn't addressing it.

So first Jordan started to just buy oil and use that oil. But they told the United Nations, that's correct?

Mr. SCHWEICH. That's correct.

Mr. SHAYS. And that eventually, the 661 Committee acknowledged that they had received the letter, acknowledged what Jordan was doing and just said, keep us informed. And we have basically the letters that you have provided us there. So we're really, one of them is Jordan first asking for Article 50 relief. That's the first thing they did. Then this is, and then a year later, they notified that they were going to do that, and we are submitting that for the

record. And then this is Turkey basically 5 years later notifying the U.N. that they were engaged in trade with Iraq as well.

Mr. SCHWEICH. They were requesting the same relief, right.

Mr. SHAYS. Requesting the same relief. And in a sense, they received it.

Mr. SCHWEICH. There wasn't actually a letter sent back, in the case of Turkey, like there was with Jordan. But effectively, they notified that it was occurring, yes.

Mr. SHAYS. But without rejection, we will put these letters into the record, and I appreciate your having those letters.

[The information referred to follows:]

UNITED  
NATIONS

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## Security Council

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LETTER DATED 20 AUGUST 1990 FROM THE PERMANENT REPRESENTATIVE OF  
JORDAN TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE  
SECURITY COUNCIL

I have the honour of enclosing herewith the text of a letter addressed to Your Excellency from His Excellency Mr. Marwan Kasim, Deputy Prime Minister and Foreign Minister of Jordan, relating to Jordan's request to enter into consultations with the Security Council under article 50 of the Charter, concerning the effects of the carrying out of resolution 661 of 1990 on Jordan.

I should be grateful if this letter and its enclosure would be given urgent consideration by the Council in view of the magnitude of the problem and its pressing nature.

(Signed) Abdullah SALAH  
Ambassador

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Annex

Text of a letter dated 20 August 1990 from the Deputy Prime Minister  
and Foreign Minister of Jordan addressed to the President of the  
Security Council

I have the honour of bringing to your attention the following:

1. The Government of the Hashemite Kingdom of Jordan has taken note of the Security Council's adoption of resolution 661 on 6 August 1990. Cognizant of its obligations under the Charter, and the resolution's mandatory nature, Jordan shall comply with its provisions.
2. The competent Jordanian authorities have, after careful studies and analysis, determined that compliance with the resolution will lead to extreme economic hardships to Jordan and its population, which constitute "special economic problems" within the meaning of Article 50 of the Charter.

In this respect, may I draw Your Excellency's attention to Jordan's geographic location and the degree of interdependence between, on the one hand, Jordan's economy and on the other, those of Iraq and Kuwait. The extent of this interdependence can be gleaned from the attached memorandum. You will recall also that Jordan is currently passing through an economic crisis unprecedented in its history.

Motivated on the one hand by their wish to carry out their Charter obligations in good faith, and conscious at the same time of the excessive onerousness for Jordan arising from compliance with resolution 661, my Government hereby officially requests to enter into consultations, on an urgent basis, with the Security Council with regard to finding a solution to the problems that will arise from the carrying out of measures under Chapter VII.

(Signed) Marwan S. KASIM

/...

EnclosureA memorandum on the economic and financial impact on Jordan  
resulting from the imposition of restrictions on its  
economic relations with Iraq and Kuwait

This memorandum explains the economic losses that would affect Jordan as a result of the imposition of restrictions on exchange of trade, services and financial transactions with Iraq and Kuwait.

These losses could be classified under the following topics:

- (1) Exports of goods
- (2) Transport to Iraq
- (3) Import of crude oil and fuel oil
- (4) Grants to the budget
- (5) Iraq's debt to Jordan
- (6) Remittances from Jordanians working in Kuwait
- (7) Dismissal of Jordanian expatriates in Kuwait
- (8) Burden resulting from the massive outflow of expatriates from Kuwait through Jordan

(1) Exports of goods to Iraq and Kuwait

Jordan's exports to Kuwait in 1989 amounted to about \$US 65 million. Most of these exports consist of vegetables and foodstuffs. It was expected that total exports in 1990 will be around \$US 80 million. Jordan's exports to Iraq are expected to exceed \$US 200 million this year, of which \$US 180 million is to be settled under the bilateral payment arrangement and the balance by convertible currencies. The restrictions on Jordan's exports to both countries will result in a loss exceeding \$US 280 million annually. The magnitude of this burden amounts to 30 per cent of Jordan's national exports, or over 60 per cent of Jordan's non-commodity exports.

This sharp drop in exports of goods would affect the balance of trade as well as the economic activity of the country and will further accentuate the already high unemployment level in Jordan.

(2) Transport to Iraq

Goods in transit from Aqaba port in Jordan and destined to Iraq is a major activity in the Jordanian economy. The total income generated from port charges

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transformation and packing activities as well as inland freight is estimated to exceed \$US 250 million annually.

The elimination of these activities would also have a sharp adverse effect on the current account of the balance of payments, GDP and employment in the country.

(3) Import of crude oil and fuel oil

Jordan imports about 22 million barrels of oil and oil derivatives annually. About 90 per cent of this is imported from Iraq and Kuwait. Kuwait provides crude oil and fuel oil as grants to Jordan amounting to \$US 60 million annually, while the balance is imported from Iraq and is financed from Jordan's outstanding debt to Iraq as well as through the bilateral trade arrangements. One fourth of Jordan's total import bill consists of fuel oil. Fuel oil is being purchased from Iraq at concessionary prices not exceeding 60 per cent of crude oil international price. Shifting to new sources of oil and fuel oil will subject Jordan to serious difficulties with regard to the loss of concessionary oil supplies, obtaining the necessary finance, as well as finding new sources of fuel oil at competitive prices.

(4) Grants to the budget

Kuwait made a commitment to pay Jordan an amount of \$US 135 million in the form of grants for the fiscal year 1990-1991 whereas Iraq made a commitment for an amount of \$US 50 million during 1990 in grants. The total amount committed by both countries is \$US 185 million.

This amount is crucial for the budget and the balance of payments and without the receipt of these grants Jordan's budget as well as the balance of payments would be subjected to strong pressures.

(5) Iraq's debt to Jordan

Iraq's total outstanding direct debt to Jordan at the beginning of 1990 stood at \$US 310 million and the Iraqi Government has agreed to reduce this debt during 1990 by about \$US 240 million through paying \$US 144 million in cash and exporting crude oil and oil derivatives for the balance. However, \$US 72 million only has been paid in cash so far, and the balance therefore shall not be met under present circumstances.

In addition, the Jordanian Government has incurred an additional obligation, the balance of which at present is \$US 2.6 billion, on behalf of the Iraqi Government to guarantee debt to a third party which the latter has been repaying regularly. This amount is not included in Jordan's outstanding foreign debt for the purposes of rescheduling. The imposition of financial and trade restrictions on Iraq shall necessarily force Iraq to stop repayment and consequently the burden of servicing this amount, (i.e. \$US 2.6 billion), shall be transferred to Jordan's Treasury.

/...

(6) Remittances from Jordanians working in Kuwait

Jordan estimates that during 1990 remittances from Jordanians working abroad will exceed \$US 800 million, 40 per cent of which were expected to come from Kuwait.

Imposing restrictions on Iraq will jeopardize the transfer of such remittances to Jordan and will further widen the gap in the balance of payments of Jordan.

(7) Dismissal of Jordanian expatriates in Kuwait

It is estimated that Jordan has around 330,000 expatriates working abroad, out of which a minimum of 100,000 work in Kuwait. The imposition of the embargo could result in sudden and massive dismissal of these expatriates and the immediate return of a large percentage of them along with their families to Jordan. (Jordanians working in Kuwait together with their families are estimated to number over 350,000.)

This imminent inflow of returning migrants will further aggravate the unemployment situation in the country which currently stands at around 15 per cent of the labour force. What will make the situation more difficult is the recent erosion of their savings in Kuwait, a fact which will impose a heavier social burden on the Government.

(8) Burden from the massive outflow of expatriates from Iraq and Kuwait through Jordan

Jordan is the only country through which expatriates working in Kuwait and Iraq can pass on their way to their home countries. Since the beginning of the crisis the through-flow of those expatriates has increased substantially. Jordan will face tremendous difficulties if it were to handle this flow.

CONCLUSION

Jordan is at present passing through a crucial economic situation which is characterized by rising unemployment, high rates of inflation and serious difficulties in servicing its foreign debt. It is already implementing an adjustment programme with the IMF in order to resume growth and address internal and external imbalances.

The success of this programme is largely dependent on the ability of Jordan to increase exports, and to obtain additional financial inflows from abroad in the form of grants and remittances.

The imposition of the embargo will certainly result in a complete reversal in these objectives and will destroy the fundamentals of this effort and hence subject the economy to total collapse. It is imperative that arrangements are made to provide Jordan with the following:

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(1) Grants to compensate for the reduction in grants from Iraq and Kuwait, the reduction in expatriate remittances, and to compensate Jordan for the increase in public expenditures resulting from imposing the embargo.

(2) Oil and oil derivatives with concessionary conditions and with long-term financing at most favourable terms.

(3) Long-term soft loans to enable Jordan to revitalize the economy and to overcome the sharp drop expected in economic activity, employment and exports.

It has been demonstrated that the direct financial loss that Jordan will incur as a result of implementing the embargo decision will not be less than \$US 1.5 billion a year and Jordan would require further funding in the magnitude of half a billion dollars to cover the indirect consequences and repercussions of reduced economic activity and external imbalances.

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SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 (1990) CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT S/AC 25/1996/COMM 7649 5 August 1996 ORIGINAL. ENGLISH

Note verbale dated 5 August 1996 from the Permanent Mission of Turkey to the United Nations addressed to the Chairman of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait

No 2597/1226

The Permanent Representative of the Republic of Turkey to the United Nations presents his compliments to the Chairman of the United Nations Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait, and has the honor to bring the following to the Committee's attention

Turkey, fully aware of its obligations under the UN Charter, has acted in solidarity with the international coalition to restore Kuwait's independence, sovereignty and territorial integrity following Iraqi aggression. Turkey meticulously implemented all UN Security Council resolutions on Iraq, including those concerning the economic embargo

After almost six years since its inception, Turkey is now at the forefront of the countries which have been directly and most adversely affected by the embargo. Economic difficulties that emerged as a consequence of the closure of the Kirkuk-Yumurtalik crude oil pipeline as well as the collapse of gross bilateral trade, the termination of contracting and banking services, the loss of transportation and communication fees, the halt of tourism from and through Iraq, the cessation of regional commercial activities, the massive influx of refugees from Northern Iraq and military expenditures on struggle with Northern Iraq-originated terrorism have compounded the security and social problems especially in the adjacent Southeast Anatolian region, which in turn has caused a strong and growing frustration among the Turkish public opinion

Turkey appreciates the contributions made by the international coalition to mitigate some of the difficulties suffered as a result of the Gulf War. Nonetheless a heavy burden of economic losses and other problems remains. Turkey believes that the losses, detailed in the annex have long exceeded its ability to continue in this manner for an unknown period of time. The Government of Turkey is applying to the UN to resume on an urgent basis its importation of petroleum and petroleum products from Iraq in limited quantities essential for Turkey's own needs, and will act in accordance with the UN Charter, including its Article 50, and relevant UN Security Council resolutions regarding Iraq, in particular UNSCR 986 and UN practices. Such imports will help revive economic activity particularly in the Southeast Anatolian region which has been hit hardest by the UN sanctions imposed on Iraq

Handwritten notes: 12/18 defen, 2/21 defen, 3/17 defen, 3/24 defen, 17 defen, 8/27 defen, 10/8 defen, 12/9 defen, 2/4 defen, 3/9 defen

The afore-mentioned purchases of Iraqi petroleum and petroleum products will be paid through the export to Iraq of foodstuffs, medicine, health supplies, materials and supplies for essential civilian needs as well as other items approved by the Committee established under resolution 661 (1990). In addition, Turkey will ask the Sanctions Committee whether payments to Iraq may also be made by drawing upon Iraqi debt to Turkey.

The Turkish Government recognizes that the provisions of the Security Council resolution 661, except as modified by other relevant resolutions, remain in effect. On the other hand, Turkey also expects that priority be given to the settlement of debts and compensations owed to its Government, nationals and corporations within the context of the relevant UN Security Council resolutions and in particular resolution 692 (1991).

**ECONOMIC LOSSES OF TURKEY  
DUE TO THE GULF WAR**

**I- TRANSPORTATION**

**A. BOTAS (Crude oil pipeline)**

The annual revenue from the pipeline was \$ 400 million. Therefore the five months revenue loss for 1990 was \$ 160 million.

**B. TRANSPORTATION (Aviation, Highway, Maritime, Railroad Transportation) AND COMMUNICATIONS**

Turkey also suffered loss in these sectors, mainly due to the decline in the number of passengers and the increase in insurance premiums.

**1- AIR TRANSPORT**

Losses in this sector can be summarized in two categories:

**a) Transit passage, landing and accommodation losses**

Landing, accommodation and bridging services given by the State Airports Management Company and special services given by private sector companies to Kuwaiti and Iraqi planes.

Transit passage fees from Kuwaiti and Iraqi planes using Turkish airspace.

**b) Passenger transport.**

Termination of THY and private sector lines due to the closure of Iraqi and Kuwaiti airspace, losses from longer flight paths; additional insurance rates, cancelled reservations

**2- LAND TRANSPORT**

Loss of ,

Transit transport from ports.

Transport of export goods;

Transport of import goods and petrol by land;

Transit transport from Europe to Iraq;

Transport of dry and cooled goods to Kuwait.

### 3- SEA TRANSPORT

a) Freight losses to Iraq and Kuwait; loss of ferry lines, increase in fuel and insurance rates; termination of transit transport to Iraq and Kuwait.

b) Port services.

Losses of income acquired from loading, unloading and other services given at Mersin and Iskenderun ports, which were the main transit ports used by Iraq and Kuwait.

### 4- RAILROAD TRANSPORT

Losses incurred by the termination of railroad land transport combined trade to Iraq

### 5- COMMUNICATIONS SECTOR

Losses of communication from Iraq to Turkey, via Turkey to the Middle East and other countries

## II- TOURISM

The expectations for tourism revenues were, \$ 4, \$ 4 4, 3 4 5, \$ 4 5, \$ 4 6 and \$ 4 7 billion for the years 1990, 1991, 1992, 1993, 1994, 1995 respectively. The difference between expected and actual figures of each year represents that year's loss.

## III- EXPORTS

The trade volume with Iraq before the Gulf Crisis was at the level of \$ 2 billion per year. In the period of 1985-1989, the share of exports to Iraq which was a main trade partner was 8% (10.87% in 1985 and 7.64% in 1989).

**Table 1: Export to Iraq for the period of 1985-1989** (million \$)

YEARS	EXPORT (ALL)	EXPORT (TO IRAQ)	% OF ALL EXPORTS
1985	7,958	961	12.0
1986	7,457	553	7.4
1987	10,190	945	9.3
1988	11,662	986	8.4
1989	11,625	445	3.3
Average			8.08

In view of these figures, the table of expected exports (in other words Turkey's losses) for the 1990-1995 period are as follows:

**Table 2: Export to Iraq for the period of 1990-1995** (million \$)

YEARS	EXPORT (ALL)	EXPORT (TO IRAQ)	% OF ALL EXPORTS	LOSS OF EXPORT REVENUES
1990	12,059	215	1,037	822
1991	13,593	122	1,087	965
1992	14,719	212	1,177	965
1993	15,345	160	1,227	1,067
1994	18,106	141	1,448	1,307
1995	21,600	123	1,728	1,605
Total				6,731

The breakdown in table 2 shows that the losses of exports to Iraq total \$ 6.7 billion for the period of 1990-1995

#### **IV- IMPORTS**

The majority of Turkish imports from Iraq was composed of petroleum and petroleum products. The estimated loss in the Turkish import bill due to the increase of oil prices is \$ 860 million for the year 1990 and \$ 60 for the year 1991.

#### **V- CONTRACTING SERVICES**

The Turkish contractors total income loss in Iraq and Kuwait, due to unpaid claims and profit loss was \$ 620 million in 1990 (\$ 420 million in Iraq and \$ 200 million in Kuwait).

The potential profit loss for the years 1991-1996 is estimated at \$ 200 million per year

#### **VI- BANKING SECTOR**

The losses in the banking sector represent losses of correspondence services

#### **VII- TURKISH CENTRAL BANK**

Due to the settlement of the account between the Turkish and Iraqi Central Banks in June 1988, the Iraqi Central Bank has undertaken a debt to its Turkish counterpart. There are also unpaid "promisory notes" from the Iraqi Authorities to Turkish contractors for services rendered in Iraq prior to the Gulf War.

#### **VIII- REGIONAL COMMERCIAL LOSSES**

Due to the halt of transit highway transportation and all cross border trade activities, regional trade collapsed. This trade has started to trickle as of August 1994, with the resumption of limited humanitarian goods exported to northern Iraq through the Habur Gate.

#### **IX- MILITARY EXPENDITURES**

The lack of authority in northern Iraq, an adverse side effect of the Gulf War, has created a favorable atmosphere for the intensification of terrorist activities in this region. This situation has led to some redeployment of the Turkish Army all along the border and has resulted in extra expenditures

amounting to \$ 330 million to ensure the border security. Furthermore, in order to eliminate the terrorist threat, Turkey had to undertake two military operations of limited scope in northern Iraq in 1992 and 1995. In the course of 1996, a number of strikes had to be carried out against the PKK terrorist organization elements based on the Iraqi side of the border. It is difficult to quantify the expenditures resulting from these military activities, which are known to be running into hundreds of millions of Dollars.

#### **X- PRODUCTION LOSS**

Turkey's average growth rate, which was 5% annually, abruptly fell to 0.5% in 1991 due to the Gulf War. Thus, it is estimated that the production loss of the country has been approximately \$ 4950 million. Some of the adverse results of the Gulf War, being already taken into account in previous paragraphs, only half of that loss is presented under the title "production loss" in the appendix.

SECURITY COUNCIL COMMITTEE ESTABLISHED  
BY RESOLUTION 661 (1990) CONCERNING THE  
SITUATION BETWEEN IRAQ AND KUWAIT

S/AC.25/1991/COMM.159  
16 May 1991  
ORIGINAL: ENGLISH

Note Verbale dated 16 May 1991 from the Permanent Representative of Jordan to the United Nations addressed to the Chairman of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait

The Permanent Representative of the Hashemite Kingdom of Jordan to the United Nations presents his compliments to the Chairman of the Sanctions Committee established by Resolution 661 (1990) and has the honour to inform the Committee that the Jordanian Government has resumed on an urgent basis its importation of oil and oil derivatives from Iraq in limited quantities absolutely essential for Jordan's own internal needs. These imports are being funded by drawing down on Iraqi debts to Jordan. In this regard, the Government of Jordan is prepared to report to the Committee each month on the quantities, value, and dates of imports of all Iraqi oil and oil derivatives. The Jordanian Government recognizes that the provisions of Security Council Resolution 661, except as modified by other relevant resolutions of the Council, remain in effect.

The Jordanian Government, whose unique economic circumstances have previously been acknowledged by the Committee, is facing great difficulties, as a result of its particular geographic location, in finding a continuous and secure supply of the above-mentioned basic materials from other suitable sources. Although the Jordanian Government has been trying to import crude oil from other available sources by sea through Aqaba port, the technical limitations for receiving, handling and discharging crude oil vessels at Aqaba port do not allow us to receive all our requirements of crude oil by sea.

SECURITY COUNCIL COMMITTEE ESTABLISHED  
BY RESOLUTION 661 (1990) CONCERNING  
THE SITUATION BETWEEN IRAQ AND KUWAIT

S/AC.25/1991/NOTE/55  
22 May 1991  
ORIGINAL: ENGLISH

Note by the Chairman

The Chairman of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait presents his compliments to the members of the Committee and ..... has the honour to transmit herewith, for their information, a copy of a letter dated 22 May 1991 from the Chairman addressed to the Permanent Representative of Jordan to the United Nations.

UNITED NATIONS  NATIONS UNIES

TELEPHONE: 310.453.2121 TELETYPE: 310.453.2121 FAX: 310.453.2121

SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 (1990)  
CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT

22 May 1991

Sir,

On behalf of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait, I have the honour to acknowledge receipt of your note verbale dated 16 May 1991 in which you informed the Committee that the Jordanian Government had resumed the importation of oil and oil derivatives from Iraq.

I have the honour to inform you that, given the unique position of Jordan in regard to Iraq, as the Committee has previously acknowledged, the Committee at its 41st meeting, held on 21 May 1991, took note of Jordan's resumption of the import of Iraqi oil and oil derivatives as described in your note verbale, pending any arrangements that can be made to obtain supplies from other sources, and on the understanding that such Iraqi oil exports are subject to the provisions of the Security Council resolution 692 (1991).

Accept Sir, the assurances of my highest consideration.



Peter Hohenfellner  
Chairman

Security Council Committee established  
by resolution 661 (1990) concerning the  
situation between Iraq and Kuwait

His Excellency  
Mr. Abdullah Salah  
Ambassador Extraordinary and Plenipotentiary  
Permanent Representative of Jordan to  
the United Nations  
Permanent Mission of Jordan to the  
United Nations  
866 United Nations Plaza, Room 550-552  
New York, N.Y. 10017

Mr. SHAYS. Why didn't the U.S. support similar trade protocols with Syria?

Mr. SCHWEICH. Well, first of all, Syria never came to the Security Council, Mr. Chairman, saying, we would like Article 50 relief and here's the impact on our economy. The reason they couldn't do that is they really didn't have substantial oil trade with Iraq until they started the protocol. So they didn't have the same hardship case.

The second thing was Syria was actually sitting on the Security Council, Mr. Chairman, and denied that they were even getting the oil. They were confronted directly with the issue, "are you importing Iraqi oil," and they said no, and we and other countries said, we have evidence that pipeline is open and that you're doing it. They said, oh, no, no, we're just testing it.

So contrary to what happened with Turkey and Jordan, where they came hat in hand, asked for Article 50 relief and really did it by the book, Syria just engaged in a massive fraud, denying the entire time they were ever importing any of the oil.

Mr. SHAYS. Why did so many non-end users get passed those overseeing the program to purchase Iraqi oil? In other words, so many middlemen, how did that happen?

Mr. SCHWEICH. I think there was some laxness there, Mr. Chairman, in really investigating whether these people were middlemen or end users. Everyone claimed to be an end user, but it turned out that was quite wrong. And the oil overseers, I think the answer is, just weren't diligent enough in their investigation to make that determination.

Mr. SHAYS. Why didn't the alleged participation of so many political and religious institutions prompt further investigation into participants of the Oil-for-Food Program?

Mr. SCHWEICH. I don't know the answer to that.

Mr. SHAYS. Do you know the answer of why didn't the United States or other 661 Committee members put holds on this over 70 contracts the U.N. informed the committee might be overpriced?

Mr. SCHWEICH. I don't know about specific contracts. I know we did put holds on some contracts because of pricing. But again, I think as DCAA pointed out, it's very, very tough to determine whether a contract is overpriced just by looking at the paper.

Mr. SHAYS. I think you said you would get back to us on this issue?

Mr. SCHWEICH. Yes, I will.

Mr. SHAYS. Thank you.

Just quickly going through these, were the internal and external oversight mechanisms adequate for a program of this scope and duration?

Mr. SCHWEICH. No, there wasn't, as I mentioned before, the OIOS didn't even audit the contracts, which is where most of the fraud was. You can say the problem was in letting Saddam Hussein pick the contractors or in failing to insert, as you know, in DOD contracts, they have audit clauses that go well into the private sector contracts down several levels and several tiers. We think something like that should have been imposed if they were going to allow Saddam Hussein to negotiate the contracts himself.

Mr. SHAYS. Why do sanctions committees act in secrecy?

Mr. SCHWEICH. Well, there is some validity in the same way that a lot of governmental and other organizations like to have candid and open conversations, so they do want secrecy in some cases. We do believe, though, I think, which might be the implication of your question, Mr. Chairman, that there is too much of that with respect to sanctions committees, and we are requesting that there be much less of it, that minutes be made available and that more meetings be open, with the understanding that there will be some circumstances in which candid discussion requires secrecy.

Mr. SHAYS. So in response to this question, should all 661 Committee minutes be made public, you would say most but not necessarily all?

Mr. SCHWEICH. I would say that the presumption should be in favor of making them public.

Mr. SHAYS. Let me get to this last line of questioning. How should we measure the effectiveness of the sanctions? In other words, what benchmarks should we use?

Mr. SCHWEICH. I think the effectiveness of the sanctions should be, did we get the actor against whom the sanctions were imposed to comply with our demands. And in the case of the Oil-for-Food Program, it was a mixed bag. Saddam Hussein did not comply with weapons inspectors, but we did keep him from getting weapons of mass destruction.

Mr. SHAYS. Is there any question my colleagues would like to ask before we go to the next panel?

Again, Mr. Schweich, I want to thank you for being here. I want to thank you for being prepared to answer the question that we needed to ask. I want to thank you also for your answering the questions directly and not giving us more detail than we needed.

I'd like to ask you, is there anything that we should have asked that we didn't ask that you need to put on the record?

Mr. SCHWEICH. I can't think of anything right now, Mr. Chairman, but if I do come up with something, would it be OK to write a letter to you about that?

Mr. SHAYS. Yes, that would be very helpful.

Mr. SCHWEICH. Thank you.

Mr. SHAYS. So we're all set?

Mr. KUCINICH. I just want to thank you for your testimony?

Mr. SHAYS. Thank you. Thank you so much.

Our second panel consists of Dr. Paul Conlon, owner of Transjuris e.K. in Munich, Germany, who was the former Deputy Secretary of the U.N. Security Council Iraq Sanctions Committee; Mr. Andrew Mack, the director of the Center for Human Security at the University of British Columbia, who was the former Director of Strategic Planning, Executive Office of the U.N. Secretary General Annan; and Dr. C. Joy Gordon, associate professor of philosophy, Fairfield University.

I thank all three, if you would remain standing, we'll swear you in and we'll go from there.

[Witnesses sworn.]

Mr. SHAYS. Note for the record our witnesses have responded in the affirmative. In the many, many years of doing this, we swear in all our witnesses, and we thank you very much.

We'll start with you, Dr. Conlon, and we'll do the same thing, we're going to do the 5-minutes and then roll it over another 5 minutes if you have points that you need to make. We'll go to you, Mr. Mack, and then to Dr. Gordon. Thank you all three for being here.

Let me make the point that your statement will be in the record. If you decide to respond to testimony already given and adjust your testimony orally, that's perfectly OK.

Dr. Conlon.

**STATEMENTS OF PAUL CONLON, OWNER, TRANSJURIS E.K., MUNICH, GERMANY, FORMER DEPUTY SECRETARY, U.N. SECURITY COUNCIL IRAQ SANCTIONS COMMITTEE; ANDREW MACK, DIRECTOR, CENTER FOR HUMAN SECURITY, UNIVERSITY OF BRITISH COLUMBIA, FORMER DIRECTOR OF STRATEGIC PLANNING, EXECUTIVE OFFICE OF U.N. SECRETARY GENERAL ANNAN; C. JOY GORDON, ASSOCIATE PROFESSOR OF PHILOSOPHY, FAIRFIELD UNIVERSITY**

**STATEMENT OF PAUL CONLON**

Dr. CONLON. Thank you, Mr. Chairman.

With the United Nations, we sometimes have a type of dichotomy between two sets of functions it has, and two mentalities that go with it. One of those is what we refer to as the humanitarian or the soft activities that it engages in. These might revolve around development, environmental protection, fighting against disease, those are the things that make it akin to a type of huge international welfare department, with soft goals, that it is not easy to determine if the goals had been obtained or not, and with soft methods.

Normally the legislative, a lot of the legislative resolutions regarding these things are not binding, they are of an exhortatory nature, not binding. That occupies about 98 percent of all those people working for the United Nations.

Alongside of that, we have something else, which is more akin to what a police department does, and that is this collective security enforcement function that resides with the Security Council. It has a privilege of actually binding members, and even non-members, to do what it wants under certain circumstances in that regard. It has at its command an awful lot of options of a very unpleasant nature which it can use against recalcitrant governments, even non-governments nowadays, that are threatening peace and security or otherwise not complying with obligations of an important nature under the U.N. charter. Now, that employs about 2 percent of the United Nations Secretariat.

Under these circumstances, we have this dichotomy, the good United Nations, the bad United Nations, and so forth. And what happened in the case of the sanctions against all of the target states of that period, not just Iraq, I should stress here, by the way, that we're talking about similar things happening in regard to the sanctions against Yugoslavia, Libya, and Haiti, to some extent also Angola, or against the rebel movement in Angola.

What it had at that time was a confusion of two things that grew up basically over time. The original consensus in regard to sanctions against Iraq was extremely high for a very good reason. It

had done something that was vitally threatening to most of the members, with the exception of a very few. There was a great deal of consensus and cooperation, greater than ever before or ever since.

Now, after April 1991, the main goal of the original U.N. action against Saddam Hussein's regime having been achieved, the residual goals that emerged largely from Resolution 687, had much less acceptance and things began to go awry. In addition, the target state gradually gathered itself and began to assess its position and think of ways in which it could respond to the challenge of being under sanction.

At this point, confusion ensued, in that the committee which originally had been created almost entirely with enforcement functions began to get involved in humanitarian mitigation functions. And there is, in this matter, a tradeoff that has to be, in case of any future sanctions regime as well, be truly looked at. The tougher the enforcements, the more you risk collateral damage to unintended targets, and that could include civilian populations. So there is a need for some attempts to structure the sanctions so they don't have that effect, or to mitigate their functions.

However, the fact that these two things were essentially the domain of two distinct constituencies in the U.N. organization itself, I'm talking now about the Secretariat to a certain extent, but also the political constituency of states that are active in the various bodies, they're not the same ones. Because these things were mixed up after about 1991 in this sanctions regime, and most others as well, you started to have problems with the one activity working against the other activity and the constituency engaged in the one activity working against the constituency engaged in the other one.

Now, the sizes, the magnitudes that I initially spoke of being very disproportionate to say the least, it's clear that when this happened, enforcement is not going to be very successful, and mitigation, or at least interference with enforcement for humanitarian mitigation purposes, is going to be very significant.

If one is looking for insights as to what has to be done in the future under this basis, one of the things I suggested in my book, to which I can refer almost whatever questions you ask, it is probably answered there already, I suggested that in the future, a stronger Security Council, if it's going to be a centerpiece or center of collective security enforcement, should have greater independence from the general Secretariat of the United Nations, possibly having its own secretariat and should be as independent as possible from the influence of the Secretary General.

This has gone into a statement I made, which I have given to another subcommittee. Two Secretary Generals, one the predecessor of Boutros-Ghali, under whom I served most of these years, were loyal to the Security Council. As from what I understand, Kofi Annan also has been. But Boutros Boutros-Ghali eventually came into conflict with the Security Council, and the constituency of states that were playing a dominant role there at the time, that's the P3, and it includes the United States. And he eventually began to do what he could do to sabotage sanctions enforcement against Iraq, against Yugoslavia as well, by the way.

What he could do was, his leeway for doing this is narrow. He is basically a servant of the Security Council, and can't do that very much. But he was able to do something, and he did that. So we had the problem that you had a U.N. system of outlying agencies which had goals that were more or less at variance with the goals of the Security Council. They occasionally did what they could to sabotage, but on other issues they did cooperate with us as well.

And you had then, at least from about 1993 or so forward, 1993 forward, let us say, a Secretary General that was becoming increasingly uncooperative with sanctions, particularly against Iraq. This is one of the reasons why things began to go awry.

At the same time, the target states, the original target state, Iraq and later other target states, particularly central Yugoslavia, which was, the state of Yugoslavia that was left, adopted certain tactics using humanitarian mitigation arguments and mechanisms to strengthen their position under sanctions. These have not been entirely analyzed afterwards, and are not entirely known.

But they did involve what the representative from the State Department has referred to as swamping the committee that began very early, began in our case around, I would say, by the end of 1991, swamping the committee with requests for humanitarian mitigation which in my book I refer to as waiver actions or waiver clearance actions. Most of these were not used. In the case of my committee, it was 10 percent that were used, and in the case of the Yugoslavia committee it was 2 percent.

So you had a body which operates in many ways in a manner similar to a regulatory agency or regulatory body in a national government, granting humanitarian waiver clearances 90 to 98 percent of which were never utilized. It was also unclear where the money was coming from or should have been coming from to finance all of this pseudo-trade that the clearances referred to.

This, it assumed after the fact that much of this had to do with unfreezing frozen assets. In the case of Iraq, I in later years also suspect that the family of the dictator, which at that time was one of the world's richest families, had the problem that its assets had to be kept relatively hidden and that moving assets out of the hidden sphere into the open market was a dangerous act, because that could tip off, Iraq's claimants were numerous by this time, as to where the rest was hidden, and that some of this activity may have been related to money laundering in that sense, ways of getting the money out of the hidden sources into the open market.

But that explanation would not be that valid for Yugoslavia, which was doing the same thing to an even greater extent as far as volume was concerned.

These things, by the way, were all vastly enhanced by the lack of transparency with which the committee operated. That was also one of the points on which I directed a good deal of criticism and analysis in internal memoranda, I think many of which have now been photocopied out of the archive at the University of Iowa and been given to the subcommittee.

So a lack of transparency was responsible for this and was responsible for many of the other problems we had, some of which had to do with the fact that even our own internal recording, reg-

istration of what we were doing was very primitive and lacking, because we had no obligations of accountability to the outside.

Since we didn't have to explain to anyone what we were doing, we ultimately did not bother to keep very good track of it ourselves. The book gives examples of all sorts of things that happened as a result of this poor management, which is, by the way, management of the committee with its decisionmakers who were not staff members but delegates of their countries.

[The prepared statement of Dr. Conlon follows:]

## STATEMENT OF REMARKS

made by Paul Conlon,  
(former political affairs officer of the UN Security Council)  
before the Subcommittee on National Security, Emerging  
Threats, and International Relations, of the  
Committee on Government Reform of the  
United States House of Representatives

EMBARGO: April 12, 2005 11 a.m.

Historically, the United Nations grew out of a treaty organization largely centered around the multilateral treaty known as the United Nations Charter. That treaty is unique and "privileged" in that its signers were not allowed to make any reservations and because it contains a provision that obligations under that treaty would take precedence over all its members' other treaty obligations. In that way it formed the basis of a constitutionally structured international legal order. Its rationale was collective security and its various parliamentary bodies were given governance and enforcement functions, most especially the Security Council which was empowered under certain circumstances ("Chapter VII") to bind the members against their will to abide by its decisions.

Seen now as a global system the United Nations consists of a large number of treaty organizations or intergovernmental organizations of much less privileged status dealing with specialized questions (human rights, development, health, refugees, international trade). They too are international governance organs but they lack the same unambiguous enforcement powers of the central treaty organization and their position in a constitutionally structured international legal order is much less clear. Nonetheless they make up the vast bulk of all UN activities and employ over 95% of all its personnel.

In the 1990s when the Security Council attempted to exercise some of its collective security enforcement functions it came into conflict with the wider UN system, partially because the latter had many functions and missions that were considered incompatible with mandatory enforcement of sanctions

resolutions. Most of those sanctions measures were binding, not only on states, but on other international organizations and their personnel. Used to operating with certain legal immunities, some of those organs of the UN and their staffs resented being subjected to the authority of the Security Council or did not share the objectives of the relevant resolutions. This was also true of most of the central Secretariat's personnel, ultimately as well of the then secretary-general (Boutros Boutros-Ghali). Within the margins of maneuver available to them, they worked against enforcement of Security Council decreed sanctions.

This historical experience is not without its relevance for discussions of UN reform. Reform has in recent years (and in the most recent proposal by the present secretary-general) been discussed as an historic compromise (or trade-off) between a western constituency interested in collective security (and human rights) and a developing world constituency interested in development. Whatever the merits of this approach, experience has shown that mixing these two functions up in the same governance organs, organizational framework and personnel pool has worked against efforts at enforcement of collective security objectives.

Therefore, in any reform and, provided collective security is to be retained as an objective of the United Nations, it would seem better to provide the Security Council with its own structures and resources (including its own personnel), preferably in a separate secretariat uninfluenced by the organization's secretary-general. Such an option appears to be admissible under the wording of the Charter as it presently stands.

The rampant commercialism that later engulfed several sanctions committees of the Security Council and paved the way for corruption under the Oil-for-Food program can only be understood against the background of this other function of the United Nations (development, humanitarian relief, etc.) and the vision of the organization's "proper role" cultivated by inside and outside constituencies interested in or engaged in these activities. UN-sponsored humanitarian relief deliveries and planned reconstruction

activities in Iraq after the military intervention of 1991 provided the original justification for humanitarian waivers, only to be followed by more commercial waiver requests and, ultimately unfeasibly voluminous waiver request flows whose purpose was something other than the delivery of goods to the target state.

Target state regimes and commercial interests elsewhere (often in states neighboring on target states) later came to encourage this phenomenon whose exact function was never entirely clarified but it appears that obtaining export permits for unfreezing of assets, laundering of target state assets, smuggling of non-approved goods to the target state and (occasionally) fraudulent activities unrelated to the target state were prominent motives. These activities also provided valuable experience for small firms specializing in sanctions busting.

At the time it was felt that such practices had an important humanitarian function in supplying much needed goods to suffering civilian populations and therefore sections of the UN system began to advocate liberalization of waiver practices in order to increase the range of goods and number of permits granted by sanctions committees. Additionally, it was held that encouraging exporters outside of the target states to enter this commercial arena was fostering economic development, another important United Nations objective. In one instance, a UN development office was behind such pseudo-humanitarian exports.

Instrumental in facilitating these undesirable developments was the secrecy with which subsidiary organs of the Security Council like sanctions committees operated. By comparison with other legislative bodies in the UN system, the Council itself is not particularly open but under the Charter much of its work is ultimately subject to publication. But the sanctions committees operated almost completely in secret.

This secrecy was not based on any more basic procedural requirement of Charter law but had evolved over time because most such subsidiary organs adopted rules of procedure opting for closed

session meetings as a rule. However, secrecy went far beyond the mere practice of holding deliberations in private because even the decisions were not divulged to the general membership. Empowered by resolutions adopted under Chapter VII of the Charter, those committees were authorized to make decisions that were binding on member states against their will (and were thus exercising authority in the terms of governmental theory). But decisions were originally only divulged to the member state (or states) that had addressed a query or request to the committees even though many such decisions had generic relevance to the general membership. Third states that might have to collaborate in the implementation of such decisions were not as a general rule informed of them officially.

Because of this the humanitarian waiver practices of sanctions committees were never clearly understood in all their ramifications by the general membership. Indeed, this lack of transparency in thousands of what in other systems might be called case law decisions made the work of the committees even more difficult for themselves since there was no coherent record keeping of decisions that would allow the delegates, in dealing with a particular case, to determine easily how similar cases had been decided in the past. The committees were not bound by precedent, but there was a feeling that consistency was at least desirable. Poor record keeping, together with non-promulgation, weakened institutional memory, all the more significant because the membership of such committees was constantly changing (one-third of the members were replaced each year) and non-permanent members were disadvantaged in their access to prior case law.

Secret deliberations were defended on the grounds that they encouraged candor in discussions of sensitive issues, but empirical research has shown that it was in fact often easier to sweep unpleasant issues under the carpet in such non-transparent bodies. The doors that impeded the flow of information in one direction ultimately did so in the opposite direction as well and the committees did not even discuss instances of alleged sanctions violations that were being aired widely in the press. Members of the committees (states, one should remember) frequently declined to inform the committees of information

that some of them most certainly must have had. In view of such a "don't ask, don't tell" posture, the committees' secretariat quickly grasped that certain types of information were not welcomed by the delegates or the chairmen and did not tell them all they knew either. The quality of decisions made in such an environment could never be good.

All of these baneful practices grew up over time on the basis of habit and mentality. There are no principles of law, or provisions of international law or Charter law that ever mandated such practices. With the passage of time and under pressure from the general membership, the decision-making delegates began to allow for more transparency. The Secretariat itself was partial to such secrecy, despite the fact that it was itself disadvantaged by it in its work. A few other departments of the Secretariat had access to what went on in the committees but important actors (primarily in the humanitarian departments) did not. This only further alienated the latter from the sanctions objectives of the Security Council.

Nor could interested and informed outsiders (non-governmental organizations with relevant mandates, scholars, the press) assist sanctions committees by providing interpretation, analysis or supplemental information on the work of the committees. This even applied to scholars funded by the United Nations. The latter, increasingly mobilized to denigrate sanctions, were kept in the dark about the rampant commercialism going on in the sanctions committees.

Other parts of the Secretariat structure, particular employees in the translation and document-processing department, clandestinely revealed what they knew from committee documentation to outside constituencies, particularly the target states themselves. One target state, Iraq, occasionally forced the Secretariat to publish its (slanted) versions of what went on at committee meetings as official Security Council documents.

A curious aspect of this matter was that the members of the committees (states, and the individuals representing them) were not bound to secrecy but could divulge what they knew and frequently did. The staff of the Secretariat was legally bound to secrecy and could only divulge what it knew of committee decision-making practice with the discretionary permission of their supervisors (ultimately: the secretary-general). Such permission was given selectively out of political considerations. The then secretary-general (Boutros Boutros-Ghali) used this prerogative to prevent the sanction committees' staff from defending the committees against unfounded allegations about their practices.

This even included one of the more sensitive issues involved in their work: violations of sanctions. It can be asked if secretary-generals really have the authority, or if so have not been abusing such authority, to force or attempt to force employees and former employees to conceal what they know about violations of sanctions measures adopted by the Security Council under Chapter VII of the Charter.

With so much non-systematic and selective information floating around about what went on behind closed doors, it is no wonder that there was no lack of manipulative and self-serving rumors available about what supposedly had transpired. Since no official versions of meetings were available to the general membership, outsiders had no way of disproving or rebutting such claims. Members of the committees could in this way not only keep their outsider colleagues in the dark but additionally mislead them with selective leaks and slanted versions of events. One member of the Security Council (that consistently supported the dominant position on the inside) made a practice of spreading rumors about its purported strong opposition to that position - thus currying favor with one faction on the inside and with the other one on the outside. Secrecy does not encourage candor or prevent demagoguery. These practices are unworthy of a body of such high standing in the international legal order.

This lack of transparency went hand in hand with a concomitant lack of accountability. Which of these eyesores was the cause and which the effect is a matter that could be debated; clearly they reinforced

each other. When the possibility of ultimate accountability for such deplorable practices was occasionally brought up in private within the Secretariat there was a confident feeling that no one would ever be held to account for them. Some of the matters kept secret constituted violations or possible violations of measures adopted by the Security Council under Chapter VII of the Charter. Since measures adopted on that high authority are also binding on international organizations and their civil servants, the least one can say is that civil servants of international organizations should not assist, or be required by their superiors to assist, delegates in concealing such matters.

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Annex I:

MEMORANDUM

to: Mr. James C. Ngobi, Deputy Director  
Subsidiary Organs Secretariat Services Branch  
Department of Political Affairs

30 December 1993

from: Paul Conlon, Political Affairs Officer

subject: security of Committee documentation

1. As mentioned orally, at the close of the latest meeting of the Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait, Mr. Martinovic and I witnessed some disturbing phenomena.
2. Firstly, a journalist that, I believe, works for a Gulf region news agency entered the room (conference room 7) and gathered up documents left on the table by the delegates.
3. In this context we became aware that the room was now completely empty, conference service personnel having already left, and that the document trolley was still standing in the room (left unlocked). We took the most sensitive types of documents from the trolley, but were obliged to leave it there.
4. Leaving the room we saw the Moroccan delegate, Mr. Bellouki, seated in the Viennese Café with Mr. Al-Nima of the Iraqi mission and another person, going through a bundle of papers.
5. One of these things cannot be prevented. The others might be amenable to some prevention. It is recommended that better arrangements be made with Conference Services about either locking the room until the trolley can be retrieved, or retrieving it immediately after the close of the meeting.

copy: Mr. Martinovic

Annex II:

16 May 1994

M E M O

to: Mr. James C. Ngobi  
 from: Paul Conlon  
 re: Desirability of publishing Committee decisions

1. The basic guidelines of subsidiary organs of the Security Council having once established the principle that closed meetings and restricted documentation were in the interest of expeditious and flexible decision-making - to which Committee Secretariat can well attest - far-reaching conclusions were then drawn as to the desirability of secrecy and the noxious nature of disclosure in general. The ultimate corollary has naturally been the idea that the members are not supposed to know what goes on either.
2. The Committee now takes thousands of decision every year in the form of export permit letters which are not published in an orderly or recognized manner. Supposedly these decisions are binding on all those connected in some way or another with the implementation of the decisions, although it is hard to see from a practical point of view how they are supposed to be implemented by those who are not allowed to know about them.
3. It can also be asked on the basis of what strange legal doctrines the Committee as a source of authority can simultaneously require the non-disclosure of its decisions and then assert pretensions to their universally binding nature? In most legal systems the validity of laws and decisions is directly dependent on their proper promulgation.
4. The basic idea of sanctions compliance has been that compliance can be ensured by the threat of prosecution of non-compliance in the court system of States. In most European jurisdictions, successful prosecution of sanctions evasions is made more difficult, if not outrightly impossible, due to the fact that there is no certainty as to which export transactions the Committee has permitted. The requesting State is the only jurisdiction where there is any certainty that the authorities can be legally bound to know of the Committee's decision in that case. This does not establish the degree of transparency in any other jurisdiction which would be necessary to make deviation from the terms of the permit prosecutable. In extreme cases this might even be the case within the jurisdiction of the requesting State.
5. The decisions of the Committee to allow exports is only communicated to the Government of the requesting State. It is unclear how third-State authorities (authorities of States other than Iraq and the requester) are supposed to be able to properly administer exports to Iraq without direct access to the permit decision. Jordan's constant requests for verification of authenticity of permit letters illustrates this point. Jordan is a "third State" in the vast majority of cases.
6. Even in other cases the point is not academic. The idea that the requesting State is the implementing State in the terms of older international law doctrine is nonsense in the case of our Committee. Frequently the requesting State stands in no relation to the export transaction other than that it is the domicile of someone who requests it. Nowadays even that requirement is being dropped. Just as there are "flag-of-convenience" jurisdictions there are also "notification convenience" jurisdictions. This is in no way impermissible according to Committee practice.
7. The general lack of knowledge as to the legal requirements of sanctions practices is well known to Secretariat staff who are constantly receiving enquiries from missions. Other feedback from national implementing authorities has indicated that they do not understand the exact regulations, particularly in regard to the question of frozen assets. There have been other examples pointing in the same direction. The result of all the secrecy is that the implementing States do not know what sanctions law requires.
8. Most importantly, the secrecy has played into the hands of the crooks who now make up an important part our ultimate clientele. Abuses of the Committee's good faith as have recently occurred would be less likely in a system where there was some fear of discovery. Gazetting permits would not deter or disturb the legitimate exporter, but the sanctions evader would see his designs foiled from the start. It might also discourage less well-founded requests.
9. It is therefore my recommendation that the Committee's approvals in the form of the core-portion of the usual approval or acknowledgement letter be gazetted in some appropriate manner, as are thousands of similar decisions of permitting authorities in the organized Western countries.

10. This might also force the Committee to clean up its act in matters of format, terminology, standardization, quantification and description. Secrecy has helped to keep unprofessional and amateurish practices alive long after volume and diversification would normally have forced through a more professional approach.
11. One possibility would be to require the requesting State to gazette the approval permit in the manner usually used for its own permits. This would be less desirable, because there would be no central source of gazetted permits, and there would be a greater variety of formats and forms. The permits might then have to appear in the official language of the Government Gazette. Abuses of permits through the use of "convenience jurisdictions" would still be possible.
12. The best alternative would be for the United Nations as such to gazette the permits, either by inserting standardized English and French versions in appropriate legal or commercial media, or by utilizing the facilities of the Treaty Section.

Mr. SHAYS. Thank you very much.  
Mr. Mack.

**STATEMENT OF ANDREW MACK**

Mr. MACK. Thank you very much, Mr. Chairman and members of the subcommittee, for this opportunity.

I should say that I'm coming here today not as an expert in any sense on Oil-for-Food. I was the Secretary General's director of strategic planning for 3 years, and if anybody spent much time in and around the United Nations, you know that strategic planning is in some sense an oxymoron in the U.N. It's very, very difficult to have strategic planning when you have a board of directors which is the General Assembly with 190 plus members.

Mr. SHAYS. So is your board of directors the entire Assembly or is it the Security Council?

Mr. MACK. The General Assembly deals with budgets, and that is absolutely critical in the U.N. The General Assembly doesn't have the same sorts of powers that the Council does. But that particular power is an incredibly important one, when it comes to U.N. reform. If you ask the question, why is it the U.N. has nearly twice as many people dealing with public information as is the case, as working in the Department of Political Affairs and peacekeeping operations, in a sense the Defense Ministry and the Foreign Ministry, the answer is the General Assembly, the fifth committee.

That's why it's so difficult, as somebody said before, for the Secretary General to in fact implement reforms in the U.N. You have to be able to persuade this large, factious body that something is in their interests as well as the interests of the Secretariat.

Mr. SHAYS. Very interesting, thank you.

Mr. MACK. So Mr. Chairman, I simply want to say that I'm here really speaking as an academic and somebody who has an interest both in the U.N. and in sanctions regimes in their general efficacy.

I think I'm going to speak to the second part of the agenda today, which is one of the implications of Iraq sanctions for the future. First of all, it seems to me that it is quite clearly the case that we are never, ever going to have another sanctions regime like that imposed on Iraq. Comprehensive sanctions are out as far as the U.N. is concerned.

And there are several reasons for this. First, you are never going to persuade the French, the Russians and the Chinese to go along with another resolution like 661. Second, the humanitarian side of the house would be up in arms, and I think that the point made earlier, that there is a fundamental tension in the institution between the humanitarian side of the house and the security side of the house is a very important one. That tension runs right throughout the Secretariat. It's not just a case that it's for the Secretariat versus the Council.

So what we're going to see, I think, in future, is that the U.N. is only going to be imposing so-called smart or targeted sanctions, and the idea behind smart and targeted sanctions, they focus on leaders and not on peoples.

The second question I think we need to ask, if you look into the future, is how successful have sanctions been in the past and what is it we need to do to make them more successful in the future. If

you ask the question, how successful have sanctions been in the past, the answer is not very. The classic study was done by the International Institute of Economics some years ago, with a follow-up study. They found that about 25 percent of sanctions regimes were “partially successful.” What that in fact means is, what success means is something which varies according to whom you speak.

A more recent Canadian study found only 14 percent of sanctions regimes have been successful, and that 85 percent of those were directed against democracies. What that suggests is that the probability of economic sanctions regimes being successful against non-democracies is in fact extremely low.

Now, in a sense, many of those sanctions regimes that have been studied were unilateral sanctions regimes. And in principle, multilateral sanctions regimes ought to be more successful. And studies by George Lopez and David Cortright have written I think now three books on U.N. sanctions. They figured about a third of U.N. sanctions regimes succeed.

Now, this isn't very good, but it's actually quite a bit better than the track record for coercive diplomacy more generally. A recent study by the U.S. Institute of Peace found only 25 percent of exercises of coercive diplomacy have been successful.

So why is it that two-thirds of U.N. sanctions regimes fail? First I think they fail because trying to impose sanctions regimes on authoritarian states fails because there's a fundamental flaw in sanctions theory. What sanctions theory says essentially is that if you impose economic pain on a population, the population will bring pressure to bear on their leaders to change the policies that led to the institution of the pain in the first place.

Now, the problem with that, as far as an authoritarian regime is concerned, is that the people that feel the pain have no power, and the people that have the power feel no pain. Plus, and this has been very well documented in the case of Iraq, but also in the case of Haiti and other places, once you impose comprehensive sanctions, one of the very first things that begins to happen economically in the targeted country is that you create a black market. And in Iraq and elsewhere, it's been the regime that has controlled the black markets, so you have an extraordinary situation where members of the regime whose behavior you're trying to change through sanctions actually have a perverse interest in the continuation of sanctions.

And third, comprehensive sanctions cannot only enrich regime members, they can actually enhance the control that the regime has over its own population. We saw that very, very clearly in the case of Oil-for-Food, where the regime to a large degree controlled the flow of food and medicines to various sectors of the Iraqi community, and that gave it of course political leverage.

But we should also point out that many U.N. sanctions have failed, not because of anything that's in any inherent flaw in sanctions per se, but because the Security Council made little or no attempt to enforce them. If you're looking at the sanctions that were placed on Africa, for example, the sanctions committee rarely met and they accomplished very little when they did meet, and the

United States, by the way, was just as complicit in doing nothing there as anyone else.

Many of these sanctions regimes were imposed because the Council wanted to be seen as doing something, but didn't want, for example, to get into the business of military intervention. And ironically, the Iraq sanctions were monitored far more closely than any other sanctions regime in the U.N.'s history.

But I think it's fair to say that the overriding concern of both the United States and the United Kingdom here was strategic; that is to say, it was about controlling the potential dual use items and not so much checking for scans. Plus the fact that you have within the Secretariat, there was no professional expertise available to help the sanctions committees do their job more effectively. Numerous reports have called for greater expertise on behalf of the Secretariat there, and no cases of funding being available to provide that expertise.

You see that very, very occasionally, as you saw for example, in the case of Angola. You had the expert panels that were set up, and there for the very first time you actually had people with real expertise. And the reports that came out of sanctions busting in Angola and Sierra Leone, the whole blood diamonds issue there, there for the first time you could see what a huge difference it makes if you can have people with really good expertise.

But the funding for that was provided independently by Member States who did not come from the General Assembly. And of course part of the problem with the Assembly now is that the Assembly has been so, there is so much animus in the Assembly because of perceived humanitarian costs of sanctions. There is a great deal of unwillingness to do anything that is going to help implement sanctions more effectively.

But I think it's quite important, and I think this was one of the points made by the State Department representative, the sanctions do more, they're about more than simply bringing countries into compliance with U.N. resolutions. Sanctions are also about stigmatizing a country. This is an important function. Sanctions are most importantly about containment.

And I think it's reasonable to say that as far as the U.N. sanctions on Iraq were concerned, notwithstanding the fact there was a large amount of leakage. They prevented Saddam from rearming. Had there not been a sanctions regime in place, Saddam could have replaced \$40 billion, \$50 billion, \$60 billion, \$80 billion worth of material. He could have brought in modern tanks, he could have brought in modern strike aircraft and so forth. He did not. He didn't do that and couldn't do that.

And third, sanctions can be used to build support for the use of force by showing that all military alternatives have been exhausted, have been tried and failed.

And finally, and I think this is one of the reasons why sanctions have been imposed so frequently, they can respond to the political imperative that the Council feels to be seen to be doing something when they don't want to do anything more than sanctions.

So finally, I just want to say a few words about smart sanctions. Smart sanctions, like smart weapons, are supposed to be precision targeted. They are intended to reduce collateral damage. They are

designed to coerce regimes, without imposing major harm on citizens. As we have heard this morning, that can include a whole range of things, freezing of overseas financial assets, specific trade embargoes on arms, on luxury goods, flight and travel bans, political sanctions designed to stigmatize the target regime, denial of travel and so on and so forth.

The point I think about smart sanctions, this is the way forward for the United Nations, they are morally appropriate when directed against authoritarian states. It's the regime that feels whatever pain there is, not the people. They minimize humanitarian costs, which isn't only desirable in itself, but it prevents the regime, as Iraq did very effectively, from using the pain inflicted on its citizens as a way of generating support, even though it was Saddam Hussein that was fundamentally responsible for the pain in the first place.

And minimizing, they also reduce incentives for sanction busting, which means that Article 50 doesn't have to be invoked, although when it is invoked, nothing normally happens, so you wouldn't have to have the same exclusions that you needed to have for Jordan and Turkey. And they reduce opportunities for regimes of profit from black marketeering.

But I think we should be very, very clear that smart sanctions are not a very powerful weapon. They should be seen as one tool and one tool only in the tool kit that policymakers have. They are something I think nearly everybody who studied sanctions, everybody who knows the U.N. says sanctions are an important tool, they are something that lie between simply verbal condemnation, exhortation on the one hand and military intervention on the other.

What is very, very clear is that the sanctions regimes are in need of major reform, of much more resources. But it would be very foolish to throw out the baby with the bathwater.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Mack follows:]

## UN Sanctions: a Glass Half Full?

Andrew Mack and Asif Khan\*

### *Introduction*

By the end of the 1990s, following a series of embarrassing failures, the utility of the UN Security Council's two primary collective security enforcement mechanisms--military force and sanctions--was being subjected to increasingly serious critique both in the research and in the policy communities. Resort to force by the Security Council in the second half of the 1990s was constrained both by doubts about its efficacy, following the debacle in Somalia, and by the reluctance of member states to put the lives of their citizens at risk in distant UN operations where no perceived vital national interests were at stake. The increase in the resort to sanctions in the 1990s should be seen in this light--as a substitute for, as well as a precursor or complement to, the use of force.

Prior to 1990 the Security Council imposed sanctions regimes on only two occasions, on Rhodesia and South Africa. The 1990s saw a dramatic surge in UN-imposed sanctions regimes, with the Security Council invoking Chapter VII to impose a variety of economic and political sanctions, travel bans, and arms embargoes on both governments and nongovernmental actors (e.g. UNITA in Angola). Sanctions were imposed on Afghanistan, Angola, Ethiopia and Eritrea, Haiti, Iraq, Liberia, Libya, Rwanda, Sierra Leone, Somalia, South Africa, Sudan, and the former Yugoslavia. In the cases of Angola, Ethiopia and Eritrea, Haiti, South Africa, Southern Rhodesia, Sudan, and the former Yugoslavia, sanctions have been fully lifted, whereas in the case of Libya, they were suspended. In the case of Iraq, sanctions have been lifted, with the exception of some prohibitions related to the sale or supply to Iraq of arms and related *materiel*.

How effective have these regimes been? This question is less easy to answer than might be imagined, not least because what the ostensible rationale for actions were and what the real reasons were sometimes differed radically. The UN lacked the resources to undertake its own "lessons learned" review of its sanctions regimes and no comprehensive scholarly studies were produced in this period either. Indeed, it was not until the new millennium that the first comprehensive study of the efficacy of the UN sanctions in the 1990s was published.<sup>1</sup>

UN sanctions, of course, only amount to a small percentage of the total. More than one hundred sanctions regimes, mostly unilateral, were imposed during the twentieth century. The most comprehensive, most heavily cited, and influential study of the efficacy of these regimes was produced by the International Institute of Economics (IIE) in 1990.<sup>2</sup> The IIE study found that sanctions failed to achieve even "partial success" in coercing desired changes in target regime behavior in 66 percent of 115 cases between World War I and 1990. Moreover, the failure rate increased over time as the global economy became more open. Between 1973 and 1990, only one in four sanctions regimes achieved even partial success. The major reason for the overwhelmingly negative assessment of the efficacy of sanctions evident in almost all studies is that success in coercing target states to change their behavior has become *the* criterion of effectiveness. But while coercing compliance is clearly an

important (albeit rarely achieved) goal, critics tend to forget that sanctions often seek to realize other objectives as well--from stigmatizing and containing transgressor states to serving as instruments of prevention and deterrence. No studies have systematically examined the effectiveness of sanctions in realizing these latter goals.

The most damaging charge against sanctions, particularly comprehensive sanctions, is that they impose widespread suffering on ordinary people, while leaving the regimes they target not only relatively unscathed but also sometimes enriched and strengthened. In part as a consequence, almost all studies today argue for one variant or other of what have come to be known as "smart sanctions," i.e., those sanctions intended to target regimes, not peoples. The effect, though not the intent, of a number of recent sanctions regimes, most notably in the case of Iraq, has been the reverse. Peoples have been harmed far more than regimes.

### *The Efficacy of Sanctions*

The only real disagreement in the contemporary sanctions literature relates to the *degree* to which sanctions fail as an instrument for coercing changes in the behavior of target states. No study argues that sanctions are, *in general*, an effective means of coercion, although individual sanctions regimes can and sometimes do succeed. Part of the difficulty in making judgments about the efficacy of sanctions arises from disagreements about what constitutes "success" even with respect to coercion. For example, supporters of sanctions argue that the comprehensive sanctions imposed on the Federal Republic of Yugoslavia (FRY) played an important role in coercing Slobodan Milosevic to agree to the 1995 Dayton Accords. Critics argue that sanctions were of negligible import, that the Bosnian Serbs were losing their war against Croatia and the Bosnian Muslims, and that it was this fact, together with the use of NATO military force, that determined the successful outcome of the talks. Dayton suited the FRY because it froze the status quo and prevented a greater Bosnian Serb defeat. Military force, not sanctions, was the decisive factor. In reality, the relative impact of sanctions and war on Milosevic's decision making will likely never be known. Sanctions were probably a contributory factor in determining the outcome of the Dayton negotiations, but they were certainly not a sufficient condition for success--and probably not a necessary one either.

The Yugoslavia case exemplifies the difficulty of determining the relative impact of sanctions on outcomes that have multiple causes, but this is by no means the only methodological problem raised by the sanctions literature. Supporters of UN sanctions, for example, argue that pessimistic findings of the International Institute of Economics study are of little relevance to the UN because a large number of the cases examined in the IIE study involved unilateral sanctions, mostly by the United States. The UN, by contrast, only imposes sanctions multilaterally, and multilateral sanctions, so it is argued, are inherently more effective than unilateral sanctions.

The logic of this argument is clear enough; whether UN multilateral sanctions are *in practice* more effective than unilateral sanctions is less so. Strongly enforced sanctions by a superpower like the United States against a small country that is dependent on U.S. trade, aid, and investment may well be more effective than

weakly implemented multilateral sanctions. The United States has demonstrated the efficacy of economic coercion (of which sanctions are but a special case) on many occasions. Moreover, the actual success rate of the UN's multilateral sanctions in the 1990s is hardly encouraging. The UN recognizes this fact and over the past several years has been actively canvassing ways to make sanctions both more effective and less costly in human terms.

### *Why Sanctions Regimes Fail*

One of the core assumptions of traditional sanctions theory is that the pain inflicted by sanctions on citizens of a target state will cause them to pressure their government into making the changes demanded by the sanctioning body. But, at least in authoritarian states, the assumption that "civilian pain leads to political gain" suffers from an obvious drawback. Those who bear the brunt of the sanctions have no power to influence policy; those in power tend to be relatively unaffected. From this it would seem to follow that sanctions directed against multiparty states, where there is some possibility of domestic pressure being brought to bear against the government, would be more effective than those levied on authoritarian states. One recent study provides suggestive evidence that this is, in fact, the case.

Using more demanding criteria for success than those of the International Institute of Economics study, Kim Richard Nossal found only 14 cases out of more than 100 in which sanctions were completely successful. What was remarkable about his finding was that in 86 percent of the small number of cases in which sanctions had "worked," the targeted state had a functioning multiparty electoral system. Sanctions against authoritarian states failed in more than 98 percent of the 100-plus cases.<sup>3</sup> Insofar as UN sanctions have been directed primarily against authoritarian states, the potential significance of this finding is obvious.

*Sanctions may strengthen the regimes they seek to coerce.* When trade embargoes are imposed on a target state, the sanctions-induced scarcity of goods causes prices to rise, often dramatically. Between 1990 and 1995, price increases for basic commodities of around 1000 percent a year were not uncommon in Iraq. The consequences were predictable. First, the poor who could afford least suffered terribly. Second, the economic independence of the middle class, a building block for democratization and source of potential resistance to the regime, was destroyed. Third, regime members and their allies who controlled the black market profited hugely. Elizabeth Gibbons has argued that the imposition of sanctions on Haiti created a perverse economic interest in their perpetuation amongst the very regime members they were targeted against.<sup>4</sup>

In Iraq, efforts by the international community to relieve the suffering of the people had a further perverse effect. Regime control over much of the food and medical supplies distributed under the oil-for-food program has increased the dependence of the people on the state and further undermined civil society, while providing an additional lever of control and coercion for the regime.

*Sanctions bodies, rather than the target regime, may be blamed for sanctions-induced suffering.* The "pain-leads-to-gain" assumption of traditional sanctions

theory also assumes that it will be the regime, not the sanctioning body, that will be blamed for the privations imposed. In reality, sanctions often increase popular support for the regimes against which they are targeted, especially when the state controls the media and can guarantee that its "spin" on who is responsible for the sanctions-induced hardship gets the widest hearing. The so-called "rally round the flag" phenomenon is true of authoritarian as well as democratic regimes.

*Failure to compensate for third-party costs may encourage cheating.* Sanctions, by definition, impose disproportionately high economic costs on the economic partners of target states, but despite calls from the UN General Assembly for these costs to be borne more equitably by the international community, this almost never happens. Where little or no assistance is available, disadvantaged states will have an incentive to break sanctions and renew their traditional economic relationships to avoid harm to themselves.

Some provision for third-party compensation has been made in those cases where the implementation of sanctions regimes has engaged the interests of major powers, notably in Iraq and the former Yugoslavia. No such aid has been forthcoming in the case of the African sanctions regimes. Here and elsewhere, demands for compensation have generally been ignored by the wealthy states.

*Implementation, monitoring, and enforcement problems can undermine sanctions regimes.* Many critics assume that because sanctions rarely succeed, there must be some inherent flaw in sanctions strategy. But failure in many cases has been due to the inadequate monitoring and enforcement of sanctions regimes. In the case of Rhodesia, for example, sanctions busting took place on such a massive scale that exports actually *rose* after sanctions were imposed.

If it is indeed the case that the failure of many sanctions regimes is due to lack of enforcement, one might be tempted to assume that sanctions would work if only they were implemented seriously. This is a superficially attractive argument, but it ignores the fact that the difference in the way sanctions are implemented is not accidental. The level of resources allocated to monitoring, assessing, and enforcing sanctions is a function of the degree to which the perceived interests of major powers are engaged; it may be politically impossible to implement sanctions successfully when they are not. Thus, implementation of UN sanctions directed against African states, where the major powers have only minor interests at stake, generated so little effort that the regimes in question have been described by one UN insider as "atrophic." By contrast, quite extraordinary efforts have been devoted to the sanctions imposed on Iraq, where the perceived vital interests of major powers--particularly the United States and United Kingdom--were engaged.

But even when there *is* serious commitment to the regime in question, most studies point to the need for improvements in UN planning, monitoring, assessment, and enforcement procedures. A 1996 report prepared for the Carnegie Commission on Preventing Deadly Conflict noted that major problems in monitoring and enforcing economic sanctions had become glaringly apparent to professionals both within the UN and national governments.<sup>5</sup> Little has changed since, and many subsequent reports have stressed the need for greater technical expertise to guide the work of the Security Council's sanctions committees. As David Cortright and George Lopez note in *The Sanctions Decade*, the UN's ability to enforce sanctions has been "woefully

inadequate.”<sup>6</sup> UN officials and Security Council members concede that this is the case but note the difficulty in persuading member states to allocate the needed resources.

### *The Humanitarian Issue*

Numerous recent studies have pointed out that sanctions, and in particular comprehensive sanctions, are not a nonviolent alternative to armed force. Like war, they can result in death and suffering, even though all UN sanctions regimes exempt food and medicines. Unlike war, however, the casualties are all on one side. The human suffering associated with some sanctions regimes has become a major political issue both within the United Nations Organization (UNO) and in the wider international community.

The most politically sensitive question, namely, the level of sanctions-induced deaths, is difficult to resolve because of real problems in obtaining reliable data. In the Iraqi case, which has generated the most concern, media and some NGO reports have sometimes cited Iraqi government claims of one-million-plus deaths attributable to sanctions, notwithstanding the obvious need for caution in using data from such a source. But in 1999 a careful Columbia University epidemiological study, which did not rely on Iraqi data, indicated that *at least* 100,000, and more likely over 200,000, children below the age of five died between August 1991 and March 1998, *over and above the number that would be expected to die in normal times*. Three-quarters of these excess deaths were attributable to sanctions.<sup>7</sup> This is more than the total number of Iraqis killed in the first Gulf War when the overwhelming majority of casualties were combatants.

The primary responsibility for these deaths clearly lies with the regime. Iraq’s deliberately obstructive tactics meant that humanitarian aid under the oil-for-food program did not start reaching those in need until March 1997, despite the fact that the Security Council had made provision for such aid as early as 1991. But critics of the Security Council have argued that once it had become clear that the regime would do nothing to prevent the sanctions-induced starvation of Iraqi children, then Council members had to share at least part of the responsibility for the continued suffering.

Few doubt today the considerable tension that can exist between the Security Council’s pursuit of political goals via sanctions and the UN’s parallel commitments to the human rights provisions of the UN Charter. As Secretary-General Kofi Annan noted in his 1998 *Annual Report on the Work of the Organization*, “The international community should be under no illusion . . . humanitarian and human rights policy goals cannot easily be reconciled with those of a sanctions regime.”<sup>8</sup> When comprehensive sanctions regimes are imposed and effectively enforced, it is difficult to avoid major suffering and severe social dislocation. The impact of sanctions on the Iraqi economy was so large, for example, that it dwarfed any and all relief programs. Moreover, while the post-March 1997 flow of food and medicine under the oil-for-food program reversed the rise in the under-five mortality rate, it did not arrest the insidious decline in the economic development infrastructures of Iraq, in the education and public health systems, and in the institutions of civil society. These may be

the most serious long-term cost of sanctions to Iraqi society and are one reason why the current post-war reconstruction program is so expensive.

Critics argue that where comprehensive sanctions generate great human suffering and destroy the social fabric of a target state without achieving their political goals, support for them will decrease and the UN's moral authority will be undermined.

### ***Measuring Success and Failure***

As noted earlier, most studies on the efficacy of sanctions ignore the fact that they may do more than simply seek to coerce states to change their behavior. In fact the variety of goals, other than coercion, that the Security Council may pursue by imposing sanctions is considerable. A complete list would include the following:

- Stigmatizing a transgressor state and, in so doing, signaling the international community's opposition to aggression, terrorism, gross violations of human rights, and other major transgressions of international law and norms.
- Containing a target state even when there is little expectation that the measures imposed will lead to the desired change in its behavior. This was clearly a central U.S. concern with respect to Iraq. Sanctions helped contain Iraq militarily by preventing it from spending tens of billions of dollars to rebuild its conventional military capability.
- Deterring other would-be violators of international laws and norms and deterring repeat violations by the target state. Even sanctions that do not succeed in changing the behavior of the transgressor state may contribute to deterrence.
- Serving as an instrument of prevention. A sanctions regime that includes an effective arms embargo will help prevent force modernization and expansion in the target state. Economic sanctions that reduce gross domestic product (GDP) levels may force reductions in defense expenditure. Both may reduce the capacity, and hence the incentive, for aggression.
- Building support for the use of force by ensuring that it not only is, but is seen to be, a measure of last resort. In this sense sanctions can be seen as a crucial rung in an escalating program of coercive measures.
- Responding to the political imperative to "do something," where the use of force is ruled out and where mere verbal condemnation would be seen to be insufficient.
- *Not* lifting sanctions may also serve domestic political interests. It is clear, for example, that even though the Clinton administration came to regard sanctions on Iraq as largely ineffective, it felt constrained by the anticipated political costs from doing much to ameliorate their humanitarian impact.

Reviews of the utility of sanctions occasionally note these additional roles that sanctions may play but almost never examine them in any detail. To the extent that they fail to do so, they present an unduly pessimistic assessment.

***Enhancing the Effectiveness and Reducing the Human Costs of UN Sanctions***

Most reviews and studies of the Security Council's sanctions machinery and implementation and monitoring processes have offered both criticism and detailed proposals for improvement. Some have argued for quite radical structural change, such as the creation of a UN Sanctions Agency or for the General Assembly to play a major role in sanctions implementation and enforcement.

On the critical issue of the impact of sanctions in terms of human suffering, major reports commissioned by the UN's Department of Humanitarian Affairs, published in 1995 and 1997, proposed a wide range of reforms. Both studies recommended that humanitarian impact assessments be conducted before and after sanctions are imposed. Few would disagree, but the central problem is again one of resources. The question of assistance to third parties has been addressed by both the General Assembly and the Secretariat. In 1998 an ad hoc experts group was set up by the Department of Economic and Social Affairs to examine practical measures of assistance to third-party states affected by sanctions. The recommendations have been presented to the General Assembly, but few observers believe that the resources will be found to implement them.

**Inducements or "Positive Sanctions"**

Over the past decade, numbers of academic studies have drawn attention to the use of inducements as a means of helping secure compliance with UN resolutions. Inducement strategies on their own are neither realistic nor appropriate. Sanctions are imposed in response to gross violations of international law. Simply offering inducements to states to return to compliance with their legal obligations would create a "moral hazard," rewarding illegal behavior. But many students of sanctions argue that sanctions regimes are generally biased too far towards coercion and pay too little attention to the use of inducements *as a complement* to coercive measures. A more effective strategy, they argue, would embrace positive as well as negative sanctions.

The historical and some game-theoretic evidence suggests that mixed strategies work better than coercive strategies on their own. For example, a recent study by Gitti Armani that examined some 22 cases of inducement and coercive strategies intended to change state behavior found that mixed strategies were three times more effective in promoting desired changes in state behavior than coercive measures alone.<sup>9</sup> In 1993 Australian Foreign Minister Gareth Evans made the case for a "tit-for-tat," carrot-and-stick strategy, arguing that sanctions should be progressively lifted as the target regime moved towards compliance with UN resolutions.<sup>10</sup> Evans noted that Commonwealth sanctions on South Africa were based on this conditionality principle. In a similar vein, in 1997 the General Assembly also called for the "progressive" lifting of sanctions as an inducement to compliance.

The case of the UN sanctions regime imposed on Libya in 1992 provides further suggestive evidence for the utility of inducements as a complement to coercion, though declining oil prices were also a factor. For years Tripoli had steadfastly refused to comply with UN demands to hand over two Libyan suspects to either Scottish or U.S. authorities. The Libyans were wanted for their alleged role in the 1988 Lockerbie air disaster. Libya argued that its citizens would not get a fair trial in Scotland, where the downed plane had crashed. Only in 1998, when the United States and United Kingdom eventually conceded that the trial could take place elsewhere, was the long process set in motion that eventually led to the suspects being handed over.

### Smart Sanctions

Today few dispute that sanctions are, to use Kofi Annan's words, a "blunt instrument," notwithstanding the measures introduced to alleviate their impact in terms of human suffering. One response to these concerns has been a rapid growth in support for the idea of "targeted," or "smart" sanctions. "Smart" sanctions, like "smart" weapons systems, are supposedly precision targeted and designed to reduce "collateral damage," that is, they are designed to coerce regimes without imposing major harm on ordinary citizens. Normal commercial trade would not be stopped under a smart sanctions regime, though particular categories of imports and exports might well be. Targeted sanctions may include:

- The freezing of overseas financial assets of government and regime members.
- Specific trade embargoes on arms, luxury goods, etc.
- Flight and travel bans.
- Political sanctions intended to stigmatize the target regime, including diplomatic isolation and withdrawal of accreditation.
- Denial of overseas travel, visas, and educational opportunities to regime members and their families.

The suspension of credits from national governments and from international institutions like the UN, the World Bank, and the International Monetary Fund and the denial or limitation of access to overseas financial markets have also been identified as possible smart-sanction options. However, unless targeted very carefully, such sanctions risk having the same harmful consequences as across-the-board trade sanctions. The advantages claimed for smart sanctions are considerable:

- They are morally appropriate: when directed against authoritarian states, the regime feels most of the pain, not the people.
- Minimizing human costs is not only a desirable goal in itself, it also makes the UN less vulnerable to charges that it subverts its own humanitarian commitments by imposing sanctions regimes that harm the innocent.

- Minimizing human costs also makes it more difficult for target regimes to rally foreign and domestic support against sanctions, as Iraq sought to do with some success.
- Because smart sanctions do not normally disrupt nonmilitary trade, they minimize costs to third-party states, reduce incentives to cheat, and thus make it easier to sustain the sanctions regime in the long term.
- In denying target regimes the black-market opportunities provided by comprehensive sanctions, smart sanctions reduce perverse incentives for elite members to benefit from sanctions.
- By reducing the need for humanitarian assistance, smart sanctions deny regimes the opportunities to extend their control over the population through control over the disbursement of aid.
- By reducing the impact on social infrastructures, smart sanctions also reduce long-term damage to educational and health systems and to the institutions or proto-institutions of civil society.

The appeal of smart sanctions is obvious, but they confront a number of difficulties. First, sanctions theory suggests that the greater the costs of sanctions to the regime, the greater the probability of compliance. Because they hit harder, comprehensive sanctions should, in principle, be far more effective than more selective targeted sanctions.<sup>11</sup> Second, monitoring and implementing limited trade bans is in some ways even more difficult than across-the-board trade bans, but the international community has not been very imaginative in this regard. Time-consuming and expensive border and ship searches may not be the only way to prevent “sanctions busting.” A market-incentive approach, as opposed to a regulatory one, could be more effective. Such an approach could involve rewards for information leading to the detection of sanctions violators. Fines imposed on violators could form a pool for the payment of rewards. This idea is similar in principle to the concept of “citizen verification” of arms control agreements that has some support in the arms control community and to the activities of human rights organizations that are in the forefront of human rights monitoring. Other creative ideas, such as passing legislation that would invalidate the insurance coverage of sanctions-busting companies, have been proposed but not yet implemented.

The third general problem with “smart” sanctions relates to the option that has generated the most interest and has the greatest potential economic impact, namely, freezing the overseas financial assets of governments and of regime members. An oft-cited example of the effectiveness of this approach is the freezing of Iranian financial assets in the United States during the Iranian hostage crisis in 1980, but this case is of little relevance to the UN. The Security Council never imposes sanctions immediately; there is always debate that will forewarn transgressor regimes that sanctions may be applied. Moreover, many in the UN believe as a matter of principle that target states should be warned before sanctions are imposed. The net effect is that regimes under threat of sanctions will always have time to withdraw any overseas assets liable to be frozen before sanctions are implemented. “Targeting is difficult,” one commentator dryly observed, “if there is nothing to target.”

If sanctions are to be preceded by pre-assessment of their likely human impact as a number of reform proposals have suggested, then the warning time will be lengthened and opportunities to evade the financial sanctions increased still further. Freezing the overseas financial holdings of target regimes and elite members will be further hampered if fund ownership is disguised (thus negating the utility of name-recognition / searching software packages) or if the accounts are located in recalcitrant tax havens.

Supporters of comprehensive sanctions point out that, unlike financial sanctions, across-the-board trade embargoes, which are the sanctions with the greatest potential impact, cannot be evaded by forewarning. But nor can the suspension of credit, aid, and foreign investment—all options in the “smart” sanctions portfolio. However, sanctions against individuals cannot succeed or fail unless they are first attempted, and it is interesting to note in this context that during the 1990s the Security Council *never* mandated compulsory financial sanctions against individual members of a transgressor state. In Haiti the assets of individuals belonging to the regime *were* specifically targeted, but the Security Council resolution only “urged” states to freeze the funds in question. The resolution was not legally binding on member states.

Smart sanctions are certainly not the panacea that some of their less reflective advocates seem to believe, but nor are the problems they confront insuperable. A second Swiss-government-sponsored meeting on financial sanctions in Interlaken in March 1999 examined the key critiques of targeted financial sanctions and found them wanting. Thus, while financial assets can be readily moved electronically, their movements can be traced. If foreign currencies are repatriated to the sanctioned state, they cannot be seized by the international community, but neither can they be used by the target state without again sending them abroad, when they are again vulnerable to tracing and seizure. Notwithstanding the problems, financial sanctions were technically feasible, the experts concluded, and much could be learned from international experience in combating money laundering. The difficulties were not technical but political—securing the commitment to what needed to be done.

Following the Swiss-funded “Interlaken Process,” Germany launched the Bonn / Berlin Process in 1999, which convened expert groups to examine how to improve arms embargoes and travel bans. The German program was succeeded in turn by the Stockholm Process, funded by Sweden, which focused on how targeted sanctions will be implemented and monitored. A report from this latter working group was presented to the Security Council early in 2003.

### **Conclusion**

History suggests that only when the interests of major powers are engaged will sufficient economic and political resources be made available to enforce comprehensive sanctions effectively. But, as Iraq has so forcibly reminded us, effective enforcement can cause great suffering, and even sanctions whose impact is devastating do not necessarily achieve compliance. While “targeted” sanctions undoubtedly have a lesser impact than comprehensive sanctions because they focus on regimes rather than peoples, they also have far lower human and third-party costs. They are politi-

cally easier to initiate and to sustain in the long term and less likely to bring the sanctions instrument into disrepute. But even the most enthusiastic proponents of smart sanctions agree that more work is needed to evaluate their potential.

Among analysts there is broad agreement that sanctions should be seen as a tool of policy, not a substitute for it. To be effective, a sanctions regime must be guided by a coherent and comprehensive political strategy, one that seeks broad international support for the regime and minimization of the human costs it will inevitably incur. Such regimes should be implemented, monitored, and assessed with the aid of highly professional staff, while consideration should be given to the selective use of inducements as well as coercion. Unfortunately, these simple requirements are almost never met in practice.

Despite their critiques of current UN practice, none of the academic studies, nor even the most critical of the NGOs, argue that sanctions should be abandoned as an instrument of UN policy. Indeed, there is a widespread consensus that, when confronting major transgressions of international law, the international community needs an instrument of suasion that lies between mere diplomatic censure, on the one hand, and war, on the other. For this purpose there is no real alternative to sanctions. Major reform is needed, not wholesale rejection.

### Endnotes

\* The views expressed herein are those of the authors and do not necessarily reflect the views of the United Nations.

1 David Cortright and George A. Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s* (New York: Lynne Rienner, 2000).

2 Gary C. Hufbauer, Jeffrey J. Schott and Kimberley Ann Elliot, *Economic Sanctions Reconsidered: History and Current Policy*, 2nd ed. (Washington, DC: Institute for International Economics, 1990).

A revised and more up-to-date study was published in 1999. The broad findings of the earlier study were confirmed. See Cortright and Lopez (note 1 above), 15.

3 Kim Richard Nossal, "Liberal-Democratic Regimes, International Sanctions and Global Governance," in *Global Governance and Enforcement: Issues and Strategies* ed. Raimo Väyrynen (Lanham, M.D.: Rowman and Littlefield, 1999), 127-149.

4 Elizabeth Gibbons, *Sanctions in Haiti: Human Rights and Democracy Under Assault*, Center for Strategic and International Studies, Washington Papers 177 (Westport, CT: Praeger, 1999).

5 John Stremblau, *Sharpening International Sanctions: Towards a Stronger Role for the United Nations* (New York: Carnegie Commission on Preventing Deadly Conflict, November 1996).

6 Cortright and Lopez, 5.

7 Richard Garfield, *Morbidity and Mortality Among Iraqi Children from 1990 to 1998: Assessing the Impact of Economic Sanctions* (Notre Dame, IN: Joan B. Kroc Institute for International Peace Studies, University of Notre Dame and Fourth Freedom Foundation, March 1999). Available at <http://www.fourthfreedom.org/sanctions/garfield.html>.

8 See United Nations, *Annual Report on the Work of the Organization* A/53/1, para. 64. Available at <http://www.un.org/Docs/SG/Report98/con98.htm>.

9 Gitty M. Armani, "A Larger Role for Positive Sanctions in Cases of Compellence?" Working Paper no. 12 (Los Angeles, CA: Center for International Relations, University of California, May 1997).

10 Gareth Evans, *Cooperating for Peace* (Sydney: Allen and Unwin, 1993).

11 Iraq's persistent defiance of the UN in the face of the most effective (in terms of impact) sanctions regime ever imposed on a modern state is not what sanctions theory would predict--or can easily explain. Even though individual regime members may have benefited from the sanctions-stimulated black market, there can be no doubt that the reduction in Iraq's material power that came with a halving of the Iraqi gross domestic product and the denial of arms imports would have been a serious blow to the regime.

Mr. SHAYS. Thank you, Mr. Mack.

Dr. Gordon, I was just questioning your invitation, given that my counsel graduated from Fairfield University. But he did point out that you have written "A Peaceful, Silent Deadly Remedy: The Ethics of Economic Sanctions," and that's why you were invited. I thought it might be because of your graduating from Brandeis, Boston University, Yale University and then getting a doctorate from Yale University.

Welcome.

#### STATEMENT OF C. JOY GORDON

Dr. GORDON. It's a pleasure to be here. I do want to say that regretfully I am actually not one of your constituents, Congressman.

Mr. SHAYS. Oh, you're not?

Dr. GORDON. My university is, but I live in New Haven. So my representative is Rosa DeLauro. I hope that despite that, you won't actually retract my invitation.

Mr. SHAYS. No, no. It's nice to have you here.

Dr. GORDON. My field is political philosophy and law. I have been doing research on economic sanctions for about 7 years. Over the last 5 years, I have published articles on the economic sanctions in a variety of venues: The Yale Journal of Human Rights Law; Ethics and International Affairs; Mideast Report; Limone Diplomatique; Harper's Magazine. I am currently completing a book on the topic for Harvard University Press.

I'd like to address the things that I think specifically have not gotten explored by the series of congressional hearings that have happened to date. I am excluding today, because I think today's hearings really is going into issues that we are just starting to see the significance of. I think it's an important contribution of this subcommittee to be doing that.

I'd like to look at issues of transparency and oversight in a somewhat different way than they have been framed to date, and the U.S. role in a somewhat different way. Then, because the consensus decisionmaking rules come up a number of times, I'd like to look at that specifically.

In terms of transparency and oversight, Dr. Conlon has described how the 661 Committee operated. That was true throughout its history, the meetings were closed and the minutes were restricted. I think it's important to understand that the OIP and Oil-for-Food Program did not operate in the same way. That was an entirely separate system. The 661 Committee was granting waivers under a different system to Iraq. And the Oil-for-Food Program, once it started, had an entirely different system with an entirely different structure of oversight.

So what's true of the Oil-for-Food Program that was not true of the 661 in its waiver system is the following, so that there were, by my count, seven levels of oversight and monitoring with Oil-for-Food not found in the waiver system. I'll just go through them briefly.

One is the distribution plan. Before Iraq could begin to negotiate any contract, it had to submit a distribution plan identifying literally every single item, how it would be used, where it would be used. All the U.N. agencies went over those and determined if they

were appropriate humanitarian goods. Sometimes they required it to be modified before that would be approved.

So that was certainly not true of the 661 process. And in terms of transparency, the distribution plans are and have always been posted on the Web site. They are enormous, anyone can read them, you can see the rationale and so forth.

Second level is the OIP review, the OIP staff then look at the contract, see if it conforms to a distribution plan, and essentially is the information collecting body, the processing body. They don't make policy. The Oil-for-Food staff do not make policy. The 661 Committee and the Security Council make policy.

So what information had to be provided, for example, or whether a contract should be approved, that was never in the hands of OIP. Everyone is familiar with OIP, it is the agency within the U.N. that was created to house Oil-for-Food plus the U.N.'s other Iraq programs. But what OIP then did do was to confirm that every contract conformed with the distribution list.

Then we have a review by UNSCOM and then later UNMOVIC to see if there were things that were on the 1051 list or were objectionable for some other reason. The 661 Committee then reviewed or had access to every single contract. Every member had access to every single contract. There was a point part-way through, I think it was Security Council resolution 1409, that created a green list, and that certain items were uncontroversial, then bypassed the committee. Although even then, there was a way that if there were improprieties, they arrived at the committee.

But keep in mind that it's been mentioned that the United States had 60 staff, and that's from a prior hearing, examining every aspect of every contract. It's true that other than the United States and the U.K., other countries gave a fairly cursory review. The United States and U.K. gave very thorough ones, and on the basis of that, the United States in particular, had a very, very free hand in blocking contracts. And that's important to understand.

There was not a consensus that was needed to block contracts. The consensus cuts the other direction. The way the consensus rule works is, if everyone doesn't agree to the contract, it's blocked. So that was how it was that the United States unilaterally, using the consensus rule, was able to block massive, massive quantities of goods that increased over the course of time. It was \$150 million worth of contracts that were on hold in November 1998. By July 2002, it was \$5 billion on hold by the United States and the United States alone. The U.K. sometimes blocked things. Typically 3 to 5 percent of the holds were the U.K. All the rest were the United States and the United States alone.

So it's simply not correct to say the United States was prevented from exercising its will or exercising its oversight in preventing problematic contracts from getting through. There was no such structure that prevented it. The process absolutely cut in the opposite direction.

The next level of oversight is that all the funds in the program by the structure went through the escrow account. No funds by the structure of the program were ever in the hands of the Iraqi government. All proceeds from oil—

Mr. SHAYS. Can I just ask a question here? I apologize to my colleague, but this is kind of like basic. If I don't get beyond this point, whatever you say afterwards I'll still be wrestling with.

I thought the testimony before this subcommittee was that one member didn't have veto power. You're saying with the Oil-for-Food Program that it was unanimous consent and if one country objected it didn't move forward?

Dr. GORDON. That's correct. Every member had veto power. Every member had veto power over everything. Over any procedural decision, over who would be invited to speak to the committee, over whether a letter would be written, over every single contract. Every member had veto power.

Mr. SHAYS. Do you both agree with that, Mr. Mack or Dr. Conlon?

Dr. CONLON. That is one way of explaining it. In the Council itself, there are five members that have a veto. In the subsidiary organs of this type, the committees, there are all members, 15 members, that have similar—

Mr. SHAYS. So the difference, I said earlier that in effect the 661 Committee was the same committee as the Security Council. But just like in our House, when we go from the full House in the chamber to the committee of the whole, we play by different rules. And the different rules with the 661 Committee was that now everybody had veto power, in effect.

Dr. GORDON. What may be confusing you is that Mr. Schweich framed it somewhat differently. He said, I think he said it wasn't a veto power, it was the withholding of consent or something like that.

Mr. SHAYS. I didn't pick up the subtlety. I appreciate that.

Dr. GORDON. I don't see a distinction in practice at all.

Mr. SHAYS. No, there isn't. And I mean, in essence it's unanimous consent. It's if one member objects on a bill that we bring under suspension to say, not having a unanimous consent that passes, one member stands out, then we're going to have a vote.

Dr. GORDON. That's right.

Mr. SHAYS. I thank the gentleman.

Dr. GORDON. So then there was the escrow account, so by the structure, by the design of the program, in fact, no money ever went into the hands of the Iraqi government. And that was true even though the Iraqi government, to run the country, in fact needed a certain amount of cash simply to run the country, because there was no generation of cash. Huge fights over the issue of a cash component, and that never took place. So Iraq was allowed to sell oil to buy goods, but not, for example, to hire consultants or to hire labor.

But in any case, that was a very, very strict position, no cash under the program, even with high supervision, was ever formally permitted to go into the hands of the Iraqi government.

The next level were the onsite inspectors. You've heard about Cotecna and Lloyd's Register. Their job was to be at the ports and as the goods arrived, to confirm that these were the goods and confirm that they conformed to the quantity of the contract. It was only an inspection for purposes of releasing payment to the contractor.

Then the last level was the entire U.N. humanitarian staff. So there were the nine agencies, I think it was the nine agencies in the south center. They made thousands, thousands of site visits and spot checks of food distribution points, of health supplies, were the health supplies being distributed in the rural communities. So their job was to ensure, the criteria were equity, efficiency and adequacy of the program.

So that entire structure was not present in, I think it's correct to say, any form, I'd have to check, but I believe any form with the 661 process. And by the way, under the Coalition Provisional Authority, under Security Council resolution 1483, all of these measures that were in place to try to ensure that the human needs were served, that the money was handled properly, every one of these is eliminated under the Coalition Authority. The oil overseers are eliminated, the humanitarian monitors are pulled, just one by one, all gone.

I think we can't be too surprised that if you are concerned about how much corruption happened when there were seven levels of oversight, you can't be too surprised to see what would happen when those levels are absent.

Let me mention in terms of transparency what kinds of things were not only available to every member of the Security Council and every member of the United Nations, but everyone in the world with access to the Internet. And that was every page of every distribution plan. Actually I think they only currently post distribution plans 5 through 13. So you would be limited and not be able to see distribution plans 1 through 4.

The 90 day reports, very detailed reports on every sector of the Iraqi economy, all the problems, all the successes with every category of goods that were being imported, all the problems, all the successes in terms of the oil liftings. Weekly updates then, a certain batch of liftings were stopped or a certain batch of goods were on hold, then the weekly updates provide that. There were charts showing the status by category of the processing of every contract in every sector.

I can tell you that reading all of these documents is probably more than most human beings want to do. When I hear these references to how little transparency and how secretive and mysterious it was, I can tell you I would have spent a lot fewer hours reading things if it were a little more secretive and mysterious. But as it is, I spent a lot of hours on this.

Mr. SHAYS. We will definitely want to pursue that issue. Can you kind of close up?

Dr. GORDON. OK. In terms of the U.S. role, I think it's common to hear now this notion that the United States was stymied as it tried to achieve compliance, and particularly that France and Russia were blocking these attempts. Again, the consensus rule cuts the other direction, that the United States was not stymied in ever exercising its decision to block goods.

Mr. SHAYS. You could say no, but you couldn't get a yes.

Dr. GORDON. Say it again, please?

Mr. SHAYS. You could say no and have power, but you could never get a yes.

Dr. GORDON. That's right. Anyone could deny a contract. It required everyone's agreement to approve a contract.

If on every occasion, when the United States had any suspicion about a contract, it did not need to get the approval of any other members to investigate that. It could have simply said no. Simply said no for any reason or no reason, as it did on depending on which point in time you're talking about, but at \$1.5 billion of contracts on hold.

I was interested to hear Mr. Schweich say he thinks there are some instances where contracts were blocked by the United States for reasons of improprieties and not for security. I would be most interested in hearing what those are. Everyone I have talked to, no one can recall a single instance where that was done.

By contrast, there were more than 70 occasions on which OIP staff went to the committee and said, here's a contract where there is a clear pricing irregularity that's suspicious, do you want to block it for that reason. And on none of those occasions did any member, including the United States, choose to block it.

So I think the reality is, the United States was singularly preoccupied with security concerns. There was little interest in stopping illicit funds. And on the occasions where the United States had the opportunity to do so, it did not. I do think that the U.N. staff did a good job. Their job was to provide the information to the members, and it was the job of the members to block or to approve a contract. They provided the information, where there were signs of kickbacks. They provided the information where there were oil surcharges.

And I think I would actually like to, if I could, raise one issue that Mr. Schweich said that you were interested in, Congressman, where he was talking about how Turkey came to the committee and asked for Article 50 relief and that it was blocked because of the consensus rule. I'm somewhat familiar with that because of the number of people I have interviewed and the documents I have read. My recollection is that on all of those occasions, it was the United States that blocked Turkey's appeal for Article 50 relief. So that might be something you might care to look into.

[The prepared statement of Dr. Gordon follows:]

**Statement by Joy Gordon  
Professor of Philosophy  
Fairfield University  
On the UN Oil for Food Program  
Before the House Committee on Government Reform  
Subcommittee on National Security, Emerging Threats, and  
International Relations  
April 12, 2005**

Mr. Chairman and distinguished members of the committee:

Thank you for this opportunity to testify before this committee. In taking on the difficult endeavor of unraveling the complexities of the Oil for Food Program, this committee is undertaking a tremendously important task, and it is a pleasure to be invited to contribute to that work. This program, its successes and its failures, has broad implications for future US foreign policy, as well as for the future of the United Nations.

My testimony today is based on the research I have done in the field of economic sanctions over the last seven years, including a close study of the Iraq sanctions process from 1990 to 2003. In the course of my research I have become familiar with the scholarly work on economic sanctions in general and on the Iraq sanctions in particular, as well as much of the extensive body of documents generated in the course of the Oil for Food Program. Over the last five years I have also interviewed many of those involved in the 661 Committee and the OFF program.

Over the last year we have heard much about the failures of the Oil for Food Program. A great deal has been blamed on the Secretary-General for what is seen as an institutional failure on the part of the United Nations. As many have noted, there have been failures on the part of nearly everyone involved with the program. Most recently the Volcker Committee has explored the ethical problems involving Cotecna; the possibility of serious improprieties on the part of Benon Sevan, the director of the program; and a critical concern about the scope of the program's audits.

But in recent months there has been growing recognition of the fact that the Oil for Food Program, as well as much of the oversight, was in fact in the hands of the Security Council and its member states—including the United States—not the Secretariat.

In my testimony today I'd like to address a number of issues concerning the Oil for Food Program and the accusations against it:

1. The effectiveness of the program
2. The magnitude of the accusations
3. Transparency and oversight
  - Monitoring of import contracts
  - Monitoring of oil sales
  - Transparency
4. Who was responsible?
  - Overland smuggling
  - Maritime smuggling
  - Kickbacks on import contracts
  - Oil surcharges
  - Iraq's freedom to choose its trade partners
5. The Volcker Committee reports
6. Who was responsible?
  - The consensus decision making rule
  - The US role
7. Conclusions

#### 1. The effectiveness of the program

I think it is important to begin by recognizing that the Oil for Food Program, and the UN staff involved, were in fact tremendously successful at raising the quality of life for the Iraqi population, in very measurable ways. The nutritional intake nearly doubled, and acute malnutrition in children dropped by half. The health care system was much better able to meet the population's needs—surgical operations increased by 40%; polio was eliminated, and communicable diseases were substantially reduced. Water and sanitation improved considerably, and electricity became much more reliable.

We should be particularly conscious of the significance of these accomplishments as we see how difficult it is been in the last two years for the US occupation authority and the interim Iraqi government to achieve similar standards. This has been particularly true as the security situation has deteriorated, and will probably worsen as funds for reconstruction are reallocated to security costs. According to a recent study, child malnutrition

in Iraq has nearly doubled in the last two years, since the fall of Saddam Hussein's regime. Medical charities say that health care is now worse in Iraq than it was before the war. There continue to be serious shortages of electricity, as well as water and sewage treatment. Many of the reconstruction efforts have stalled.

The fundamental goal of the Oil for Food Program was to improve the lives of the Iraqi population through the import of critical humanitarian goods, and that was unquestionably achieved.

#### The magnitude of the accusations

While it is common to hear that Saddam Hussein's regime received \$11 billion in illicit funds through the Oil for Food Program (or more recently, \$21 billion), in fact the credible accusations are much more limited: that the former Iraqi regime obtained somewhere between \$2 billion and \$4.4 billion through oil surcharges and import contracts.

According to both the GAO reports from 2004 and the CIA's report from last September, the bulk of the illicit funds that entered Iraq came from oil smuggling—which took place prior to the Oil for Food Program, and after 1996 occurred entirely outside the program. As earlier congressional hearings have made clear, Iraq had ongoing trade with Jordan, Turkey, and Syria for many years.

The major GAO report maintained that from 1997 through 2002, the former Iraqi regime acquired \$10.1 billion in illegal revenues related to the Oil for Food Program.<sup>1</sup> \$5.7 of this came from oil smuggling and \$4.4 billion from illicit surcharges on oil sales and commissions on imports.<sup>2</sup> The report of the CIA's Iraq Study Group maintains that the bulk of Iraq's illicit funds came from "government to government protocols"—ongoing trade agreements between Iraq and other countries, in violation of the sanctions. Iraq's income from these, according to the report, came to some \$8 billion, while kickbacks from import contracts were estimated to be \$1.5 billion, surcharges from oil sales were \$229 million, and private sector smuggling was estimated at \$1.2 billion.<sup>3</sup>

<sup>1</sup> "United Nations: Observations on the Oil for Food Program," Statement of Joseph A. Christoff, Director, International Affairs and Trade. Testimony before the Committee on Foreign Relations, U.S. Senate. GAO-04-65IT, p. 2.

<sup>2</sup> "United Nations: Observations on the Oil for Food Program," Statement of Joseph A. Christoff, Director, International Affairs and Trade. Testimony before the Committee on Foreign Relations, U.S. Senate. GAO-04-65IT, p. 2.

<sup>3</sup> "Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD," 30 September 2004, Regime finance and procurement section, p. 23.

Thus, the most credible accusations—the GAO and ISG reports—maintain that the Iraqi regime illicitly received at most \$4.4 billion via some aspect of the Oil for Food Program.

### 3. Transparency and Oversight

I'd like to address some common misconceptions about the program. Over the last year we've heard people say many times that the Oil for Food program had no system of oversight or monitoring, and that there was no transparency. It in fact had an elaborate system of oversight, and there was an enormous amount of information about the program and its operations that was not only available to the UN and the member states, but in fact was maintained for the public on the web site of OIP (Office of Iraq Programme), the agency established within the UN to house the Oil for Food Program and the UN's other Iraq programs.

It is important to understand that to the extent there were kickbacks or improprieties within the program, this occurred not because of a lack of systematic monitoring; but rather took place in spite of an elaborate monitoring system. This monitoring system involved detailed oversight by members of the Security Council, including extensive participation by the United States and the United Kingdom, each of which received copies of all contracts made by the government of Iraq for every purchase of humanitarian supplies and oil spare parts.

It was OIP staff—customs officers—who notified the 661 Committee of possible kickbacks on import contracts, on more than seventy occasions. No member of the 661 Committee, including the US, then exercised its right to block or delay the contract.

It was OIP staff—the oil overseers—who notified the 661 Committee of oil surcharges in October 2000. The US and UK then began withholding pricing approval in response.

#### A. Monitoring of import contracts

Briefly, the multi-tiered monitoring structure for south/center Iraq<sup>4</sup> was:

1. **Distribution plan:** Before an application could be submitted that would allow Iraq to import goods, Iraq was required to submit an exhaustive list of every single item it wished to import, identifying quantities and sectors where goods would be used, and the justification for prioritizing these goods. The Distribution Plan then had to be reviewed and approved by UN staff, often with modifications.
2. **OIP review:** Once a contract was negotiated between the Iraqi government and the supplier, it was submitted to OIP. OIP staff reviewed it to see that it contained all the information required by the 661 Committee, and corresponded to the Distribution Plan
3. **UNSCOM/UNMOVIC:** The contract was also sent to UNSCOM (later UNMOVIC) and IAEA, to determine if there were any military or dual use goods
4. **661 Committee review:** The contract was circulated to every member of the 661 Committee.<sup>5</sup> Each member had the option of delaying the contract, asking for more information, or simply vetoing it.
5. **Escrow account:** Under the terms of the program as designed, no program funds ever went directly through the hands of the Iraqi government. All proceeds from legal oil sales went into a UN-held escrow account, and all import contracts were paid for from this account.
6. **On-site inspectors:** Upon arrival in Iraq, the goods were inspected by Lloyd's Register (later Cotecna) to see that the quantities conformed to the contract
7. **End use monitors:** Once the goods were in Iraq, staff from the UN agencies conducted thousands of site visits, surveys, and spot checks to determine if the goods were being distributed equitably and efficiently, and to gauge the adequacy of the program.

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<sup>4</sup> Note that in northern Iraq the UN executed the program on behalf of the government of Iraq, and in that capacity took over some governmental functions. In south/center Iraq, the Iraqi government continued to perform normal governmental functions, but was monitored.

<sup>5</sup> Some goods that the Security Council considered uncontroversial were eventually put on a "green list" that bypassed the committee (pursuant to Security Council Resolution 1409) but went through all the other monitoring stages. However, where OIP staff found irregularities in "green list" contracts, they then presented those to the 661 Committee.

B. For oil sales:

1. The Iraqi government proposed pricing formulas, which were then reviewed by oil overseers and submitted to the 661 Committee for approval.
2. Every oil contract, including the prices, delivery specifications, and all contract terms, was reviewed by “oil overseers”-- consultants from the oil industry, hired by the Secretary General, with the approval of the members of the Security Council. They advised the 661 Committee of any irregularities.
3. Every member of the 661 Committee had the opportunity to review any contract. Any oil contract could be vetoed by any member of the 661 Committee.

C. Transparency

In many ways the program was highly transparent. There was a considerable amount of information easily available to the general public at all times, and there was even more information available to the members of the Security Council, which was overseeing the program.

- The Distribution Plans, showing every item that the UN permitted Iraq to contract for, for every phase of the program, were (and for phases 5-13 continue to be) posted on the OIP web site
- The Secretary General provided reports every ninety days on the program, including detailed information on both oil sales and import contracts, and on the situation in every sector of the Iraqi economy and society, including health, agriculture and nutrition, education, electricity production, telecommunications, transportation, de-mining. All of these reports were (and still are) posted on the OIP web site
- For every 6-month phase, OIP posted charts showing the status of both oil contracts and import contracts: for every sector of the economy, how many contracts had been submitted, how many approved, how much had been delivered, etc. All of these were posted for each phase on the OIP web site.

- OIP issued weekly updates with details of oil liftings, status of holds on particular contracts, and other items. All of these were (and are) posted on the OIP web site.
- The OIP web site also listed every Security Council resolution, Secretary-General report, and every other major report on the program. These were (and still are) posted on the OIP web site.

The transparency of the Oil for Food Program stands in marked contrast with the way that the sanctions program had operated in the first half of the 1990s. From 1990-1995, Iraq was permitted to apply to the 661 Committee for permission to purchase humanitarian goods (although it could not sell oil to generate funds). However, the 661 Committee was extremely inconsistent in what items it would permit and what it would not; refused to generate any guidelines or criteria that would allow suppliers or the government of Iraq to know what was permitted and what was not; was often inconsistent, permitting a contract for certain goods, such as ambulance tires, on one occasion, and then a few months later denying a contract for similar goods; and once it denied a contract, it would not provide the government of Iraq or the supplier with any information as to why the goods were denied.

The transparency of the Oil for Food Program also stands in marked contrast with the framework established for the Coalition Provisional Authority. Under Security Council Resolution 1483 of May 2003, all of the forms of UN oversight that had been in place under the Oil for Food program were systematically eliminated. The Coalition Provisional Authority was given a free hand, with very little oversight by the UN or international agencies.

- The role of UNMOVIC and IAEA in arms inspection and disarmament was effectively eliminated.
- The oil overseers were eliminated.
- The 661 Committee, which had provided direct oversight and reported to the Security Council, was eliminated.
- The Security Council was given no role in monitoring or setting parameters for the occupation. The US and the UK were merely “encouraged” to report to the Council on their activities.
- UN oversight of the humanitarian situation was eliminated, including all monitoring of water, health care, and food.

In recent months we've seen the result of the absence of oversight and transparency with regard to the Coalition Provisional Authority and the Iraqi Interim Government. These involve improprieties comparable to those that the Oil for Food Program is accused of.

A few examples:

A report by the Center for Strategic and International Studies from October 2004 states that for every dollar spent on Iraqi reconstruction, as little as 27 cents has actually gone to projects benefiting Iraqis. A July 2004 audit report of the Inspector General of the Coalition Provisional Authority found that the CPA had no standard procedures for reviewing and monitoring contracts, and that contracting officers failed to ensure that prices were fair and reasonable. A report of the International Advisory and Monitoring Board for the first half of 2004 found that \$4 billion of disbursements had been made with improper financial practices; a no-bid contract for \$339 million was awarded with no justification or documentation. According to the third report to Congress by the CPA Inspector General, \$1.5 billion in payments were made to Halliburton subsidiary Kellogg, Brown and Root, where it was unclear that the company had performed the services; and a \$1.4 billion line item marked "transfer payment" was made with no information as to the purpose of the funds. In a March 2004 report the Defense Contracting Audit Agency found that Kellogg, Brown and Root "significantly and systematically" violated federal contracting rules.

#### 4. Who was responsible?

For many months now we've heard accusations leveled against "the UN" for allowing Saddam Hussein to garner illicit funds through the Oil for Food Program. There are some in Congress and elsewhere calling for Kofi Annan's resignation. Yet the Secretariat had no decision making role in setting the terms of the Oil for Food Program. The program itself was a product of a Security Council resolution; all subsequent modifications to the program were established through Security Council resolutions; and implementation of the program, including OIP, was overseen by the 661 Committee, which made procedural decisions, as well as lower-level substantive decisions.

Under Article 41 of the UN Charter, it was the responsibility of the Security Council, not the Secretariat, to enforce the sanctions regime. The role of the Secretariat was limited to execution of the program, as the

program had been designed by the Security Council; as well as providing the Council members with information, and performing administrative functions. The Security Council and its members, including the United States, played critical roles in allowing smuggling and kickbacks to take place.

#### A. Smuggling

The bulk of Iraq's illicit income, according to the GAO and the CIA's Iraq Study Group, was from smuggling: \$5.7 billion according to the GAO, and to \$8 billion according to the ISG.

According to the ISG report, the majority of this trade—\$4.4 billion—was with Jordan. A significant amount of illicit trade (\$710 million) was with Turkey. According to the ISG report, in 1991 Jordan informed the Council of its intention to continue trading with Iraq, and the Council “took note,” but took no measures to reprimand or prevent Jordan from going forward with large-scale, prohibited trade. Similarly, in the case of Turkey, the Council turned a blind eye to large-scale illicit trade. This included the US, which had a strategic alliance with Turkey. All three US administrations over the course of the sanctions regime sent waivers to Congress, asking that aid be continued to Jordan and Turkey despite their illicit trade with Iraq.

#### B. Maritime smuggling

In addition to overland smuggling, there was substantial maritime smuggling as well. The Multinational Interception Force (MIF) was charged with interdicting ships engaged in illegal trade with Iraq. The MIF was created by Security Council Resolution 665, which called upon member states with naval forces in the area to intervene to enforce the sanctions.

According to its reports, the MIF was quite active, boarding hundreds of ships each year,<sup>6</sup> and there is no reason to suggest that it was incompetent or poorly run. However, it makes little sense to blame the UN for failing to stop Iraq's illicit oil smuggling. There was no authorization for any UN entity to take actions to intervene; SCR 665 only invited member states to take these measures.

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<sup>6</sup> From 1994 to 2001, there were several hundred boardings per year; in 2002 and 2003, there were over 3000 boardings per year.

The MIF involved some participation, at various points, from twenty or so different nations. But it was overwhelmingly dominated by US naval forces. The commanders at every point in the MIF's history were US naval rear admirals or vice admirals in the US Fifth Fleet.<sup>7</sup> The force itself consisted overwhelmingly of US ships. In 2000, for example, the US contributed 86 vessels; the UK seven vessels; Canada contributed one vessel for two months, and the Netherlands contributed one vessel for one month.<sup>8</sup> MIF commanders periodically reported to the 661 Committee.

#### C. Kickbacks on import contracts

OIP has been accused of failing to stop illegal kickbacks. However, OIP had no authority to block improper contracts. It was authorized to request clarification in the case of irregularities, and provide that information to the 661 committee. Only the members of the Security Council had the power to block contracts. Where price irregularities were clear, the customs officers of the OIP staff did in fact inform the 661 Committee, giving each member the opportunity to block the contract, or to ask for further information before approving. **On over 70 occasions**, this was done. **On none** of those occasions did **any** member of the Council—including the US—seek to delay or block the contract for pricing irregularities.

#### D. Oil surcharges

In October 2000, while reviewing Iraq's proposed pricing formulas, the oil overseers noted that the proposed formulas did not reflect fair market value. In their contacts with potential oil buyers, they learned that the Iraqi authorities had started requesting payment of a surcharge of up to 50 cents per barrel. The oil overseers reported both of these facts to the 661 Committee. In March 2001, the Secretary General drew attention to this problem in a public report to the Security Council.

In response to this information, the US and UK implemented a "retroactive pricing policy." The normal practice in the industry, and for the Oil for Food Program, was to set the price for the coming month. Under retroactive pricing, the US and the UK withheld their approval for the price

<sup>7</sup> The commanders of the MIF were Rear Admiral A.K. Taylor (1991-1992); Vice Admiral D.J. Katz (1992-1994); Vice Admiral J.S. Redd (1994-1996); Vice Admiral T.B. Fargo (1996-1998); Vice Admiral C.W. Moore Jr. (1998-2002); and Vice Admiral T.J. Keating (2002-2003).

<sup>8</sup> In 2001, the US contributed 90 vessels, the UK contributed four, and all other participating countries contributed one or two. In 2002, the US contributed 99 vessels, five nations contributed ten or more, and several other countries contributed less than ten.

until the month had passed. This meant that buyers literally were required to sign contracts for oil purchases without knowing what the price was until after they were committed. The US and UK took the position that this allowed the committee to determine retroactively what the fair market value of the oil had been the previous month, and charge buyers accordingly. Thus, the argument went, Iraq was receiving no more nor less than fair market value; that eliminated the premia that went to middlemen; and consequently eliminated the possibility that the middlemen would pay Iraq illicit surcharges.

The new pricing policies did in fact eliminate any margin for surcharges. But it had another result as well: that oil sales were substantially compromised. Predictably, few buyers were prepared to purchase Iraqi oil without knowing the price. It did not help much to provide assurances that the price they were ultimately charged would be “fair market value,” as determined by the 661 Committee. As a result, the retroactive pricing mechanism created a financial crisis in the OFF program from 2001-2003. In 2001, oil exports averaged 1.7 million barrels per day. In 2002, the average was 1.1 million BPD. By September 2002, that number had dropped to 400,000 BPD. The result was a dramatic shortfall in funding for humanitarian contracts. As of February 2002, there were nearly 700 fully approved contracts, with a value of \$1.6 billion, for which there was no funding; and another \$5.3 billion of contracts on hold, awaiting approval; for a total potential shortfall of \$6.9 billion. One member of the 661 Committee noted that “exports are now so low that the program is on the verge of collapsing.”<sup>9</sup>

#### E. Iraq’s freedom to choose its trade partners

The CIA’s report makes much of the “secret oil voucher” system, by which Iraq designated oil purchasers. However, this appears for the most part to be simply Iraq’s record-keeping system for exercising the rights it had under the terms of the OFF program to select its trading partners. While it may be said that particular purchasers should not have been approved, the fundamental decision to allow Iraq to choose its oil buyers and import contractors—and the political leverage that accompanied that—was a decision made by the Security Council, with the participation and agreement

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<sup>9</sup> In June 2001 Iraq stopped producing oil in protest against a US proposal to modify the sanctions regime, and in April 2002 Iraq again declared a moratorium, to protest Israel’s treatment of Palestinians. However, the retroactive pricing mechanism was by far the major factor in the financial crisis of the OFF program from 2001-2003.

of the United States. It may be that the Council felt that the elaborate system of monitoring and the multi-tiered approval process would serve as a sufficient mechanism of oversight. But the decision to allow Iraq to select its trading partners was not a failure of judgment or oversight on the part of the Secretariat.

### 5. The Volcker Committee Reports

In its February report, the overall finding of the Volcker Committee regarding the account discussed (the 2.2% account) was that it was run carefully and well. The reports generated by the Independent Inquiry Committee chaired by Paul Volcker have been by far the most rigorous and careful studies of the accusations against the Oil for Food Program to date. Of the accusations addressed in the IIC's reports thus far, some concern the operation of the program; some concern individual acts which did not have significant effects on the program; some improprieties served the interests of the Iraqi government, and some did not.

- The most significant issue concerning the program's structure was the claim that the OFF program should have conducted internal audits. This issue raised by the Volcker Committee goes to one of the fundamental problems in the basic structure of the program: that it was a program created, designed, and enforced by the Security Council under its powers in Chapter VII, but administered by the Secretariat. There is no provision in the UN Charter for the Secretariat to override or modify any decision by the Security Council, in any form.

Under the terms of the program's mandate, contained primarily in Security Council Resolution 986 and the Memorandum of Understanding, only external audits were authorized. According to the February report of the Volcker Committee, these were conducted and submitted to the Security Council, as required. Under standard UN practice, contracts to which the UN is a party are audited; but the import and export contracts in the OFF program took place between Iraq and commercial enterprises. While we may now say that internal audits should have been conducted, or that the import and export contracts should have been audited, that was not how the Security Council chose to design the program, and the Secretariat did not have authority to override the Security Council on these or any other aspects of the OFF program.

The other major issues discussed in the Volcker Committee reports released to date do not indicate that program's basic structure or operations were fundamentally compromised:

- A great deal has been said about the claim that Kofi Annan's son may have been involved in the decision to award an inspection contract to Cotecna. But while this issue has gotten enormous attention from the media, it is not a significant factor in the operation of the Oil for Food Program. The Cotecna contract involved a minor part of the program (the 2.2% account). Further, the accusation is that the contract was improperly awarded to Cotecna; not that Iraq's humanitarian imports were compromised by any practices of Cotecna.
- The improprieties in contracting identified by the Volcker Committee in the February report indicate that the program was subject to a series of manipulations for political purposes, but that these generally did not in fact serve the interests of the Iraqi government. The report of February 3 notes that of the three major contracts under the 2.2% account, only one (the banking contract) was awarded with the agreement of the Iraqi government; and that arrangement had the support of the US and UK. The Saybolt contract was improperly awarded to a Dutch company, on the grounds that the Netherlands supported the enforcement of sanctions against Iraq. The inspection contract to Lloyd's Register was improperly awarded to a British company, through the influence of the British Mission to the UN.
- The Volcker Committee gives evidence for serious concerns that Benon Sevan improperly received \$160,000 through his involvement with one company that bought Iraqi oil through the program. If true, Sevan's actions would clearly be improper and may be illegal as well. However, it is not clear that Sevan in fact used his position to serve illicit interests on the part of the Iraqi government. The Volcker report indicates that the Iraqi government wanted Sevan to use his influence to persuade the Security Council members to lift holds on oil spare parts and equipment. The Volcker report notes that the Iraqi government was disappointed that Sevan did not do so, and cancelled further oil allocations. In fact, Sevan did argue for lifting holds on oil spares parts and equipment, on the grounds that these were necessary for oil extraction. But that was also the position held by the oil overseers, as well as most members of the Security Council.

## 6. Who was responsible?

### A. The consensus decision making rule

Prior witnesses at these hearings have suggested that the consensus requirement of the 661 Committee made it difficult to establish effective oversight of the Oil for Food program. However, for the most part the consensus requirement in fact operated in exactly the opposite way: in the absence of consensus, the default position was denial of import or oil sales, not approval. In most contexts, the consensus requirement did not prevent unilateral US action. It was in fact the structure that **enabled** the US to impose many policies and decisions unilaterally.

- Import contracts: All contracts (except those eventually included on the Green List) were circulated to every member of the 661 Committee, and required the approval of every member of the Committee. Thus, any single member could block any contract, regardless of whether other members objected.

The United States unilaterally blocked massive quantities of import contracts, citing security concerns. It was occasionally joined by the UK, but the overwhelming majority of the holds (typically 90-95% at any point in time) were imposed by the US and the US alone.

- Oil contracts: the US, joined by the UK, used the consensus rule to delay approval of oil pricing, and did so over the objections of others in the Council until October 2001, when the 661 Committee finally agreed to retroactive oil pricing.
- The negotiation of “rollover” resolutions (the Security Council resolutions extending the program for an additional six months) were occasions for dispute. On one hand, there was considerable controversy over US holds on humanitarian goods; on the other hand, the US and UK would raise the issue of smuggling, and seek to include stronger measures against smuggling in the rollover resolution. On these occasions, France and Russia opposed such measures, arguably because of their own interests. However, it appears that the US also had little credibility on this issue with the committee, since the US did not want to

enforce such measures against its allies, Jordan and Turkey, but only against other nations.

B. What was the US role?

The history of the program does not support the claim that the US was concerned about illicit funds entering Iraq, or would have done more if it had not been stymied by other members of the council. By all accounts, and based upon the US policies and decisions, the US was singularly preoccupied with military concerns, in particular WMD.

- The US blocked billions of dollars of import contracts-- \$150 million as of November 1998, then growing to \$5 billion as of July 2002. All of these were blocked on the grounds that they contained items that could have military applications, or else contributed to Iraq's infrastructure, thereby creating the possibility of rebuilding its military capacity.  
 There was nothing in the 661 Committee's procedures that prevented the US from blocking questionable contracts, for either imports or oil sales. To the contrary, the consensus rule was the mechanism that allowed the US to impose far greater restrictions on import and oil sales than other members of the Security Council supported.
- The US **declined** to block any of the contracts presented, on the more than seventy occasions on which the US and the other member states were explicitly informed by UN staff of pricing irregularities suggesting possible kickbacks.
- US officials did on occasion report rumors of kickbacks and ask for investigations. However, when asked to provide specifics that could be investigated, US officials failed to provide any information on which to base an investigation.
- All three US administrations explicitly permitted large-scale illicit overland trade between Iraq and Jordan, and between Iraq and Turkey, throughout the history of the sanctions regime.
- To the extent that there was maritime smuggling, this occurred not through failures on the part of the UN, but rather on the watch of the US Fifth Fleet. The MIF fleet was overwhelmingly made up of vessels from the US Fifth Fleet, and was at all times commanded by US naval officers.

- The US approved the hire of every oil overseer hired by the Secretariat
- When the oil overseers—UN staff—informed the 661 Committee of pricing irregularities in oil sales, the US and UK implemented a harsh policy of retroactive pricing. Far from being stymied by other members on the Council, this practice began despite the objections of others on the Council.
- The US voted for Security Council Resolution 986 and agreed to the Memorandum of Understanding, which gave the government of Iraq the right to select its trading partners. This was crucial in permitting Iraq to use the OFF program to generate political support.
- The US voted for Security Council Resolution 986, which only required the OFF program to be subject to external audits, not internal audits.

## 7. Conclusions

- The bulk of the illicit funds that arrived in Iraq over the course of the sanctions regime had no relation to the Oil for Food Program. They occurred through large-scale ongoing smuggling, which began well before the OFF program, and had no relation to the program at all.
- Contrary to common views, the Oil for Food Program did not “give Saddam Hussein a free hand” to use oil proceeds as he wished, without oversight or monitoring. Rather, the OFF program had multiple levels of oversight for both import contracts and oil sales, involving scrutiny by UN staff and by every member of the Security Council, of nearly every aspect of every transaction. To the extent that there were kickbacks or other improprieties in the program, these occurred not for lack of oversight; but rather occurred despite an elaborate system of oversight.
- Contrary to common views, the Oil for Food Program was not characterized by an absence of transparency. In many regards the program was highly transparent, not only to the members of the Security Council—which authorized and supervised the program—but to the general public as well.
- Contrary to common views, the UN Secretariat was not responsible for what are seen as the major failures of the program: the ability of Iraq to choose its trade partners; the kickbacks on import contracts; the

surcharges on oil contracts; the large-scale smuggling. The design of the program, and the enforcement of the sanctions, was in the hands of the Security Council and its members, not the Secretariat.

- Contrary to common views, the US did not show significant concern regarding smuggling and kickbacks. Rather, the US was preoccupied with blocking military goods from entering Iraq. The US generally showed a lack of interest in stopping illegal funds from entering Iraq, and this was particularly true where US strategic allies were involved in illicit trade with Iraq.
- It is not plausible to attribute the poor humanitarian situation in Iraq to the failures of oversight of the Oil for Food program. These kickbacks and oil surcharges are estimated to be at most \$4.4 billion, over the seven-year course of the program. What was far more damaging to Iraq's economy and society were the limitations that compromised oil sales (including retroactive oil pricing) and large-scale holds on equipment and goods necessary for infrastructure and for the operation of an industrialized society—electricity production, water and sewage treatment, telecommunications, transportation, construction, industrial production, agriculture. These were imposed almost entirely by the United States. US holds on critical humanitarian and infrastructure supplies at just one point in time—July 2002—totaled some \$5 billion. In the end, the total goods that actually arrived in Iraq from the program's inception through May 2003 came to only \$4.6 billion per year, or about \$191 per person per year. The extreme impoverishment of the Iraqi population would not have been significantly affected if that amount were increased to \$200 per person per year, which is approximately the difference that \$4.4 billion would have made.

We may be shocked that as much as \$4.4 billion in illicit funds slipped through the oversight structures of the Oil for Food Program. But the reality is that in the face of such severe, longstanding, and widespread impoverishment, the actual impact of the kickbacks and surcharges that have been denounced by many as a scandal of historic proportions was in fact negligible in comparison to the economic sanctions themselves, and the additional strictures imposed by the US and the UK.

Mr. SHAYS. Thank you very much.

You all are wonderful witnesses. This is a little more academic, it's not the kind of thing where we're making news here, but I'm learning a lot and I appreciate it tremendously.

Mr. Lynch, you have the floor.

Mr. LYNCH. Thank you.

Dr. Conlon, you described a situation where you felt that in some cases, with most sanctions, if that humanitarian aspect of the situation is not addressed that there is a wearing away or a gradual deterioration of the sanction itself through various other channels. It doesn't appear, based on what I've heard, that the Iraq situation fits that mold. This doesn't seem like a gradual deterioration or a wearing away or an undermining of the sanctions. This in my opinion appears to be a total and sudden collapse, almost a looting that occurred.

And I'm wondering, in your opinion, was it a situation where this was bigger than anything that the U.N. had been asked to do previously in terms of the complexity of this and the staff that would have been required or as it was there, just a total disconnect as Dr. Gordon has suggested, between what the 661 Committee is doing and what the Oil-for-Food staff and the folks at the U.N. there are doing.

Dr. CONLON. I'm not sure what timeframe your question refers to. I was there until a point in 1995, which is before the Oil-for-Food Program went into effect. And I'm not quite sure what I said, whether you understood it, what was being eroded was sympathy support and willingness to cooperate with sanctions over the years as time went on. That refers to what governments and delegates in the United Nations were willing to do to accept or to promote.

Mr. LYNCH. But looking at this situation—

Dr. CONLON. With the Oil-for-Food?

Mr. LYNCH. Yes.

Dr. CONLON. I was not involved in that, so I don't want to be too authoritative. But even at that point in time, the ultimate authority rested with the 661 Committee as a subsidiary organ of the Council or with the Council. With the passage of time, and because there were introduced a number of improvements in regard to transparency. But the committee itself was at no time, even up to the end, transparent in its practices.

Mr. LYNCH. I realize the difficulty in what I am trying to get you to answer. Perhaps I should wait for Mr. Volcker's report in July. I'm just trying to get some help on that.

Dr. Gordon, your testimony is troubling in the sense that it seems that organizationally, at least what you've described that there are people doing what they are supposed to be doing, and there is transparency, and there seems to be some order, and yet we have these massive problems. Is it the disconnect between, and you sort of imply that there's a whole framework set up, and seven levels of oversight in one framework and one organization and then there seems to be a disconnect between what the 661 Committee is doing?

Dr. GORDON. Well, when you talk about massive problems, the ones that we know of is really the smuggling. The smuggling has nothing to do with the Oil-for-Food Program. Smuggling happened

in the beginning of the 1990's, with Jordan starting in 1990. It happened prior to Oil-for-Food, it happened outside Oil-for-Food. It was just a separate thing. Oil-for-Food was then involved in smuggling interdiction. The two sources of smuggling, overland and maritime, we've heard a lot about the overland smuggling, Turkey-Jordan, Syria-Egypt.

If you want to know who was responsible for the maritime smuggling, there was something called a multinational interception force. It was created by, I think, Security Council Resolution 665. It essentially invited Member States, if they had naval forces in the area, to interdict smuggling if they chose to. That gave rise to the MIF.

So we have this notion that the U.N. let all of these vessels illegally smuggle oil in and out, right? The MIF consisted almost in its entirety, at every point in time, of the U.S. Fifth Fleet. The United States is under command, at every point in time, of someone from the Fifth Fleet. The British generally provided the deputy commander, they provided a relatively small number of ships. So as of 2000, I think the United States had 90 vessels, the British had 4. A handful of other countries contributed one or two vessels for a couple of months.

But essentially, one of the things we see that we're blaming "the U.N." for is these massive problems, and you're right to say it, this is our view, there are these massive problems and the U.N. did nothing. But if in fact, we look at who allowed what to happen, the smuggling was not under the auspices of the Oil-for-Food Program. It was subject to enforcement only by Member States at their will, and it turns out to have been the U.S. Navy.

I'm not saying the U.S. Navy did a poor job, there's no sign of that. But if you want to say on whose watch did the maritime smuggling take place, the answer is the U.S. Fifth Fleet.

Mr. LYNCH. If I accept your testimony as true, what you are telling me today and what I've heard everything you say, there is no blame with the United Nations, this is the U.S. Navy's problem?

Dr. GORDON. For the MIF?

Mr. LYNCH. For basically everything. If the U.N. folks did nothing wrong, did nothing wrong, did everything they were supposed to do, and that's basically what your testimony is here this morning, they did nothing wrong, they did nothing wrong, they did exactly what they were supposed to do, and all this corruption and everything else, there's just no blame there for anybody within the U.N. I find that hard to believe, I've got to tell you. I find that really hard to believe, based on all the other testimony we've heard from other people, including people within Iraq that are very upset about how resources that should have been reserved for that population are now gone and unaccounted for.

Dr. GORDON. With all due respect, sir, I did not say that no one in the U.N. or the Secretariat did nothing wrong.

Mr. LYNCH. I must have missed it, because I didn't hear it at all.

Dr. GORDON. What I did say, and what I want to reiterate is, it is not accurate to say that there was no oversight or monitoring. There were multiple levels of oversight and monitoring.

Second, the fundamental flaws in the program, having to do with the basic decisions for how it was structured, the decisions were

made at the level of the Security Council. Implementation happened at the level of the Secretariat. The crucial decision to allow Iraq to choose its trading partners was not a failure of the part of Secretariat staff, it was a decision made by the Security Council, of which we are a member. We supported that decision.

Mr. LYNCH. Why did Russia and France go along with the 661 Committee structure in the first place? Can you answer that?

Dr. GORDON. What do you mean, go along with the structure?

Mr. LYNCH. Well, there was a vote to basically endorse this whole framework.

Dr. GORDON. The Oil-for-Food Program?

Mr. LYNCH. Yes.

Dr. GORDON. So you're saying why did France and Russia support Security Council Resolution 986? Is that your question?

Mr. LYNCH. Well, there was a framework that the Security Council approved regarding Oil-for-Food and the way this would be handled. And yet the implication here is that somehow there was a disconnect during all of this that while the U.N. did nothing wrong, there seemed to be abuses and you can call it smuggling or whatever characteristic you want to place upon it, there seems to be an unwillingness of some who had the power not to use it.

Dr. GORDON. I'm afraid I am completely confused. Can you tell me concretely if there is an instance where you're saying—what are you asking exactly? Why France and Russia did not use their power? Why they objected to the United States using it?

Mr. LYNCH. Well, it just seems that if it was a failing on our part because we were so obsessed with the security situation, from the U.S. standpoint, if that was part of our failing, why then, why then would that affect France and Russia, who had no concern with the security situation? What was their reason for not paying attention? Does that explain it better?

Dr. GORDON. I think I'm starting to understand it. There was a fundamental tension, which I'm sure you're completely familiar with, between the United States and U.K. on the one hand and France and Russia explicitly on the other, and China somewhat more quietly. The basic way the tension played out over the course of the sanctions regime was partly about security issues but heavily about humanitarian issues.

So in fact, the issue that was most controversial, that there were the most vigorous fights about, were how to limit the humanitarian goods and what the circumstances for that would be. And there were tremendous opposition on those from the very beginning, everything from, well, in the first resolution, the only thing that Iraq was allowed to import was medicine and food "in humanitarian circumstances." Dr. Conlon writes about this in his book.

Then the next thing that happens, of course, is a dispute: what does "in humanitarian circumstances" mean. When does this mean Iraq is permitted to import food? So you have a country that is very heavily import-dependent on its food prior to the war, whatever agricultural capacity it has has really been compromised by the Persian Gulf war. When will it be allowed to start importing food, is the question. Huge fight over that.

The U.S. position, correct me if I'm wrong, Dr. Conlon, was in humanitarian circumstances means essentially once something

close to famine sets in will be the point at which Iraq will be permitted to start importing food. The position of, I think it was Yemen and Cuba, was if a single child at night goes to bed hungry, that is when Iraq will be allowed to import food.

That's the kind of issue you see a thousand times. As well as on security issues, real concerns about the tenuousness of the U.S. claims.

So in the early days, there was a point where the United States blocked, I think it was glue for textbooks. You see other countries saying, what is your reason for blocking the glue for textbooks. And the United States doesn't give one and the issue is raised again and again. And finally, as I recall, the U.S. delegate says, it's because we care about the horses, a reference to the old adage about horses going to the glue factory, something which doesn't seem like a plausible justification.

An analyst from DOD, I was told, came to a 661 Committee meeting—

Mr. LYNCH. If you don't mind me saying it, we've run far afield from the question that I originally asked. Far afield.

Let me just ask, and I'll leave it at this, there are media allegations that France, Russia and China aided in a way Saddam's evasion of sanctions in order to gain advantage on lucrative contracts for Iraqi crude oil. That's the perception that's been put out there in the press. Do you agree with that perception?

Dr. GORDON. That France and Russia aided Iraq's evasion? I don't know what was going on in secret. I do know in terms of the Oil-for-Food structure, it's certainly the case that France and Russia opposed the United States on what kinds of goods were allowed into Iraq. Typically the United States would be, and sometimes the U.K., but the United States would be opposed or would define dual-use goods that it would block as anything relating to infrastructure. France and Russia generally opposed that on the grounds that infrastructure was necessary for the functioning of the economy.

If you also want to say that the goods that finally arrived in Iraq supported the regime, I think if there are absolutely nothing that came to the—the question is, as Mr. Mack was saying, do you want to take the position that, if the situation is horrendous enough, people out of sheer desperation will overthrow the regime, then I guess you could say indirectly, the program, the whole Oil-for-Food Program and the goods arriving made it possible for the regime to stay in power. I'm not sure of that, but I don't really know how to answer that.

Mr. LYNCH. OK, thank you.

Mr. SHAYS. I'd like to ask some general questions first, and I thank the gentleman. I'd like to be clear, because at the end it was mostly Dr. Gordon responding to questions. All three of you have written about the Oil-for-Food Program, is that correct, on the sanctions?

Mr. MACK. No. Sanctions I've written on, but not Oil-for-Food Program.

Mr. SHAYS. Oh, you've written about sanctions in general, and you have written about—

Dr. CONLON. I wrote about the management of sanctions up through 1995, which was prior to the Oil-for-Food Program.

Mr. SHAYS. OK. But all of you are truly experts on the issue of sanctions. I'd like to just be clear where the lines of demarcation are, whether there is agreement here. You've heard the previous panelists, you've heard your fellow panelists here make statements. I'd like to know, Dr. Conlon, where you if at all disagree that anything that has been said from that desk today by another panelist. I'm not looking for this debate as much as understanding your perspectives of where you're coming from. So are there things that have been said today by other panelists that you disagree with?

Dr. CONLON. Yes, and that also include the representative of the State Department and his description—

Mr. SHAYS. Yes, right, the previous panelists also.

Dr. CONLON. His description of the decision taken in 1991 to allow or at least acquiesce in Jordanian imports of oil. I don't agree that smart sanctions will, first of all, this is a very undeveloped field, but I don't agree that it will bring any change, because in many ways the Oil-for-Food Program was an exercise in smart sanctions. It was supposed to affect the regime, keep the regime under pressure of sanctions but allow the civilian population to get what it needed in the area of vital goods. And in that sense, it failed.

Also in our other sanctions endeavors up to 1995, as long as I was there, control of financial flows was the big weakness in what we were doing. We were able to control and inhibit flows of goods to some extent. We had no control whatsoever over financial flows. That is essentially what one of the main points behind smart sanctions is supposed to control the elite's finances.

So in that sense, I don't expect anything from smart sanctions. But I do agree with my neighbor here to the extent that there will be no more major sanctions exercises in the Security Council in the area of the Security Council's responsibility against major targets or serious targets.

Mr. SHAYS. These are significant, if true, this is quite significant. Because I mean, if you're right, I know you're speaking what you believe to be true. But if you're right, I view sanctions as a step that enables you not to go to war. And if you're saying that instrument is not, and Mr. Mack, you started it by saying, the era of comprehensive sanctions has ended.

My recollection of our sanctions against South Africa were that they ultimately achieved their objective. I think it was not only what came in and came out, but South Africans weren't able to travel. They couldn't come to the United States, they couldn't go to some places in Europe. They began to realize their lifestyle was going to be significantly impacted and their capability to grow their GNP and so on. I view that as a huge success. I think Nelson Mandela was let out of prison because of ultimate sanctions.

So it seemed to me our alternative to sanctions on Iraq was just to end the regime in 1991. And if you're saying now that what this may prove to us is one, sanctions can't work and two, even if they could work, there's not the will on the part of the body to vote for them, it's a huge conclusion that we're arriving at today. Maybe you could speak to that, and I'll have others.

But at any rate, you disagree, Dr. Conlon, you are making a point, you think, like Mr. Mack, that comprehensive sanctions are not going to be an option of the U.N. And I don't mean option, are not going to be, it's unlikely the U.N. will ratify and endorse comprehensive sanctions.

Dr. CONLON. No, I think it has shown that these cannot succeed within a reasonable degree of, not succeed with a reasonable degree of effectiveness.

Mr. SHAYS. You don't think they can be effective?

Dr. CONLON. Effectiveness, so that to a certain extent the events of April 2003 is where the future will be, if we have any at all, that the Security Council will be bypassed. This happened in 1991, sanctions which did begin to have some effect on what Iraq was doing, and also had positive effects in other respects in regard to Kuwait and its assets, which were saved from Saddam Hussein's grasp at that time, thanks to the same sanctions regime and same legal construction. It did not bring about the evacuation from Kuwait, which had to be done with military means. Ultimately, the sanctions regime against Iraq ended when the regime was defeated militarily. The same thing happened largely in Yugoslavia.

Of course, in all of these cases, those regimes were weakened by the effects of sanctions. And that contributed to their downfall, but it certainly was not decisive.

Mr. SHAYS. So even poorly, sanctions had an impact, but sanctions are not going to be airtight, not even close to airtight and so on?

Dr. CONLON. No. Therefore, there will be resort to military means in very serious cases, particularly in case of major adversaries that have to be dealt with, such as Iraq in 1991.

Mr. SHAYS. Thank you.

Mr. Mack, we haven't heard much from you in the response to questions. But you were the most provocative to me in the beginning by just simply saying, sanctions are, I interpret what you are saying is, at least as it comes to the United Nations, sanctions are a thing of the past with the U.N. Excuse me, comprehensive sanctions.

Mr. MACK. Comprehensive sanctions. I think that's going to be the case. In fact, you don't even hear the U.N. talking about comprehensive sanctions any more. Look at Darfour at the moment, the talk there is a gain on targeted sanctions, it's a focusing on the regime.

Then we come back into that question of real politic cynicism, the economic interests, why the Chinese and the Russians are opposed to sanctions on Saddam. Well, in part, they can say, we've always been opposed on a matter of principle to something that causes humanitarian harm. But the sanctions that are being talked about won't cause a lot of humanitarian harm, they're directed at the regime. And the real reason of course is the Chinese have really important oil interests there and the Russians want to sell arms.

I think that to come back to the point that Mr. Lynch raised previously, it is very, very—I'm not at all sure the Russians and the French acted in such a way as to positively undermine the sanctions, but they were very, very clear, right way through, about

their adamant opposition to them. And of course, one of the other reasons—

Mr. SHAYS. Even during the cease-fire?

Mr. MACK. Which cease-fire? Not back in—remember that sanctions, most people thought, I totally supported sanctions back at the end of the first Gulf war. Nearly everybody I knew supported them. This was a better alternative than marching on Baghdad.

Now, the reality was, everybody thought that this was going to be over with in a year. It took 10 years. And that's when as the humanitarian costs began to mount, and the humanitarian costs mounted primarily of course because Saddam Hussein refused to agree to any version of Oil-for-Food before it was formally called that. But once they were in place, then within the humanitarian community in and around the U.N. and elsewhere, people were saying, well, wait a minute. We know that Saddam Hussein is ultimately responsible for this, because if he was in compliance, the sanctions would cease to exist.

But once it's the case that the Council knows that you have a regime which is so ruthless it doesn't care about its kids starving to death, then the Council itself has to bear some responsibility. That's where that tension between the security side of the house and the humanitarian side of the House comes in.

Mr. SHAYS. Saddam learned how to beat the sanctions from previous experiences of others. And if he was willing to see his people starve, there was no way ultimately we were going to see the sanctions discontinue without some way, I mean, that's pretty clear.

Mr. MACK. It was bound to break down, and if not just Saddam, the countries that were around there. It's one thing for a set of countries to say, we're going to impose sanctions, they're going to be there for a year, and these are your major trading partners. But when everybody is under sanctions for such a long period of time, and yes, of course, there was some leakage to Turkey and there was some leakage to Jordan, but they didn't have anything like the full trade relationships they had previously. And this was a regime whose GDP was only a fraction of what it was previously.

So for a whole variety of reasons, things were beginning to break down. And the great irony, in a sense, is the humanitarian outcry against sanctions was actually highest when the situation was getting better. Because remember, Oil-for-Food didn't come in until—they started stuff going in 1996. That's why you began to see an improvement.

And this is why I would take slight issue with your point, the sanctions being a non-violent alternative to war. Because if you look at the research that was done in Columbia, at least 240,000, the most conservative estimate, under 5 year olds died, who wouldn't have died had there not been a war and the sanctions—

Mr. SHAYS. In Iraq or Colombia?

Dr. GORDON. Columbia University.

Mr. MACK. Columbia University.

Mr. SHAYS. That's what I was wondering, what sanctions we had in Colombia. [Laughter.]

Mr. MACK. No, no, Columbia University study. If you compare that with the numbers of people that were killed in the war, it is much, much greater. And remember, when the first Gulf war took

place, it was mostly incompetents that were killed. The 240,000 minimum kids that died were innocent by any measure. That's why there has been so much opposition, I think, in the humanitarian community. It's the cost of these types of sanctions to the innocent. And the fact that the regime, of course, used this brilliantly politically to try and gain sympathy. It was Saddam's responsibility, but somehow or other he managed to use it—

Mr. SHAYS. It's an interesting concept, of using it brilliantly. You literally had a leader who was willing to see a quarter of a million of his kids die. When all that was being asked of him was to—

Mr. MACK. Come into compliance.

Mr. SHAYS. Yes. And his complaint about loss of sovereignty was, guess what, you could have been annihilated. And the military force of the world stepped back.

Mr. MACK. It seems to me the true irony of this whole situation of why Saddam Hussein was ultimately so stupid was, if it really was the case that he didn't have weapons of mass destruction, as now appears to be the case, then why on Earth didn't he say, come in, search my palaces, go anywhere you'd like, knowing that once they had a clean bill of health, then it would have been incredibly difficult for the international community to maintain any serious level of monitoring and he could have started all over again.

Mr. SHAYS. I went with one of my staff to Stockholm to ask that specific question of Hans Blix, why did Saddam want us to think he had weapons of mass destruction. Because he wanted us to believe he had them. It was an interesting 2-hour discussion.

Before we go to you, Dr. Gordon, because you've really made this point—well, you didn't say what you disagreed with about other panelists. Mr. Mack, any comment that you would make?

Mr. MACK. It's just a small point with the statement from the representative from the State Department. By and large, I think an excellent presentation. But somehow or other, this notion that here was the United States, who was standing firm on sanctions, doing the right thing all the time, if you look at all of this, I think 16 sanctions regimes being imposed by the United Nations, the United States was basically utterly uninterested in most of those. It was interested in Libya, it was interested in the Balkans, it was obviously deeply concerned about Iraq.

But as far as the rest of them are concerned, the United States was just as bad as other countries.

Mr. SHAYS. Give me an example of one where we might have been better.

Mr. MACK. Liberia.

Mr. SHAYS. OK.

Mr. MACK. Angola initially. And Liberia, of course, you have another example where the cynicism of the great powers, where for a long time, one of the things we knew was that Charles Taylor was being bankrolled by the, literally bankrolled by logs. And the French were absolutely opposed to any sort of sanctions on log exports, because most of their—

Mr. SHAYS. What exports?

Mr. MACK. Log exports, exports of timber.

Mr. SHAYS. Right.

Mr. MACK. Because most of those go into France. Eventually, even the French were persuaded, and that actually made a difference. It was one of those things where denying access to funds helped bring down that regime.

Mr. SHAYS. I'm just going to go to you, Dr. Gordon, then I'm going to come back. I would like us both maybe to jointly pursue this issue of transparency. But anything you disagree—I think one thing you've already stated, you disagree with the concept that there, I view there was no transparency, I've never had anyone say there was, you're saying there was a significant transparency, a lot of information available.

But beside that, let's put that aside, anything that was said that you want to highlight disagreement with, either Dr. Conlon or Mr. Mack or the State Department?

Dr. GORDON. First of all, I agree and have enormous respect not only for what both of them have said today but at least their, or at least Dr. Conlon's publications, which I think I read and memorized his entire book.

Mr. SHAYS. And did not plagiarize? [Laughter.]

Dr. GORDON. No, just memorized it, that's all.

I think Mr. Schweich is in a difficult position. I think the State Department is clearly embarrassed about acknowledging the extent of the U.S. role. The extent of the U.S.' indifference to the amount of cash going into the Saddam Hussein regime. So we're looking at some backpedaling, we're looking at some spinning.

So when he says, the United States tried to get other countries, other members to do something about the contracts where there were kickbacks, but they demanded excessive levels of evidence, again, if the United States had any evidence, it simply had the possibility of blocking that contract. It did not need to persuade anybody else to do that. When he says other countries resisted—

Mr. SHAYS. And neither of you disagree with that point, there was unanimous consent, therefore they had veto power? Dr. Conlon, Mr. Mack, you agree that they could stop? You're nodding your head, Mr. Mack, for the record, and Dr. Conlon? Did they have the ability to stop a contract?

Dr. CONLON. Yes, but it's very difficult to be the one blocker, the one veto exerciser time and again, meeting after meeting. Pressure mounts.

Mr. SHAYS. OK. That's kind of like the Senate deciding not to have a vote on Schiavo because the one member who would have blocked unanimous consent in sending to the House would have forced all the Senators to come back to Washington. I'm just trying to relate it to something I can identify with.

Dr. GORDON. Yes. Although with all due respect, in fact on the holds, I don't know about in every single committee meeting, but on the holds, the United States was the sole blocker. The U.K. had a much more limited role, and no one else for years and years blocked any goods.

Mr. SHAYS. You know, a difference of having two or three more people helping you would have been significant.

Anything else on that? I want to get to transparency, and I want to go back to Mr. Lynch if he has something.

Dr. GORDON. I think just generally the notion, he said, we did what we could, if we couldn't show a smoking gun the committee chose not to act. Again, I think that simply misrepresents the basic procedure of how choices were made, how decisions were made, who had what authority. In general, I want to say that the literature on sanctions is exactly as my colleagues have said, overwhelming says sanctions tend to be ineffectual, sanctions tend to result in greater legitimacy for the state. South Africa is an anomaly, it's not at all typical.

Mr. SHAYS. You're telling me what you agree with. Right now I just want to know disagreements. I'd like to come back at the end, before we go, but I want to give Mr. Lynch some more time.

Dr. GORDON. Actually if I could say, Mr. Mack says it was Saddam Hussein's fault and you echoed this language, that he decided to allow the kids to starve. It was more complicated than that. There was a minimum level that the Saddam Hussein needed to maintain for its political legitimacy. On the issue of starvation, it was Iraq, it was weeks, it was in early September, it was about 4 weeks after sanctions were imposed that a ration system was created by Saddam Hussein's government.

I think you will see any, Red Cross, any NGO's over the course of the 1990's saying, it was the governmental rationing system that was the reason that there was not widespread famine. If you look at effective attempts by the Iraqi government to get services back up within weeks after the Persian Gulf war, you see literally what I've heard is, every engineer up to nuclear physicist was sent out to build bridges. Every electrical generator that could be up and running was. Every water and sewage treatment plant, through cannibalized parts that could be up and running was.

Mr. SHAYS. That's a little bit different, what you're talking about there. We're talking about the idea of kids starving. That's ultimately what forced a change in policy in the United Nations, to allow more flexibility and more oversight, to give Saddam the ability to make some key decisions that we didn't want him to make.

But you did kind of surprise me about this issue of transparency. This is my view, and tell me if I'm wrong. I believe that Benon Sevan never thought that people knew that he was a player with the vouchers. And he never thought he would be known because the U.N. wouldn't tell and Iraq wouldn't tell. So it was an easy way to pick up literally hundreds of thousands, if not a million plus dollars. And I believe other people thought the same thing.

The only reason this became a discussion was, you had, and I love it, because people don't realize that Iraq and the Iraqis are learning things that are very basic in a democracy in general, a government leak and a free press. A government official leaked information about Benon Sevan and others to an Iraqi free press, it was published in a newspaper and eventually the western media picked it up and the rest is history.

So tell me how, we're not getting the minutes of the 661 Committee, we're not getting those minutes. We didn't get the list from them of who was getting vouchers. How is that transparency?

Dr. GORDON. Well, OK.

Mr. SHAYS. I want the short answer, not the long answer.

Dr. GORDON. The vouchers, as I understand it, OK, so under 986 and under the memorandum of understanding, which is the basic document—

Mr. SHAYS. Before you answer, think for a second what you're going to say. I just want to know, Dr. Conlon and Mr. Mack, do you believe there is transparency at the U.N.? Do you believe that information is made available upon demand by the Member States and the institutions of those Member States, like Congress, for instance, in the United States?

Dr. CONLON. No. There is a very low level of transparency in the terms of the normal world outside.

Mr. MACK. I agree with that. It's not a very transparent institution. I think the Secretary General, Kofi Annan, has been trying to make it a more transparent institution. But it is a big bureaucracy, and like all big bureaucracies, people keep control over information as a way of having power.

Mr. SHAYS. OK. Now, that's kind of my view. I'm wondering if you are trying to give us a difference without a distinction here. What I think I'm hearing you say, Dr. Gordon, is that there is information available, if you're willing to work at it, you can find it. So there is some information that you've found, I mean, the information that we found from Dr. Conlon was, you left some of the minutes of the 661 at Iowa University, which is a story that I'd like you to write a book about. And then they become public.

But at any rate, sort this out. I don't get your point about transparency.

Dr. GORDON. OK. I'm not making a generalization about transparency at the United Nations.

Mr. SHAYS. OK.

Dr. GORDON. I don't know enough about how the other functions of the U.N. work to say with any kind of competence, in general here's where you see greater or lesser transparency throughout the U.N. system.

But what I do know a lot about is this program. You're saying you may be able to find some after some effort, and I'm not saying that at all. I am saying, it's on the Web, it's on Google. You don't have to go to the University of Iowa, you don't have to go to Dresden. You go to Google, you type in Iraq distribution plan. You see every item that Iraq was approved to buy.

Mr. SHAYS. You're saying the distribution plan was public.

Dr. GORDON. Yes.

Mr. SHAYS. OK, so that's public.

Dr. GORDON. Every 90 days, detailed report on the impact of the program, the problems with the program. Charts, I think they were the current chart for each phase. I don't think you would find prior charts from prior phases, because it was a spreadsheet of the current status. So it would say, for the electricity sector, how many contracts were on hold, how many were approved but in transit, how many had been delivered, weekly updates as well on particular issues that were controversial. These holds on these items have been lifted, there have been this number of liftings of oil, these spare parts have arrived.

It's an enormous amount of information.

Mr. SHAYS. But is it the information that we needed?

Dr. GORDON. I'll tell you what obviously wasn't there, the auditing of the contracts between Iraq and its suppliers. There is controversy, well, the Volcker report is highly critical. We know what the reasoning is regarding that. First, the——

Mr. SHAYS. I don't need to get into that part now.

Dr. GORDON. Well, let me tell you this much, which is, Security Council resolution 986 was the one that said, here's what the auditing structure should be, external audit for those, not internal audit. I don't want to be framed as saying I'm defending the sloppiness of the Secretariat, but you have to say, it was the Security Council that chose these parameters.

Mr. SHAYS. Well, I'm going to tell you what I'm taking from what you say. There is a lot more information out there than people realize. And I accept that. To say the U.N. is transparent, to me is something that I don't even come close to believing, from our experience and the information we've tried to get.

Dr. GORDON. What is correct is that this program was in many, many regards transparent. This program in many, many regards had multiple levels of oversight by interested parties, by disinterested parties, by persons with expertise at every level.

Mr. SHAYS. OK, let me go to Mr. Lynch.

Mr. LYNCH. OK, thank you, Mr. Chairman.

Mr. Mack, we talked a little earlier about a reason why Saddam Hussein, if he didn't have the weapons of mass destruction, why didn't he just invite people in. And it would have cut the legs out from under a lot of people who wanted to take military action there.

And we surmised about possible reasons that he might not do that. But he wanted to make the United States believe that he had those weapons.

Might I suggest, and I just want to get your opinion on this, given the fact that he had used chemical weapons against the Kurds in the north, he had used chemical weapons in his war against Iran, and at the very root of his power was his ruthlessness and his ability to strike fear into the people of Iraq, and that's based on my own observations. I was among the first congressional delegation into Iraq after the invasion on March 19, 2003, into there about 60 days later.

Isn't that a plausible reason that he would want to maintain his own right? I remember Tariq Aziz responding that, this was in the run-up to the invasion, that just like every other country, Iraq maintained its right to possess weapons of mass destruction. Is that a plausible explanation?

Put on that as well the fact of these mass graves that our folks dug up in the weeks and months after the invasion in 2003. So he wasn't just going around building bridges and feeding kids.

Mr. MACK. I think that on that issue, two things. First, in the first Gulf war, he had chemical weapons, he didn't use them. It's one thing to use chemical weapons against civilians, it's another thing to use chemical weapons against the Iranians. Using chemical weapons or biological weapons against the United States is a huge risk for someone like that.

Saddam Hussein has done a lot of stupid things, but when it came to confronting the United Nations, it seems more that he was

stupid than reckless. If it was the case that he really believed, really believed that the Americans thought that he had enough weapons of mass destruction, which, I mean, the Americans were really only talking about chemical weapons and perhaps some biological weapons at that time, then if he thought that was going to deter the Americans from striking, then he was fundamentally foolish.

If had he managed to persuade the Americans that he had nuclear weapons, that would have been very different. The United States has made it very, very clear that the solution to the problem with North Korea is a diplomatic one. I think the primary reason for that is a very sensible one, is that the United States believes, almost certainly correctly, the North Koreans have now admitted they actually have nuclear weapons capability. They can't deliver it against the United States, but they could almost certainly deliver it against South Korea.

So I've also heard, we talked to Hans Blix, he was over in our institute recently, he said that part of the answer may be this was Saddam trying to persuade his generals. That didn't seem to be very particularly persuasive, either.

I have to say, I come out of this thinking that basically this is a guy who wasn't terribly bright when it came to major strategic thinking. Had he given up, had he opened the place up, go wherever you like, it would have been politically impossible for the United States to have maintained a sanctions regime. Search, go into the toilets of any one of my palaces, do whatever you like, open the place up, don't try to obstruct them as they did with UNSCOM. It would have been something which I would have thought politically obvious, brilliant. He never even thought about it.

Mr. LYNCH. I just have one last question. And that is this. I know this is close to home. You were actually director for Kofi Annan, is that correct?

Mr. MACK. I ran Kofi Annan's strategic planning unit, which was essentially a small think tank for the Secretary General. He would worry about a particular question. One of the things, when we first came to the United Nations, that I asked was, do we know if our sanctions regimes work? What is the success rate of our peace-building operations? Nobody knew, because there are certainly not the resources inside. General Assembly has rejected the idea of trying to have any sort of internal analytic unit in the U.N. that can answer these sorts of questions.

Mr. LYNCH. I just wanted to get a sense of your association with Kofi Annan. Based on the size of his problem, and let's forget about the smuggling, he has a \$2 billion to \$4 billion problem within Oil-for-Food. And I know there might be numbers on the Web site, but we're looking for between \$2 billion and \$4 billion that went missing in that program. That's the size of his problem.

Do you have, within the United Nations, do you have a sense on whether or not he had enough support to survive this and should we be looking to him as someone who might be part of the solution here as opposed to a major part of the problem?

Mr. MACK. I think this is a Secretary General who has demonstrated more than any other Secretary General in recent history a real commitment to the idea of reform in the U.N. But remember, reforming the U.N. is incredibly difficult. To reform the United Na-

tions, you have to have the General Assembly on your side. Because if you don't have the General Assembly on side, it's the General Assembly that controls budgets.

Mr. LYNCH. Yes.

Mr. MACK. The United States is the dominant player in the Council. The United States is not a dominant player in the General Assembly. Part of the difficulty in getting support for reform in the U.N. is that many countries in the General Assembly quite incorrectly believe that the U.S. support for reform is actually support of bringing the institution down, for weakening the institution.

So if there is a commitment to reforming the United Nations, then the United States has to be seen as a country which is committed to the U.N. as an institution. And I think that is going to be a fundamental problem.

The Secretary General has enormous difficulties in trying to push forward. One of the things he's called for in a high level panel report, and his subsequent report based on the high level panel report, is to be able to get rid of deadwood in the institution. Everybody knows that, any big bureaucracy has them. But it's incredibly difficult to do that. Politically incredibly difficult to do that.

Mr. LYNCH. Right. As a new Member and a Democratic Member of the Congress, I can relate to his difficulties.

That means a lot, that you would take that position with respect to Kofi Annan. So thank you.

Mr. SHAYS. I just have to say, I'm really learning a lot. I'm surprised by some things that I didn't know and some things that I assumed. I have more sympathy for Kofi Annan by this one statistic that the budget is controlled by the Member States and that he does not have any real, I'm leaving believing that he has no real control over the budget. That's what I'm being told.

Mr. MACK. He has the ability to persuade.

Mr. SHAYS. Does he submit a budget? It's his budget that he submits.

Mr. MACK. Yes, but the decisions on what goes through is essentially the fifth committee, that's the critical committee, it's the budget committee of the U.N. That's essentially controlled by, it's a General Assembly committee. And the voice of the south is a very strong one there.

Mr. SHAYS. Let me see if counsel has any particular question that he would like to ask that we need to put on the record.

Mr. HALLORAN. Thank you. Let me ask each of you, based on your experience and writings in the field, was it or should it have been known that the Oil-for-Food Program would be vulnerable to the many abuses we heard before, that the sanctions program, the 661 Committee and its progeny, Oil-for-Food, was vulnerable to those abuses based on the experience of the 661 Committee from its inception until the OFF was started? How knowable was that by those inside or outside?

Dr. CONLON. It was completely knowable, because it comes out in my book, we had all of the background conditions for things like this happening. The people who actually negotiated for years with Iraq about Oil-for-Food, the first program and then even the later ones, the bulk of that expertise was found in the legal department which was privy to all of the things that we know about, or that

I knew about, and was also privy to all of the things that went on in the committee. They were on the mailing list, they could come to the meetings, they occasionally did, and they got copies of all the memos that I wrote.

So they knew that many of these sanctions busting mechanisms and tactics were being used very successfully in the course of many years. They knew essentially how the adversary had been manipulating humanitarian waiver actions to perform certain functions clearly of a financial nature, never entirely clarified exactly how.

And I also think that at that point in time, when the decision-makers outside of the Secretariat, such as the U.S. Government, the other powerful voices in the Security Council, that they agreed to a new Oil-for-Food Program, on better terms, more on Saddam Hussein's terms, that they knew that they were going to have problems.

Mr. HALLORAN. Mr. Mack.

Mr. MACK. I think it was the point made this morning by the State Department that it was very, very difficult for the international community not to agree to an Oil-for-Food Program because concern about the humanitarian costs were growing so intense.

Mr. HALLORAN. Let me stop you there. By their terms, U.N. sanctions don't include food and medicine ever, by any terms, is that correct?

Mr. MACK. It depends. This was an across-the-board trade embargo. So it included everything, until you brought in the exceptions.

Dr. CONLON. That's not quite true. Medicines in the very narrowest sense cannot be included in sanctions measures because of provisions in the protocol to the fourth Geneva Convention. So in the very strict sense, medicine may never be prohibited. It however is legitimate to control its sale or transport in the sense of requiring notification. That is a weak form of control.

Food was much less clear. In 1990, that was the first and only time that a sanctions program of such comprehensive nature was agreed as to include food stuffs. Even at that time, there were serious difficulties with this, particularly in the west, but also in the Islamic countries, because it had been argued that Christianity and Islam do not allow deprivation of food as an acceptable form of coercion.

The food embargo was lifted in 1991 and turned into a requirement for notification. But it could no longer be prohibited. And I think there was a general agreement at that time that it would never be tried again because of the very serious implications it might have. So in that sense, food is out.

Other than that, one has the distinction between a comprehensive sanctions program, such as in the case of Iraq and Yugoslavia, from which exceptions can be made, from a more selective approach in the case of Libya, where trade was regarded as legitimate, as such, except for certain categories of items which were then banned. One is called all-inclusive or comprehensive, the other is referred to as a selective, I think, sanctions regime.

Mr. MACK. I'm sorry, to go back to the major point, and I think that Saddam Hussein had quite a powerful card when he was nego-

tiating over Oil-for-Food. That was the huge amount of concern in the international community about humanitarian costs of sanctions. And they were very high.

So he said, Iraqi sovereignty, and that was his bargaining. And that's what enabled him to get the deal which subsequently created all of the problems, and that is that he gets to choose the buyers and sellers. I think that is absolutely crucial.

I think the other thing is that if you actually look back right at the very beginning when sanctions were imposed, nobody had any idea that it was going to last as long as it did. Therefore, there weren't the sort of concerns that came up later, because people thought, in a year he's bound to give in. This was 90 percent of all of Iraq's exports. It was an enormous amount of leverage. No sanctions regime in history has ever had that sort of leverage. It reduced Iraqi GDP by some accounts to about a third of what it was previously.

If anything, if economic sanctions could ever have worked, they should have worked there. But they didn't.

Dr. GORDON. I agree. I think what was unknown is what would happen if you actually had globally comprehensive sanctions. Remember, it had been politically impossible for this to occur at any time in history before. Since World War II, sanctions were imposed by one block against the other. Whoever was being sanctioned by the United States or by the Soviet block could trade with the other.

This is literally the first time in human history that there is the possibility of every nation in the world participating in the blocking off of goods for a country that has one source of revenue and one source of goods. I'm overstating it, but overwhelmingly dependent on exports for cash, overwhelmingly dependent on imports for goods. So it was comprehensive in every possible regard. And it was an experiment that way.

All the literature of that time made it look as though this was the ideal circumstance for sanctions to succeed. The literature said, if sanctions were comprehensive, if they were immediate, if they were multi-lateral, those were the circumstances most likely to bring about regime change or whatever the target was. So I think the expectation was they would work and they would work quickly.

And there really, I think was not thought about what would happen once the long term erosion of different sorts happened. And I also think that no one cared about the smuggling. That no one cared. The issue was always the tension between security interests and humanitarian interests, back and forth and back and forth between those two. The leakage around the edges, \$2 billion to \$4 billion sounds like a lot of money to us. The numbers I have on Iraq's GDP is that the GDP dropped from \$60 billion to \$13 billion.

So \$2 billion to \$4 billion over any period of time is really an insignificant change in Iraq's economy. I don't want to be on the record as saying I don't think \$4 billion is a lot of money. But no one cared about that. The economy was done. The infrastructure was done, it was shot. Iraq would not be able to rebuild a significant military capacity with no functioning industrial capacity.

The specific issue of the trade partners I think is where we see the most clear instance that everyone knew what was going on with this. Not necessarily that this would allow the kickbacks to

happen, but it clearly gave Iraq political leverage through the use of contracting. Everyone saw that, it was completely on the table.

Mr. HALLORAN. All right. In previous testimony at previous hearings, we had the U.N. contractors, inspectors for the oil and commodities and the banking house that did the letters of credit. They testified that they lacked capacity, the power to really see the extent of the transactions that they thought they should be able to provide any assurance that the Oil-for-Food Program was achieving what it was meant to achieve and not more or less for the regime.

We also had testimony that the distribution plans were not regularly followed, that they would overlap and you would lose track of what was filled and what wasn't over time as things kind of slopped over from phase to phase. So there were some weaknesses in these, which the Volcker Commission has pointed out as well, in the safeguards that you, and the oversight mechanisms that you listed, that differentiated the sanctions program from Oil-for-Food.

So I guess my question is, what are the implications of that in terms of sanctions regimes that if a program on which all these layers of oversight and safeguards were put in place, and yet it still appears the program leaked badly or was manipulated by the target regime to its benefit, what does that say about future sanctions regimes?

Dr. GORDON. Well, to me comprehensive sanctions don't make sense for all of the reasons that everyone has said today. Politically they don't make sense, from a basic position of international humanitarian law, they don't make sense. So the leakage is really about that. If you say we want to blockade, we want to choke off the entire economy, and then you say, well, there's leakage, I can't imagine a circumstance where there will be the political tolerance to do something similar to that.

I think the only avenue is smart sanctions. That's the only thing that makes sense to me.

Mr. SHAYS. Is what? I'm sorry.

Dr. GORDON. Smart sanctions.

Mr. SHAYS. Define smart sanctions again, quickly.

Dr. GORDON. I think you suspect that academics are incapable of speaking briefly.

It just means targeted. So normally, the kinds of sanctions we generally talk about, they are on the economy or on a sector of the economy as a whole. Smart sanctions typically include things that affect the particular leaders or goods, such as arms embargoes.

Mr. SHAYS. I get it.

Dr. GORDON. That's the only thing that makes sense to me in terms of efficiency, in terms of moral legitimacy. To me it just makes no sense at all, if you look at the entire history of sanctions, the more you harm a civilian population of another state, the more that state consolidates power, the more resistance there is to the outside pressure, the outside coercion from the civilian population, the less they are inclined to do what you see is your goal, which is their putting pressure on their state and so on.

Mr. SHAYS. Let me wrap up here. Just to complete the comment on what was Saddam thinking, when I was meeting with Hans Blix, he was pretty convinced that Saddam never thought we would

come in. So it was almost irrelevant whether he wanted to convince us he had it or not. He could have us think he had it, but he still didn't think we would come in. The reason why that was verified was that Tariq Aziz told us that when the attack began, Saddam didn't believe it and wanted it verified, that he was pretty shocked about it.

The other information that we learned from Tariq Aziz through Duelfer was that in the Duelfer Report, people point out that Duelfer said no weapons of mass destruction. They don't focus on the other parts in which he said it was the purpose of Saddam to reward particular nations under the Oil-for-Food Program who had veto power in the Security Council, particularly France, Russia and China. So he was pretty convinced that if those three countries didn't accept our coming in, we wouldn't come in. He just didn't understand how willing the President, President Bush was to do that in spite of that, in other words, go in in spite of the opposition of three key Security Council members.

I think that we've covered a lot. I'd like to know, is there anything, Dr. Conlon or Mr. Mack or Dr. Gordon, that we should have asked you that we didn't? Is there anything that you would have liked to have commented about that we didn't ask you about? Any closing comment, in other words?

Dr. CONLON. First of all, the description given by the State Department about this oil exemption for Jordan has been dealt with by myself in an article which was published in, among other places, the Florida State University Journal of Transnational Law some time in the late 1990's. That goes into some detail about the legal ramifications and circumstances.

The second one is that the idea presented by my two co-panelists today about how sanctions are supposed to work by imposing burdens and discomfort on the civilian population to such an extent that they then get their government to stop doing what it's doing is actually not the way sanctions are thought of. This objection is equally applicable to military action as it is to sanctions, the same thing applies. You can say that military action does not bother the elite, it bothers the common people who have to suffer.

So the purpose of sanctions is to apply pressure on the system, just as the purpose of military action is that. They have functions, the function of trying to get the economy to slow down or to fail in some of its vital functions. This is irrespective of whether the people suffering from that have the ability to openly try to influence the government or not, if the effects of these disruptive activities are such that the system cannot function, it doesn't matter that the vast majority of the population has no voice as such in decisionmaking.

Mr. SHAYS. Let me just say, I think that it's important, it's helpful for me to have you make this final point. I was thinking in essence you were saying sanctions don't work. When you were saying comprehensive sanctions, I was thinking of comprehensive in the context that everyone around the world is on board. You're talking about the comprehensive sanctions of food, etc., in other words, comprehensive in terms of nothing gets into the country.

And I'm reminded of a conversation in one of my travels to the Middle East with a member of King Hussein's family. He said to

me, you Americans don't get it, this was around 1994. He said, in your country, when times are bad your people turn against your leaders. He said, in the Middle East, when times are bad, we turn to our leaders, which is kind of reinforcing, Mr. Mack, your comment that we made Saddam's people turn to him to get anything they needed and wanted. We made him in a sense almost more important and valuable to his country. And if this leader was right, they weren't turning against him, as we would think intuitively in our own society.

Any closing comment you'd like to make?

Mr. MACK. Just one very quick one. We're just finishing something called the Human Security Report, which is analogous to, modeled on the U.N.'s Human Development Report. One of the things that we find out of this, particularly when you're talking about the U.N. and your whole concern here, I think, is not just this particular issue, but the future of U.N. reform generally, is that when you look at the evidence, there has been a huge explosion of international activism following the end of the cold war. The U.N. certainly liberated to do all sorts of things it couldn't do previously, massive increase in the number of peace operations, disarmament, demobilization, post-conflict reconstruction and sanctions, they all go up 400, 500, 600 percent.

In the same period, the number of armed conflicts declined by 40 percent. And we argue that even though all of these U.N. exercises aren't individually particularly successful, a 30 percent to 45 percent success rate seems to be about the norm, which isn't very good. About 30 to 45 percent when prior to 1990 there was nothing at all. And that appears to have made a major difference. Not just for the United Nations, it's the United Nations, the Bank, the major donor states and all the rest of it. That's all.

Mr. SHAYS. Thank you.

Mr. MACK. But sanctions is part of a much broader package and should be seen in that sense.

Mr. SHAYS. Thank you.

Dr. GORDON. Actually, I just want to say how impressive I think it is that this subcommittee has taken something that really threatened to become something like a feeding frenzy over the last year, and it's really very complicated. The United States is not always on the right on this issue, and the Secretariat and the U.N. as a whole are not always in the wrong on this issue.

I just think it's so important to the work of this subcommittee in figuring out at a very detailed level, maybe more detailed than you want to hear, but how it's worked and who has done what, rather than I think the much more pat responses we've seen for months now that really are just accusations that are choosing to not see the reality of the complexities of how this is really operated.

Mr. SHAYS. I thank you for that comment. It is interesting to me that in the total amount of dollars that we were looking at smuggling and the Oil-for-Food Program, we were at one time thinking the Oil-for-Food Program, that the amount of dollars that Saddam was getting was closer to \$4 billion. We now think that number is closer to \$1.7 billion, and that the smuggling, which we thought was around \$5 billion, is closer to \$10 billion.

That takes us out of the news when we say that. But it gets us to understand really the reality of what is truthful about what's going on. So thank you all very much. Appreciate your being here. It was a very interesting hearing. We will now adjourn the hearing.

We do thank our transcriber and I do thank my staff that has worked so hard on this issue. They even went to Iowa. [Laughter.]

[Whereupon, at 2:25 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]



## UNITED STATES MISSION TO THE UNITED NATIONS

799 UNITED NATIONS PLAZA  
NEW YORK, N. Y. 10017-3505

April 21, 2005

Dear Mr. Chairman:

Thank you once again for allowing me to testify on behalf of the Department of State before members of the Committee on Government Reform, Subcommittee on National Security, Emerging Threats and International Relations during the Subcommittee's April 12 hearing on *The UN Oil-for-Food Program: The Inevitable Failure of UN Sanctions*.

During the testimony, I indicated that the State Department would provide additional information on several subjects. One such subject involved requests advanced by UN Member States under Article 50 of the Charter of the United Nations for relief from the negative economic, financial and commercial consequences suffered by States as a result of their efforts to implement the comprehensive multilateral restrictions on the former Government of Iraq. Resolution 669 of September 24, 1990, "entrusts the Security Council Committee established by resolution 661 (1990) ... with the task of examining requests for assistance under the provisions of Article 50 of the Charter and making recommendations to the President of the Security Council for appropriate action."

On March 22, 1991, 21 UN Member States "confronted with special economic problems arising from the application of sanctions against Iraq," wrote to the President of the Security Council, requesting that the Council consider their plight "with a view to finding quick and effective solutions." Among the signatories to the March 22, 1991 letter were Iraq's neighbors, Jordan and Syria. I have attached to this correspondence Security Council document # S/22382 dated March 25, 1991, which lists the names of the other UN Member States who signed the March 22, 1991 letter to the Security Council President. For most, there was very little further action, if any.

You also requested information on holds placed by the United States and the United Kingdom on UN Oil-for-Food (OFF) contracts. Specifically, you and other Members asked whether the U.S. Government ever placed holds on OFF contracts based on price concerns. You will recall that I testified that the U.S. did put holds on a small number of contracts because of pricing but that, as Defense Contract Audit Agency (DCAA) noted, it was difficult to identify overpriced contracts.

The Honorable Christopher Shays  
Chairman,  
SubCommittee on National Security, Emerging Threats and International Relations,  
U.S. House of Representatives,  
Room B-372, Rayburn Building,  
Washington, D.C. 20515.

One example was Comm #730859, submitted during the 7<sup>th</sup> Phase of the OFF Program (12/12/99-06/08/00), in which the U.S. Delegation, in placing a "hold" on the contract, advised the UN Office of the Iraq Program (OIP) that "prices for delivery and handling services and the after-sale services are considered to be significantly higher than what is considered reasonable."

A second example of a contract placed on hold by the U.S. Delegation because of pricing concerns involves Comm # 930167, originally submitted during the 9<sup>th</sup> Phase of the OFF Program (12/06/00-06/03/01). Our records indicate that the U.S. Delegation initially placed Comm # 930167 on hold because of suspicions that certain items might be dual-use, but we also noted, "even if the supplier were able to address this objection, another objection is that the price charged seems excessive for the normal cost of these goods."

We are continuing to review our records to determine if there are other examples where the U.S. Delegation placed a hold based on pricing concerns. For the record, I also would note that while the State Department did not always include references to pricing concerns in its correspondence with the UN Office of the Iraq Program when the U.S. Delegation placed specific contracts on hold, the U.S. Government interagency group that reviewed each OFF contract often remarked in its internally-shared notes that, "price is higher than market price," or, "prices appear higher than prices for similar goods."

However, in these cases, the U.S. normally cited dual-use concerns and not price reasonableness as the principal justification for placing a hold on the contract.

Mr. Chairman, I hope this information helps to address ongoing Subcommittee concerns. Please advise me of any additional assistance you and the Subcommittee may require.

Sincerely,



Thomas A. Schweich  
Chief of Staff

Attachments:

- 1) Letter Dated March 22, 1991 from 21 UN Member States to the UNSC President
- 2) April 29, 1991 Note by the President of the Security Council
- 3) Copies of Comms # 730859, # 930167

UNITED  
NATIONS



Security Council

Distr.  
GENERAL

S/22382  
25 March 1991

ORIGINAL: ENGLISH

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LETTER DATED 22 MARCH 1991 FROM THE REPRESENTATIVES OF BANGLADESH, BULGARIA, CZECHOSLOVAKIA, DJIBOUTI, INDIA, JORDAN, LEBANON, POLAND, ROMANIA, SEYCHELLES, SRI LANKA, THE SUDAN, THE SYRIAN ARAB REPUBLIC, TUNISIA, MAURITANIA, PAKISTAN, THE PHILIPPINES, URUGUAY, VIET NAM, YEMEN AND YUGOSLAVIA TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

We have the honour to submit herewith a memorandum of 21 Member States confronted with special economic problems arising from the application of sanctions against Iraq pursuant to Security Council resolution 661 (1990) which addressed the Security Council under Article 50 of the Charter of the United Nations and on which the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait made recommendations for appropriate action.

We would be grateful if you would have this memorandum considered by the Security Council and circulated with the present letter as a document of the Security Council.

(Signed) H.E. Mr. Mohammad MOHSIN  
Permanent Representative of  
Bangladesh

(Signed) H.E. Mr. C. R. GHAREKHAN  
Permanent Representative of  
India

(Signed) H.E. Mr. Dimitar T. KOSTOV  
Permanent Representative of  
Bulgaria

(Signed) H.E. Mr. Abdullah SALAH  
Permanent Representative of  
Jordan

(Signed) H.E. Mr. Eduard KUKAN  
Permanent Representative of  
Czechoslovakia

(Signed) H.E. Mr. Khalil MARRAWI  
Permanent Representative of  
Lebanon

(Signed) H.E. Mr. Roble OLHAYE  
Permanent Representative of  
Djibouti

(Signed) H.E. Mr. M. OULD MOHAMED MAHMOUD  
Permanent Representative of Mauritania

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English  
Page 2

(Signed) H.E. Mr. Jamsheed MARKER  
Permanent Representative of  
Pakistan

(Signed) H.E. Mr. S. A. ORDÓÑEZ  
Permanent Representative of  
the Philippines

(Signed) H.E. Mr. Stanislaw PAWLAK  
Permanent Representative of  
Poland

(Signed) H.E. Mr. A. D. MUNTEANU  
Permanent Representative of  
Romania

(Signed) H.E. Mr. M. M. MARENGO  
Chargé d'affaires  
Permanent Mission of the Republic  
of Seychelles

(Signed) H.E. Dr. Stanley KALPAGÉ  
Permanent Representative of  
Sri Lanka

(Signed) H.E. Lt. Gen. (Ret.) Joseph LAGU  
Permanent Representative of the  
Sudan

(Signed) H.E. Mr. Dia-Allah EL-FATTAL  
Permanent Representative of the  
Syrian Arab Republic

(Signed) H.E. Mr. Ahmed GHEZAL  
Permanent Representative of Tunisia

(Signed) H.E. Mr. R. PIRIZ BALLON  
Permanent Representative of  
Uruguay

(Signed) H.E. Mr. TRINH XUAN LANG  
Permanent Representative of  
Viet Nam

(Signed) H.E. Mr. A. S. AL-ASHTAL  
Permanent Representative of Yemen

(Signed) H.E. Mr. D. SILOVIC  
Permanent Representative of  
Yugoslavia

/...

## Annex

## MEMORANDUM

1. By resolution 669 (1990), the Security Council entrusted its Committee established by resolution 661 (1990) with the task of examining requests for assistance under the provisions of Article 50 of the Charter of the United Nations. It was the first time that a large number of States addressed the Security Council on the basis of this Article.
2. All the 21 States addressing the Security Council under Article 50 of the Charter emphasized their full adherence to the relevant Security Council resolutions relating to the Gulf crisis and their solidarity with the international community. They expressed their firm determination to continue to comply fully with the provisions of resolution 661 (1990), in spite of the grave economic, financial and commercial losses incurred as a result of implementation of sanctions, which are estimated at more than \$US 30 billion.
3. The Security Council Committee considered the cases referred to it and by the recommendations adopted, launched individual appeals to all States and specialized agencies of the United Nations and international financial institutions to provide urgent assistance to the affected States in order to mitigate the adverse economic and social problems confronted by them.
4. The problems affecting these countries persist, and in certain respects have been aggravated, while the appeals launched pursuant to the recommendations of the Security Council Committee and addressed to all concerned by the Secretary-General, have not evoked responses commensurate with the urgent needs of the affected countries.
5. Assistance to the affected countries in accordance with Article 50 of the Charter would reaffirm international solidarity and unity.
6. The 21 States launch a collective appeal, particularly to all donor States, to respond urgently and effectively in providing assistance to the affected countries by allocating additional financial resources both through bilateral channels and by supporting the actions of the competent organs and specialized agencies of the United Nations system.
7. The 21 States most seriously affected believe that it is essential that all Member States, as well as the United Nations, the specialized agencies and other international organizations of the United Nations system, take all appropriate action to cooperate with them in the fields of trade, employment, economic assistance and other areas, in order to alleviate the difficult economic problems facing them.
8. The affected countries believe that, given the magnitude of the difficulties they face, the Security Council should give renewed attention to these problems with a view to finding quick and effective solutions.

UNITED  
NATIONS



Security Council

Distr.  
GENERAL

S/22548  
20 April 1991  
ENGLISH  
ORIGINAL: FRENCH

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NOTE BY THE PRESIDENT OF THE SECURITY COUNCIL

Following consultations with the members of the Security Council, the President of the Council made the following statement, on behalf of the Council, at its 2985th meeting on 29 April 1991, in connection with the Council's consideration of the item entitled "The situation between Iraq and Kuwait":

"The members of the Security Council have considered the memorandum dated 22 March 1991 (S/22382) which was addressed to the President of the Security Council by the 21 States which have invoked Article 50 of the United Nations Charter owing to the special economic problems arising from the implementation of the sanctions imposed against Iraq and Kuwait under Council resolution 661 (1990).

"The members of the Security Council have taken note of the Secretary-General's oral report to them on 11 April 1991, in which he supported the appeal launched by the 21 States that have invoked Article 50. The Secretary-General further informed the Council on 26 April 1991 of the conclusions reached by the Administrative Committee on Coordination (ACC) at the session it has just held in Paris, where members of ACC agreed to vigorously pursue their efforts to respond effectively to the needs of countries most affected by the implementation of resolution 661. The Secretary-General will coordinate through ACC, within the framework of this assistance, the activities of organisations of the United Nations system.

"The members of the Security Council have taken note of the replies from a number of States (Austria, Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Luxembourg on behalf of the European Community and its 12 member States, Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, United Kingdom, United States and the USSR) which have furnished specific information on the assistance they have provided to various affected countries; they have also taken note of the replies from officials of international financial institutions, such as those received from the President of the World Bank and the Managing Director of IMF. They invite other Member States and

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Page 2

international financial institutions and organisations to inform the Secretary-General as soon as possible of the measures that they have taken on behalf of the States which have invoked Article 50.

"The members of the Security Council make a solemn appeal to States, international financial institutions and United Nations bodies to respond positively and speedily to the recommendations of the Security Council Committee, established under resolution 661, for assistance to countries which find themselves confronted with special economic problems arising from the carrying out of those measures imposed by resolution 661 and which have invoked Article 50.

"The members of the Security Council note that the procedure established under Article 50 of the Charter remains in effect."

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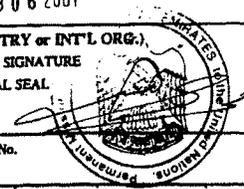
6 FEB 01 U.S. Mission #986/028

<u>COMM #</u>	<u>COUNTRY</u>	<u>Reason for Block or Hold</u>
730859	UAE	Hold - Contract does not make sense. Delivery, handling and after sales services account for 25 % of total contract price. Please explain why CD-ROM's require about \$30,000 for service and delivers. Where is the money going?

جوان 24 2001

JAN 24 2001

AUGUST 1997 REVISED FORM

SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 681 (1990) CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT									
NOTIFICATION OR REQUEST TO SHIP GOODS TO IRAQ									
(TO BE COMPLETED BY THE SECRETARIAT)									
COMM No.		REGISTRATION DATE			DEADLINE FOR OBJECTIONS				
730859		FEB 02 2001			FEB 06 2001				
(TO BE COMPLETED BY PROSPECTIVE EXPORTING COUNTRY or INT'L ORG.)									
1. MISSION OR INTERNATIONAL ORGANIZATION				CERTIFYING SIGNATURE AND OFFICIAL SEAL					
PERMANENT MISSION OF THE UNITED ARAB EMIRATES TO THE UNITED NATIONS									
2. DATE OF SUBMISSION				3. MISSION REFERENCE No.					
23 January 2001				68/2001					
4a. SECTOR/ITEM CODE (SCR 986)	5. GOODS TO BE SHIPPED (Name and/or description. Attach additional sheet if necessary)	6. QUANTITY IN NUMBERS	7. UNIT OF MEASUREMENT	8. VALUE PER ITEM	9. TOTAL VALUE	10. CURRENCY ISO CC			
08-7-00-0803	Worldwide Standard Index Plus (Window Version)	1		DM 7,834.00	DM 7,834.00	C			
2a)	API Complete Standards	1		DM 24,966.00	DM 24,966.00	/			
3a)	ASIM Complete Standards	1		DM 25,298.00	DM 25,298.00	D			
11. EXPORTER Name and Address					12. ORIGIN of GOODS (if different from applicant State)				
Texas Management Consultants P.O. Box 15054, Dubai, UAE					United Arab Emirates				
13. RECEIVING COMPANY / ORG Name and Address					14. SHIPPING ARRANGEMENTS:				
SOMO (State Oil Marketing Organization) Ministry of Oil - Baghdad Republic of Iraq					a) Border Point or Port of Entry into Iraq Um Qasr				
14 b) Means of Transportation					14 c) Other information (e.g. route, major ports, etc.)				
Sea and Truck									
<input checked="" type="checkbox"/> From the Iraq Account in accordance with SC resolution 986 (1995) (Relevant documentation including contract(s) must be attached)					15. METHOD OF PAYMENT L/C				
					<input type="checkbox"/> By other arrangement (Provide as many details as possible)				
16. ADDITIONAL INFORMATION: End-use and End-user (Attach additional sheet if necessary)									

IMPORTANT NOTICE

- Provide only one item per line in Box 5.
- Sector/Item Codes (Box 4a) are mandatory, and are found in the Annexes to the Distribution Plan of SCR 986.
- HS Tariff Codes (Box 4b), if used, must be 6 digit codes of the International Harmonized System of Tariff Nomenclature as determined by the Customs Co-Operation Council in Brussels, Belgium.
- Information entered must match shipping documents presented to customs officials.
- Incomplete, incorrect or illegible applications will be returned by the Committee's Secretariat for completion.

S/AC.25/2001/986/COMM. 730859

REPORT CONCERNING REQUEST TO SHIP SPARES PARTS FOR THE OIL INDUSTRY TO IRAQ IN ACCORDANCE WITH RESOLUTIONS 986 (1995), 1175 (1998) & 1284 (1999)

MISSION: UNITED ARAB EMIRATES

EXPORTER: TEXAS MANAGEMENT CONSULTANTS

RECEIVING COMPANY: STATE OIL MARKETING ORGANIZATION (SOMO)

GOODS: CD ROMS WITH ENGINEERING STANDARDS

.....

The application has been examined to determine its conformity with the provisions of paragraph 25 of Security Council resolution 1284 (1999) and all related procedures and guidelines. In addition, the application has been examined in accordance with paragraphs 32 and 33 of the Procedures of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait in the discharge of its responsibilities as requested by paragraph 12 of Security Council Resolution 986 (1995). Specifically, this application has been examined to establish whether the price and value is credible and whether the items to be exported are in compliance with the applicable list. Additionally, the application has been examined to determine whether all relevant details have been submitted with the application. Undertakings have also been sought to ensure the readiness of the independent inspection agents to observe the distribution of the goods and to establish the projected availability of funds in the Iraq account.

.....

SCR 1284 (1999): The application has been examined in accordance with paragraph 25 of Security Council resolution 1284 (1999) and the goods are not included in the list to which the export/import mechanism approved by Security Council resolution 1051 (1996) applies.

GOODS IN DISTRIBUTION PLAN: The goods are in the Distribution Plan list, which notes that they are related to the operations of Oil Projects Company at engineering offices as design office requirements. These goods are listed at sector item code 08-7-00-0803 (6/6) in the Distribution Plan list and are within the requested quantities.

PRICING: The item, price and value have been examined as per paragraph 33 of S/1996/636 and while the prices for the CD ROMs appears reasonable and acceptable, both the prices for the "delivery and handling services" and the "after sales services" are considered to be significantly higher than what is considered reasonable.

COMMENTS: In the contract, the Receiver indicates that these goods and services are required for the engineering offices to be used for engineering design. Clause 7 in the contract indicates that the supplier includes a warranty for defects arising from faulty design, material or workmanship for 12 months from the date of commissioning but with a maximum of 18 months from the date of receipt of the equipment on site. The Supplier should be aware that, in the event that there becomes a need to supply warranty replacement goods for those found to be deficient or broken, these goods must be approved by the Committee prior to shipment to Iraq. Therefore, the Supplier will be responsible for the presentation of an amended application in conformity with the procedures as published in the UN website "Information for the Suppliers. The application consists of 1 SET of Engineering Standards CD ROMS. The contract value includes charges for "Delivery and Handling Services" and "After Sales Technical Services". These services have been valued at 39,305 DEM (or 15% of the direct cost) and 30,132 DEM (10% of the total contract) respectively. The Committee should also be aware that the prices quoted in the contract are based on a 12-month subscription with free updates every 60 days.

.../2

Authentication procedures for services described "Delivery and Handling Services" and "After Sales Technical Services" follow:

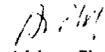
- The authentication of the services by the UN Independent Inspection Agents at the borders of Iraq (Cotecna) shall be based, in part, on the presentation of evidentiary documentation by the Supplier indicating that the services have been satisfactorily delivered and completed.
- In addition, the authentication shall also be based on site visitation(s) by the UN Independent Inspection Agents in Iraq (Saybolt) and their report to Cotecna that the services have been completed in a fully satisfactory manner.
- Payments will be made by the UN Treasury in accordance with established procedures in respect of the Supplier's presentation of the invoices.
- The Committee's approval shall be contingent upon the adherence on the part of the Supplier to all of the foregoing conditions.

**DATE OF CUSTOMS OFFICER'S REPORT:** 01/02/2000

**DATE SUBMITTED FOR CIRCULATION:** 02/02/2001

Reporting Officer: Sharen Socholotuk

Check Officer: Adrianus Phaff



18 Sept 01	U.S. Mission	#986/178
<b><u>COMM #</u></b>	<b><u>COUNTRY</u></b>	<b><u>Reason for Block or Hold</u></b>
930167	France	Change reason: goods are WMD dual use. Even if the supplier were able to address this objection, another objection is that the price charged seems excessive for the normal cost of these goods. Prices would have to be better justified.

JUL 12 2001

RVT

1/15

12/07/01							COMITE DU CONSEIL DE SECURITE CREE PAR LA RESOLUTION 661 CONCERNANT LA SITUATION ENTRE L'IRAQ ET LE KOWBIT NOTIFICATION OU DEMANDE D'EXPEDITION DE MARCHANDISES EN IRAQ							
(A REMPLIR PAR LE SECRETARIAT)							DATE LIMITE POUR OPPOSER DES OBJECTIONS							
N° COMM. 930167							DATE D'ENREGISTREMENT AUG 03 2001							
(A REMPLIR PAR LE PAYS OU L'ORG. INTER. SOUHAITANT EXPORTER EN IRAQ)							SIGNATURE DE LA PERSONNE QUALIFIEE ET CACHE OFFICIEL							
1. MISSION OU ORGANISATION INTERNATIONALE MISSION PERMANENTE DE LA FRANCE														
2. DATE DE SOUMISSION 10 juillet 2001							3. N° DE REFERENCE DE LA MISSION IK 39							
4a. Code des Marchandises		5. MARCHANDISES A EXPEDIER (Nom et/ou description, Jolies des feuilles supplémentaires si nécessaires)			6. QUANTITE en chiffres		7. UNITE DE MESURE		8. VALEUR PAR UNITE		9. VALEUR TOTALE		10. MONNAIE CODE NO	
4b. Code du Tarif S.H.		SEE THE ATTACHED LIST												
1a)														
1b)														
2a)														
1b)														
3a)														
1b)														
11. EXPORTATEUR VINCI TECHNOLOGIES 14 Rue Auguste Neveu BP 91 92503 Nanterre - Malmaison / France							12. PROVENANCE DES MARCHANDISES (si autre que l'Etat demandeur) FRANCE							
13. SOCIETE / ORG. DESTINATAIRE ECONOMIC & FINANCE DEPARTMENT (EFD) MINISTRY OF OIL BAGHDAD - REPUBLIC OF IRAQ							14. MODE D'EXPEDITION a) Poste frontière ou port d'entrée en Iraq TIRETL							
14b) MODE DE TRANSPORT Tiré-à-l'ordre par mer et/ou camion							14c) Autres informations (itinéraire, principaux ports etc..)							
<input checked="" type="checkbox"/> A partir du compte iraquien conformément à la résolution 986 (1995) (Tous les documents pertinents, y compris les contrats doivent être joints)							15. MODE DE PAIEMENT <input type="checkbox"/> Par d'autres moyens (donner toutes les précisions possibles)							
16. INFORMATIONS COMPLEMENTAIRES. Utilisation finale et utilisateur final (Joindre des feuilles supplémentaires si nécessaire) Utilisation prévue: Equipements de Laboratoire pour études pétrophysiques Utilisateur final: OIL EXPLORATION COMPANY (STATE COMPANY) Lieu d'utilisation: Laboratoire OEC - Bagdad														

AVIS IMPORTANT

- N'oubliez qu'un article par ligne à la case 4.
- Le code tarifaire S.H. (case 4) doit être rempli, le cas échéant, en moyen des positions à 6 chiffres du système harmonisé de désignation et de codification des marchandises du Conseil de Coopération. Document de Bruxelles, Belgique.
- Les renseignements fournis doivent être identiques à ceux figurant sur les documents d'expédition remis au pays de destination.
- Le secretariat du comité examine tout formulaire comportant des renseignements incomplets, incorrects ou illisibles à son expédition pour qu'il soit apposés les modifications nécessaires.

S/AC.25/2001/986/COMM. 930167

**REPORT CONCERNING REQUEST TO SHIP SPARES PARTS FOR THE OIL INDUSTRY TO IRAQ IN ACCORDANCE WITH RESOLUTIONS 986 (1995), 1175 (1998) & 1284 (1999)****MISSION:** FRANCE**EXPORTER:** VINCI TECHNOLOGIES**RECEIVING COMPANY:** ECONOMICS AND FINANCE DEPARTMENT (EFD)**GOODS:** DEAN STARK UNIT, SOXHLET EXTRACTOR AND SPARE PARTS

.....

The application has been examined to determine its conformity with the provisions of paragraph 18 and 25 of Security Council resolution 1284 (1999) and all related procedures and guidelines. In addition, the application has been examined in accordance with paragraphs 32 and 33 of the Procedures of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait in the discharge of its responsibilities as requested by paragraph 12 of Security Council Resolution 986 (1995). Specifically, this application has been examined to establish whether the price and value is credible and whether the items to be exported are in compliance with the applicable list and suitable for their intended use. Additionally, the application has been examined to determine whether all relevant details have been submitted with the application. Undertakings have also been sought to ensure the readiness of the independent inspection agents to observe the distribution of the goods and to establish the projected availability of funds in the Iraq account.

.....

**SCR 1284 (1999):** The application has been examined in accordance with paragraph 25 of Security Council resolution 1284 (1999) and the goods are not included in the list to which the export/import mechanism approved by Security Council resolution 1051 (1996) applies.

**DISTRIBUTION PLAN:** The goods are in the Distribution Plan and are related to the operations of the Oil Exploration Company in all areas for testing, inspection, studies, surveys and laboratories. The goods are listed at sector item code 08-9-05-06-0823 and 08-9-05-06-0824 in the Distribution Plan list and are within the requested quantities.

**PRICING:** The item price and value have been examined as per paragraph 33 of S/1996/636 and appear reasonable and acceptable.

**COMMENTS:** The application consists of 1 unit of Dean Stark with Spare Parts and 1 unit of Soxhlet Extractor, Glass and Plug Size (6-unit) with Spare Parts (this last item is in the notification list and would normally be subject to notification by the Secretariat) for a total amount of EUR 32,032.

In the contract, the Receiver indicates that these goods will be used for petrophysical studies.

Clause 7 in the contract indicates that the supplier includes a warranty for defects arising from faulty design, material or workmanship for 12 months from the date of commissioning but with a maximum of 18 months from the date of receipt of equipment on site.

**IMPORTANT INFORMATION FOR SUPPLIER:** The Supplier should be aware that, in the event that there becomes a need to supply warranty replacement goods for those found to be deficient or broken, these goods must be approved by the Committee prior to shipment to Iraq. Therefore, the Supplier will be responsible for the presentation of an amended application in conformity with the procedures as published in the UN website "Information for the Suppliers".

The supplier should also note that any compensatory payments related to the settlement of claims relevant to shortages, damages and any other discrepancies, or post award discounts, must be remitted to the United Nations Iraq account. Non-compliance with this requirement violates relevant Security Council resolutions as well as procedures of the Committee established by resolution 661 (1990).

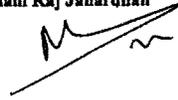
161

- 2 -

**DATE SUBMITTED FOR OIP APPROVAL:** 03/08/2001

**Reporting Officer:** Luis Esteban Yrazu

**Check Officer:** Palani Raj Janardhan

A handwritten signature in black ink, appearing to be 'Palani Raj Janardhan', written over a horizontal line.

MINISTRY OF INTERNATIONAL COOPERATION  
 CUSTOMS FORM NO. 3959

ITEM NO.	LA. SECTION/ITEM CODE (ICHS/985)	HS. HS TARIFF CODE	5. GOODS TO SHIPPED (NAME and/or description)	6. QUANTITY IN METERS	7. UNIT OF MEASUREMENT	8. VALUE PER ITEM	9. TOTAL VALUE	10. CURRENCY ISO CODE
1	0890506023		DEAN STARK UNIT	1	Unit	18,282.00	18,282.00	ZAR
	0890506023		2 YEARS SPARE PARTS INCLUDING:					
	0890506023		10 ml receiving tube	2	Piece		Included	ZAR
	0890506023		4 ml receiving tube	3	Piece		Included	ZAR
	0890506023		Saxthlet body	1	Piece		Included	ZAR
	0890506023		Condenser	1	Piece		Included	ZAR
	0890506023		Sample support screen	1	Piece		Included	ZAR
	0890506023		Pyrex thimble (1")	3	Piece		Included	ZAR
	0890506023		Pyrex thimble (1.5")	3	Piece		Included	ZAR
	0890506023		Tong	1	Piece		Included	ZAR
	0890506023		Moisture collection rods	1	Piece		Included	ZAR
	0890506023		SOXHLET EXTRACTOR	1	Unit	13,750.00	13,750.00	ZAR
	0890506023		2 YEARS SPARE PARTS INCLUDING:					
	0890506023		Siphon tube	1	Piece		Included	ZAR
	0890506023		Saxthlet body	1	Piece		Included	ZAR
	0890506023		Condenser	3	Piece		Included	ZAR
	0890506023		Sample support screen	3	Piece		Included	ZAR
	0890506023		Pyrex thimble (1")	3	Piece		Included	ZAR
	0890506023		Pyrex thimble (1.5")	3	Piece		Included	ZAR
	0890506023		Tong	1	Piece		Included	ZAR
	0890506023		Moisture collection rod	1	Piece		Included	ZAR
	0890506023		TOTAL CIF BAGHDAD VIA TREBIL				32,032.00	ZAR

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EFD REF. No. : OEC/09/22

**PURCHASE ORDER CONTRACT FOR THE SUPPLY**  
**OF MATERIALS, EQUIPMENT & SPARE PARTS**  
**FOR PRODUCTION MAINTENANCE & ENHANCEMENT**

FIRST PARTY (CLIENT) : (EFD) ECONOMICS & FINANCE DEPT.  
 MINISTRY OF OIL,  
 BAGHDAD, REPUBLIC OF IRAQ

SECOND PARTY (SUPPLIER) : VINCI TECHNOLOGIES / FRANCE

END USER : OIL EXPLORATION COMPANY (STATE COMPANY)

ACCORDING TO THE "MEMORANDUM OF UNDERSTANDING" BETWEEN THE GOVERNMENT OF THE REPUBLIC OF IRAQ AND THE SECRETARIAT OF THE UNITED - NATIONS ON 20<sup>TH</sup> MAY 1996 ON THE IMPLEMENTATION OF SECURITY COUNCIL RESOLUTION 906 (1995) AS WELL AS UNSC RESOLUTIONS 1153 (1998), 1175 (1998), 1281 (1999), 1362 AND 1330 (2000), THE SUPPLIER IS HEREBY ASSIGNED BY THE CLIENT TO SUPPLY THE MATERIALS FOR THE FOLLOWING:

CODE NO. 08-9-05-06-0823 & 08-9-05-06-0824

ITEM DESCRIPTION : - DEAN STARK UNIT WITH SPARE PARTS  
 - SOXHLET EXTRACTOR, GLASS, PLUG SIZE (6-UNIT)  
 WITH SPARE PARTS.

LOCATION : OEC LABS. BAGHDAD

PURPOSE : LABORATORY EQUIPMENT FOR PETROPHYSICAL STUDIES.

BASED ON THE ATTACHED OFFER.

BY :- VINCI TECHNOLOGIES / FRANCE

NO :- 8190 BREV1

DATE : 07 / 03 / 2001

AND PURCHASE ORDER NO. (OEC) / 09 / 22

DATE : / / 2001

EXPORTING COUNTRY : FRANCE

COUNTRY OF ORIGIN : FRANCE

PORT OF SHIPMENT : LE HAVRE OR MARSEILLE (FRANCE)

(1-4)

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THE TWO PARTIES AGREE AS FOLLOWS :

**1-MATERIALS** : TO COMPLY WITH SPECIAL QUALITY STANDARDS STIPULATED IN THE ATTACHED OFFER . IF NO SPECIAL STANDARDS ARE SPECIFIED, RECOGNIZED INTERNATIONAL QUALITY STANDARDS APPLY.

**2-PACKING** : PACKAGES CONTAINING MATERIALS SHALL BE MARKED WITH THE APPROPRIATE ITEM NUMBERS INDICATED IN THE TENDER PROFORMA INVOICE . THIS PACKING MUST BE ACCORDING TO THE NATURE OF THE GOODS IN CONFORMITY WITH INTERNATIONALLY ACCEPTED FORMS AND STANDARDS.

**3- TOTAL VALUE ( CIP BAGHDAD ) : EURO (32032)**  
**EURO THIRTY TWO THOUSAND & THIRTY TWO ONLY .**

**4- PAYMENT** : L/C COVERED BY U.C.P. 1993 REVISION OF I.C.C. PUBLICATION NO. 500 OPENED BY BANQUE NATIONAL DE PARIS S.A. NEW-YORK BRANCH (IRAQ ACCOUNT) ACCORDING TO THE REQUEST OF THE CENTRAL BANK OF IRAQ FOR THE BENEFIT OF THE SUPPLIER PAYABLE FROM THE CASH COLLATERAL REQUIRED UNDER L/C AMOUNT , AND ITS FEES PURSUANT TO THE (M.O.U.) AGREEMENT ACCORDING TO THE SUBMISSION OF THE FOLLOWING DOCUMENTATION :

- A. THE CUSTOMARY COMMERCIAL DOCUMENTATION AS LISTED IN PARA 13 BELOW.
- B. A COPY OF THE 661 COMMITTEE'S LETTERS OR THE PROCEDURES PREVAILING ACCORDING TO UN. SCR 1153 (1998) , UN. SCR 1175 (1998) , AND UN.SCR 1281 (1999) , STATING THAT THE SUPPLIER IS ELIGIBLE FOR PAYMENT FROM THE UNITED NATIONS IRAQ ACCOUNT.
- C. A CONFIRMATION BY THE SECRETARY GENERAL'S DESIGNEE OF THE ARRIVAL OF THE EXPORTED MATERIALS IN IRAQ.
- D. CONFIRMATION OF FULL COMPLIANCE TO THE TECHNICAL SPECIFICATIONS, BY 3RD PARTY INTERNATIONAL INSPECTION (SURVEYOR).
- E. ANY REQUIRED GOVERNMENTAL LICENSE OR EQUIVALENT AUTHORIZING THE EXPORT PROVIDED THAT :

E1. THE BANK SHALL NOT MAKE ANY PAYMENT UNDER THE L/C UNLESS THE AUTHORIZED UNITED NATIONS OFFICIALS DESIGNATED AND HAVING APPROPRIATED AUTHORITY APPROVE SUCH PAYMENT.

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OEC /09/22

E2. ALL REQUIRED DOCUMENTS LISTED ABOVE STIPULATED IN THE L/C ARE PRESENTED AND IN ORDER IN ADDITION TO THAT TERMS AND CONDITIONS OF L/C ARE COMPLIED WITH.

E3. PARTIAL PAYMENTS CAN BE MADE CORRESPONDING TO ACTUAL DELIVERIES TO IRAQ.

E4. INSTALLMENTS DOCUMENTARY DISCREPANCIES CAN BE WAIVED ONLY BY SECRETARY GENERAL.

E5. AMOUNTS RELATED TO THE SETTLEMENT OF CLAIMS RELEVANT TO SHORTAGES , DAMAGES AND ANY OTHER DISCREPANCIES FOR EACH SHIPMENT (ACCORDING TO THE CONFIRMATION OF THE SECRETARY GENERALS DESIGNEE ) MUST BE REMITTED TO IRAQ ACCOUNT.

**5. DELIVERY PERIOD** : SHALL BE NOT LATER THAN ( 8 ) MONTHS FROM THE DATE OF OPENING OF THE L/C ; OTHERWISE , THE SUPPLIER SHOULD PAY TO THE CLIENT A PENALTY EQUAL TO (0.1%) OF THE VALUE OF THE MATERIALS DELAYED FOR EACH DAY OF DELAY.THE TOTAL AMOUNT OF THE PENALTY, HOWEVER, SHALL NOT EXCEED (5%) OF THE VALUE OF THE MATERIALS DELAYED.THIS PENALTY WILL BE DEDUCTED FROM THE INVOICE WHEN SUBMITTED WITH DOCUMENTS ; HOWEVER, AS THE MATERIALS ARE MOST URGENTLY REQUIRED, PARTIAL DELIVERY WILL BE ACCEPTED .DELAYS DUE TO CAUSES BEYOND CONTROL (FORCE MAJEURE) WILL NOT BE LIABLE TO PENALTIES PROVIDED THAT SUCH CAUSES HAD BEEN IMMEDIATELY NOTIFIED BY FAX, TELEX, OR REGISTERED MAIL AND APPROVED BY CLIENT.

**6. TRANSPORTATION BY** : ( AND TO BE STATED IN THE L/C ) : **BY SHIP & TRUCK**

**7. WARRANTY** :THE SUPPLIER WARRANTS THE MATERIALS UNDER THIS PURCHASE ORDER CONTRACT FOR DEFECTS ARISING FROM FAULTY DESIGN,MATERIAL OR WORKMANSHIP FOR ( 12 ) MONTHS FROM THE DATE OF COMMISSIONING BUT WITH A MAXIMUM OF ( 18 ) MONTHS FROM THE DATE OF RECEIPT OF EQUIPMENT ON SITE.

**8. TAXES** : THE CLIENT UNDERTAKES TO PAY ALL TAXES AND CUSTOMS DUTIES ARISING IN THE COUNTRY OF CLIENT.

9. THE L/C SHOULD ALLOW PARTIAL AND TRANSSHIPMENT .

10. THIS CONTRACT WILL BE EFFECTIVE FROM THE DATE OF THE NOTIFICATION OF THE L/C TO THE SUPPLIER BUT WILL NOT BE OPERATIVE IF THE L/C CANNOT BE OPENED WITHIN ( 90 DAYS) FROM THE DATE OF SIGNATURE OF THIS CONTRACT.

**11.DESTINATION** : ( SHOULD BE SO STATED IN THE L/C ) **BAGHDAD / IRAQ**

**12. ENTRY POINT TO IRAQ:** **TREBIL**

*J. H. ...*

6 OEC/09/22

**13. DOCUMENTS REQUIRED FOR EACH CONSIGNMENT :**

- 4 (FOUR) COPIES OF INVOICES.
- 1 (ONE) COPY OF NON-NEGOTIABLE BILL OF LADING.
- 4(FOUR) COPIES OF PACKING LISTS.

14. THE SUPPLIER IS TO SUBMIT TO THE CLIENT A TIME SCHEDULE DETAILING THE NUMBER OF SHIPMENTS AND THEIR EXPECTED DATE OF CROSSING THE IRAQI BORDER.

15. THIS PURCHASE ORDER IS SUBJECT TO THE APPROVAL PROCEDURES PREVAILING ACCORDING TO UNSCR 1153 (1998), UNSCR 1175 (1998), UNSCR 1281 (1999) & UNSCR 1302 (2000).

16. THIS CONTRACT SHALL BE REGISTERED WITH THE UN WITHIN ( 21) DAYS FROM THE SIGNATURE DATE , OTHERWISE IT IS LIABLE TO REVIEW WHICH MAY LEAD TO CANCELLATION .

**DONE AND SIGNED IN BAGHDAD ON 8/4 /2001**

DR. ABDUL ILAH M. MATLOOBI  
FIRST PARTY (CLIENT)  
(EFD)



ECONOMICS & FINANCE DEPARTMENT (EFD)  
MINISTRY OF OIL / BAGHDAD / IRAQ

FAX : 009641 8869432

TELEX : 212216 MI OIL IK

**END USER**

DR. IBRAHIM A. K. RASHID  
DIRECTOR GENERAL  
OIL EXPLORATION COMPANY ( STATE COMPANY )  
BAGHDAD - IRAQ

*S. Rashid*

TELEX: 212204 INOC IK,  
212208 INOC IK

TEL : 009641 7729829  
009641 8213601  
009641 8854075  
009641 8854027

FAX : (964-1) 8220899

VINCI TECHNOLOGIES  
14, Rue Auguste Herou - 91156  
92603 RUEIL MALMAISON  
Tel : 41.39.00.80 - Fax : 47.02.06.83

SECOND PARTY(SUPPLIER)  
VINCI TECHNOLOGIES

COUNTRY : FRANCE  
FAX : +33 1 47 08 3899  
TEL : +33 1 41 39 0020

*S. Legend*  
Vice President

*7/1/01*

REPUBLIC OF IRAQ  
OIL EXPLORATION COMPANY ( STATE COMPANY )  
BAGHDAD , IRAQ  
TELEX : 212204 - 212208 INOC IK  
FAX : (964-1) 8220899

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TO : VINCI TECHNOLOGIES / FRANC

FAX : + 33 1 47 08 3899

TEL : + 33 1 41 39 0020

PURCHASE ORDER NO. ( OEC ) / 09 / 22

DATED : / / 2000

ATTACHMENT OF CONTRACT NO. OEC / 09 / 22

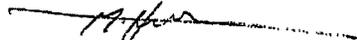
DATED : / / 2000

AS PER YOUR OFFER NO.- 8190 BREV1

DATED : 07 / 03 / 2001

CODE NO:- 08 - 9 - 05 - 06 - 0823 &amp; 08 - 9 - 05 - 06 - 0824

ITEMS	DESCRIPTION	UNIT	QTY.	UNIT PRICE EURO	TOTAL PRICE EURO
1.	DEAN STARK UNIT WITH 2 YEARS SPARE PARTS	SET	1	18282	18282
2.	SOXHLET EXTRACTOR , GLASS , PLUG SIZE ( 6-UNIT ) WITH 2 YEARS SPARE PARTS .	SET	1	13750	13750
TOTAL PRICE CIP BAGHDAD EURO THIRTY TWO THOUSAND & THIRTY TWO ONLY .			TOTAL		32032

NOTE : THE GOODS SHOULD BE BRAND NEW .


MUKDAD H. MAHDI  
MATERIALS & PURCHASING MANAGER



DR. IBRAHIM A.K. RASHID  
DIRECTOR GENERAL

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**LABORATORY EQUIPMENTS FOR  
EXPLORATION & PRODUCTION**

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**COMMERCIAL PROPOSAL  
N° 8190b REV. 1**

**REQUEST N°: MOU9 / items 22, 23,**

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**MINISTRY OF OIL  
OIL EXPLORATION COMPANY**

**IRAQ**

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**VINCI TECHNOLOGIES**

*7/3/01*

**1. DEAN STARK APPARATUS : MOU 9 / 22**

Lot	Description	Unit price EURO	Qty	Total price EURO
1.01 1.1	<p><b>DEAN STARK UNIT</b></p> <p>The distillation extraction (Dean stark) method of determining fluid saturation depends upon the distillation of the water fraction, and the solvent extraction of the oil fraction from the sample. The sample is weighed and the water fraction is vaporized by boiling solvent. The water is condensed and collected in a calibrated receiver. Vaporized solvent also condenses, soaks the sample, and extracts the oil. The sample is oven dried and weighed. The oil content is determined by gravimetric difference.</p> <p>The apparatus consists of a distillation/extraction glassware unit and a six place combination heating mantle with thermostatic controller. The glassware for six samples is composed of 6 boiling flasks, 6 soxhlet bodies with sample support screen, 6 sample thimbles (1" or 1.5"), 6 volumetrically graduated water receiving tubes, 6 condensers and 6 desiccant drying tubes. A flexible plastic tubing is also used to connect the six dean stark condensers to the water cooling unit. All these devices are mounted on a mounting rack</p> <p><u>Scope of supply:</u> The system comes complete the following items.</p> <ul style="list-style-type: none"> <li>➤ Six Glassware units for six samples composed of 6 boiling flasks, 6 soxhlet bodies, 6 Pyrex thimbles for 1" sample, 6 Pyrex thimbles for 1.5" sample, 6 x 4 ml receiving tubes, 6 x 10 ml receiving tubes, 6 condensers and 6 drying tubes</li> <li>➤ Six place combination heating mantle with thermostatic controller</li> <li>➤ Flexible plastic tubing for water cooling</li> <li>➤ Multi heater mounting rack</li> <li>➤ Documentation</li> </ul>	9,460	1 set	9,460

	Specifications			
	Core diameter: 1 and 1.5" Core length: 3" Number of sample: 6 Receiving tube: 4 & 10 ml, 0.1 ml graduation Heating temperature: 150°C Water cooling system: 0.5 to 3 liters per minute, 18°C Power supply: 220 VAC 50 / 60 Hz - 1 phase			
Lot 1.2	CELLULOSE THIMBLE for unconsolidated core samples up to 1.5" diameter.	242	6 sets	1.452
Lot 1.3	SPARE PARTS AND CONSUMABLE ITEMS for two years operation including: <ul style="list-style-type: none"> <li>• 3 ea 10 ml receiving tube</li> <li>• 3 ea 4 ml receiving tube</li> <li>• 1 ea soxhlet body</li> <li>• 1 ea condenser</li> <li>• 1 sample support screen</li> <li>• 3 ea pyrex thimble (1")</li> <li>• 3 ea pyrex thimble (1.5")</li> <li>• 1 set of tongs</li> <li>• 1 set of moisture collection rods</li> </ul>	4.070	1 set	4.070

<b>TOTAL VALUE EX WORKS RUEIL In Euro</b>	<b>14,982</b>
<b>CIP Charges In Euro</b>	<b>3,300</b>
<b>TOTAL VALUE CIP BAGIIDAD In Euro</b>	<b>18,282</b>

**2. SOXHLET APPARATUS : MOU 9 / 23**

Lot	Description	Unit price EURO	Qty	Total price EURO
Lot 2.1	<p><b>SOXHLET EXTRACTOR</b></p> <p>The soxhlet distillation extraction method is used to dissolve and extract oil and brine from rock core sample by using solvents. The cleanliness of the sample is determined from the color of the solvent that siphons periodically from the extractor which must be clear.</p> <p>The samples are placed in the extractor and cleaned by refluxing solvent. The solvent is heated and vaporized in boiling flasks and cooled at the top by condenser. The cooled solvent liquid falls into the sample chamber. The cleaned solvent fills the chamber and soaks the core sample. When the chamber is full, the dirty solvent which was used to clean the core siphons back into the boiling flask and is redistilled again.</p> <p><u>Specifications</u>            Core diameter: 1" and 1.5" for plug size core            Core length: 3" for plug size core            Heating temperature: 150°C            Water cooling system: 0.5 to 3 liters per minute, 18°C Power supply: 220 VAC 50 / 60 Hz - 1 phase</p> <p>The apparatus consists of a distillation/extraction glassware unit and a six place combination heating mantle with thermostatic controller. The glassware for six samples is composed of 6 boiling flasks, 6 soxhlet bodies with sample support screen, 6 sample thimbles (1" or 1.5"), 6 siphon tubes, 6 condensers and 6 desiccant drying tubes. A flexible plastic tubing is also used to connect the six condensers to the water cooling unit. All these devices are mounted on a mounting rack.</p>	8,470	1 SET	8,470

	<p><u>Scope of supply:</u></p> <p>The system comes complete the following items.</p> <ul style="list-style-type: none"> <li>➤ Six Glassware units for six samples composed of 6 boiling flasks, 6 soxhlet bodies, 6 Pyrex thimbles for 1" sample, 6 Pyrex thimbles for 1.5" sample, 6 siphon tubes, 6 condensers and 6 drying tubes</li> <li>➤ Six place combination heating mantle with thermostatic controller</li> <li>➤ Flexible plastic tubing for water cooling</li> <li>➤ Multi heater mounting rack</li> <li>➤ Documentation</li> </ul>			
Lot 2.2	<p><b>SPARE PARTS AND CONSUMABLE ITEMS</b> for two years operation including:</p> <ul style="list-style-type: none"> <li>• 1 ea siphon tube</li> <li>• 1 ea soxhlet body</li> <li>• 3 ea condenser</li> <li>• 3 sample support screen</li> <li>• 3 ea pyrex thimble (1")</li> <li>• 3 ea pyrex thimble (1.5")</li> <li>• 1 set of tongs</li> <li>• 1 set of moisture collection rods</li> </ul>	3,080	1 set	3,080

<i>TOTAL VALUE OF EQUIPMENT EX WORKS RUEIL in Euro</i>	<i>11,550</i>
<i>CIP Charges in Euro</i>	<i>2,200</i>
<b>TOTAL VALUE OF EQUIPMENT CIP BAGHDAD in Euro</b>	<b>13,750</b>

17/4/01

**2.1. VALIDITY OF THE OFFER**

The present conditions are valid until 30/6/2001

**2.2. PAYMENT CONDITIONS**

- 100% by irrevocable documentary credit confirmed by a first class French bank, opened in favor of VINCI Technologies, established with a seven (7) months validity, payable against remittance of our invoice and shipping documents.

The documentary credit shall be confirmed and notified to VINCI Technologies by:

CREDIT LYONNAIS	Télex: 266364F
Service Crédits Documentaires	SWIFT: CRLY FRPP
90 Quai de Bercy	
75613 Paris Cedex 12 - France	

Each party will bear the bank expenses in its own country.

**2.3. DELIVERY TIME**

The proposed equipment can be delivered within 8 months from date of L/C.

**2.4. EXPORTING COUNTRY**

FRANCE

**2.5. ORIGIN OF GOODS**

FRANCE

**2.6. PORT OF SHIPMENT**

LE HAVRE OR MARSEILLE

VINCI TECHNOLOGIES  
84, rue Auguste Naveu - B.P. 94  
92503 RUEIL MALMAISON  
TEL : 41.98.00.20 - FAX : 47.00.30.99

S. Legrand  
Vice President

June 18, 2001  
 Proforma invoice n° 164 PF/01  
 End User :  
 OIL EXPLORATION COMPANY (STATE COMPANY)



AN  
 ORIGINAL

ECONOMIC & FINANCE DEPARTMENT (EPD)  
 MINISTRY OF OIL  
 BAGHDAD - REPUBLIC OF IRAQ

According to the "Memorandum of understanding" between the Government of the Republic of Iraq and the Secretariat of United Nations on 20<sup>th</sup> May 1996 on the implementation of security council resolution 986 (1995) as well as UNSC resolution 1153 (1998), 1175 (1998), 1281 (1999), 1302 and 1330 (2000).  
 Code n° : 08-9-05-06-0823 & 08-9-05-06-0824

Item description : - Dean stark unit with spare parts  
 - Soxhlet extractor; glass, plug size (6-unit) with spare parts

Location : OEC Labs, Baghdad

Purpose : Laboratory equipment for petrophysical studies

Our offer 8190 B rev1 dated March 7, 2001

Purchase order n° OEC/09/22 dated April 28, 2001

Exporting country : FRANCE

Country of origin : FRANCE

Item	Qty	Unit of measurement	Designation	Unit price Euros	Total price Euros
1	1	Unit	DEAN STARK UNIT	18,282.00	18,282.00
			2 YEARS SPARE PARTS INCLUDING :		Include
	3	Piece	10 ml receiving tube		Include
	3	Piece	4 ml receiving tube		Include
	1	Piece	Soxhlet body		Include
	1	Piece	Condenser		Include
	1	Piece	Sample support screen		Include
	3	Piece	Pyrex thimble (1")		Include
	3	Piece	Pyrex thimble (1.5")		Include
	1	Piece	Tong		Include
	1	Piece	Moisture collection rods		Include
2	1	Unit	SOXHLET EXTRACTOR	13,750.00	13,750.00
			2 YEARS SPARE PARTS INCLUDING :		Include
	1	Piece	Siphon tube		Include
	1	Piece	Soxhlet body		Include
	3	Piece	Condenser		Include
	3	Piece	Sample support screen		Include
	3	Piece	Pyrex thimble (1")		Include
	3	Piece	Pyrex thimble (1.5")		Include
	1	Piece	Tong		Include
	1	Piece	Moisture collection rod		Include

TOTAL AMOUNT CIF BAGHDAD VIA TREBIL EUROS 32,032.00  
 (THIRTY TWO THOUSAND & THIRTY TWO EUROS)

S. LEGRAND  
 Vice President

VINCI TECHNOLOGIES  
 14, Rue Auguste Nveau - B.P. 91  
 92503 RUEIL MALMAISON  
 Tél. : 41.39.00.20 - Fax : 47.08.38.99

## CORE PREPARATION TOOLS *15/15*

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### DEAN STARK

Method of determining fluid saturation upon the distillation of the water fraction, and the solvent extraction of the oil fraction from the sample.

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### SOXHLET

Used to dissolve and extract oil and brine from rock core sample by using solvents

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**Fil. dr. Paul Conlon**  
Wirtschaftsmediator (IHK)  
Business Mediator

Conlon · Adelsbergstraße 11 b · D-81247 München

Hon Christopher Shays, Chairman  
Subcommittee on National Security, Emerging Threats,  
and International Relations  
Committee on Government Reform  
B-372 Rayburn House Office Building  
Washington, DC 20515, USA

18 April 2005

re: Hearing on 12 April 2005

Dear Representative Shays,

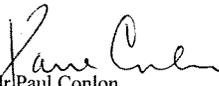
I want to thank you and the members of the Subcommittee for your kind invitation to appear at the hearing held on 12 April 2005. It was a great honour for me to be called to share my expertise in such a serious and professional attempt to understand very complex and controversial events and developments in the recent past.

Regarding Jordan's imports of oil from Iraq, I would like to add that the Subcommittee's office has a copy of an article I wrote on this subject ("How Legal Are Jordan's Oil Imports from Iraq?" in the Florida State University Journal of Transnational Law & Policy, vol 6, pp 109-124, 1996) from which a somewhat fuller picture emerges than what could be explained briefly at the hearing. For one thing, the Iraq Sanctions Committee had no authority to do what it did. In addition, it set certain conditions for Jordan which the latter did not comply with.

Inter alia, the action was thought of as temporary until Jordan could find alternative supplies of oil. But Jordan failed to seek oil supplies elsewhere for the next twelve years for the simple reason that Iraq set the price of the oil so low that it could not be had cheaper anywhere else. This was not the intention of the member States of the Committee that in 1991 agreed to acquiesce in Jordan's imports.

With best wishes for the continued progress of your investigations, I remain

Sincerely yours,

  
Fil. dr. Paul Conlon

FLORIDA STATE UNIVERSITY

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VOLUME 6

NUMBER 1

FALL 1996

## HOW LEGAL ARE JORDAN'S OIL IMPORTS FROM IRAQ?

PAUL CONLON\*

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### I. INTRODUCTION

In 1990, Iraq invaded Kuwait, and the Gulf War began. The United Nations ("U.N.") responded to Iraq's invasion by initiating sanctions against Iraq, including the prohibition on the export of oil from Iraq. Later in 1990, Jordan applied to the U.N. Security Council Committee Established by Resolution 661 (1990) Concerning the Situation Between Iraq and Kuwait ("Committee") for an exemption

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\* Senior Associate, Procedural Aspects of International Law Institute, Washington, D.C.; Fil. Dr., University of Lund, Sweden. The opinions expressed in this article are those of the author and do not necessarily reflect the views of the Institute. From 1990 to 1995, the author worked for the United Nations Security Council Committee Established by Resolution 661 (1990) Concerning the Situation Between Iraq and Kuwait ("Committee"/"Comm. Established by Res. 661") and is currently writing a history of the Committee.

The original draft of this article was published in MIDDLE E. ECON. SURV., 26 Feb., 1996, at D1. The *Middle East Economic Survey* is a weekly review of oil, finance and banking, and political developments, published in Nicosia, Cyprus.

from the provision which prohibited the purchase of oil from Iraq. The resulting legal maneuvers used by the Committee which allow Jordan to continue buying oil from Iraq should cause great concern for international lawyers. Some causes for concern include: (i) the secrecy of the "agreement" between the Committee and Jordan; (ii) problems with the "agreement" itself; and (iii) whether the Committee has the power to make such agreements.

This article discusses the various issues involved in the Committee's decision to "take note" of Jordan's request for an exemption to buy oil from Iraq. This article also addresses the Committee generally, the United States' position on this topic, and other related issues.

## II. THE SANCTIONS COMMITTEE'S DECISION AND ITS AFTERMATH

### A. *Jordan's Oil Problems*

Traditionally, Jordan has satisfied most of its oil needs by importing oil from Iraq, which represented eighty-four percent of Jordan's oil imports in 1989.<sup>1</sup> Iraq was already in debt to Jordan; thus trade was already on a cash-less basis. The arrangements also were sweetened by concessionary pricing agreements. Then the Gulf War crisis broke out, beginning with Iraq's invasion of Kuwait in August 1990. The U.N. responded by immediately imposing sanctions on Iraq, including sanctions on Iraq's oil exports. Jordan had no substitution options in the short term for its oil, and its nearest substitute supplier, Saudi Arabia, simultaneously cut off its remaining supplies for reasons unrelated to the Gulf War. Therefore, Jordan continued to import oil from Iraq after the imposition of sanctions on August 6, 1990, that rendered such imports illegal.<sup>2</sup>

### B. *Jordan's Request for Relief Before the Sanctions Committee*

Faced with additional enormous economic and logistical difficulties, in September 1990, Jordan applied to the Committee for relief under Article 50 of the U.N. Charter.<sup>3</sup> Jordan asked to be formally

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1. Jordanian trade data in this article was taken from the U.N. database of world trade (COMTRADE), from which its annual statistical yearbooks are generated. All data therein on Jordanian trade is ultimately derived from official Jordanian government sources.

2. See S.C. Res. 661, U.N. SCOR, 45th Sess., 2933d mtg. at 19-20, U.N. Doc. S/INF.46 (1990).

3. Article 50 of the U.N. Charter provides:

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

allowed to continue importing oil under certain conditions (*inter alia*, cash-less debt amortization in lieu of payment) and submitted relevant data on its oil import and credit extension situation.<sup>4</sup> Members of the Committee were in general agreement<sup>5</sup> that Jordan faced unique difficulties and needed to be granted a greater degree of relief than other Article 50 applicants. An exemption for the oil imports was seriously considered. Jordan's application was separated from the others and processed more expeditiously and generously; however, ultimately the Committee's recommendations<sup>6</sup> ignored the issue.

Jordan continued to import oil from Iraq, and this fact was widely disseminated in press reports as well as in public and classified U.N. documents.<sup>7</sup> In the general chaos accompanying Iraq's military collapse in March 1991, deliveries were temporarily brought to a halt. These events indicate that only in a limited sense can Jordan be considered to have stopped importing oil.

One can only speculate whether the continuing imports were covered by a tacit agreement with the United States, United Kingdom, and France—the so-called "P-3," power-wielding permanent Western members of the Security Council. The Committee made no such agreement, and its initial response to Jordan's request for an oil import exemption was not as charitable as its later one.<sup>8</sup> Additionally, hints dropped during the discussion of India's similar request for an exemption<sup>9</sup> suggest that the P-3 still considered Jordanian

4. See Letter Dated 20 August 1990 from the Permanent Representative of Jordan Addressed to the President of the Security Council, U.N. Doc. S/21620 (1990) [hereinafter *Letter, Aug. 20, 1990*]; see also Letter Dated 27 August 1990 from the Permanent Representative of Jordan Addressed to the Chairman of the Security Council Comm. Established by Res. 661, Annex, U.N. Doc. S/21786 (1990) [hereinafter *Letter, Aug. 27, 1990*]. Prior to its issuance as a public document, *Letter, Aug. 27, 1990*, was referenced as U.N. Doc. S/AC.25/1990/CRP.3 (1990) (restricted) in the summary records of the Committee's meetings. All restricted documents cited here are on file with the author. Documents cited as "internal secretariat documents" do not have document symbols and normally refer to informal memoranda or reports which are generated by the secretariat and not distributed to committee members.

5. See *Letter, Aug. 27, 1990, supra* note 4, pmb., 2, 3.

6. See *id.*

7. See, e.g., *Report of Mission to Jordan Undertaken by Mr. Jean Ripert*, at 4, U.N. Doc. S/21938 [hereinafter *Ripert Report*]; *Report of Mission to Jordan by Mr. James C. Ngobi*, at 8, 13, U.N. Doc. S/AC.25/1990/COMM.167 (restricted).

8. See U.N. SCOR, Comm. Established by Res. 661, 4th mtg. at 5-8, Agenda Item *Consultations Under Article 50*, U.N. Doc. S/AC.25/SR.4 (remarks by Mr. Goshu of Ethiopia, Mr. Sery of Côte d'Ivoire, and Mr. Lukabu Khabouji N'Zaji of Zaire) (restricted); see also 2 KUWAIT CRISIS: SANCTIONS AND THE ECONOMIC CONSEQUENCES 787-90 (D. L. Bethlehem ed., 1991) [hereinafter *KUWAIT CRISIS*].

9. See U.N. SCOR, Comm. Established by Res. 661, 24th mtg. at 7, U.N. Doc. S/AC.25/SR.24 (1991) (remarks by Ambassador Sir David Hannay of the United Kingdom in response to statement of Ambassador Gharekhan of India) (restricted) [hereinafter *Hannay's Remarks*]; see also 2 KUWAIT CRISIS, *supra* note 8, at 974.

imports to be a sanctions violation. The threat by the Security Council to apply sanctions against states evading sanctions,<sup>10</sup> unique in its resolutions, was directed precisely at Jordan.

India joined the Security Council in January 1991 and requested a similar exemption, citing the reported existence of such an arrangement without specifically naming Jordan. India's request was rebuffed, and in a formal opinion of considerable precision and clarity obtained from the U.N. Legal Counsel,<sup>11</sup> the Committee concluded that an exemption would be illegal. The Committee rejected India's argument that the debts in question predated the imposition of sanctions. The Committee also cited the case of the rebuffed Iraqi oil donation to the U.N. Relief and Works Agency for Palestinian Refugees in the Near East.<sup>12</sup>

*C. The "Agreement" Between Jordan and the Sanctions Committee –  
"Taking Note"*

In May 1991, the P-3 and Jordan arrived at an agreement which was formalized by an exchange of communications between Jordan and the Committee. Because Jordan approached the Committee after the details of the agreement had been worked out, the ensuing correspondence did not contain all the of agreement's details and provisions. One can assume that the P-3 discussed this agreement with most of the other Committee members prior to reaching the agreement.

It is not necessary to go into detail about the political motives of the various active and passive participants in these negotiations because the only issues are the legal basis and consequences of this diplomacy. In general, all of the members of the Committee had some valid grounds for acting as they did. In addition, the general feeling at the time was that the long-term provisions of Resolution 687 would be formally in place and operating by 1992. The problem was perceived as needing only a temporary "stopgap" solution to last until the New Year of 1992. One should not discount the possibility that the background agreement went beyond the oil import issue, thus making more sense than what it appears to on its face.

10. See S.C. Res. 670, U.N. SCOR, 45th Sess., 2943d mtg. at 25, U.N. Doc. S/INF.46 (1990).

11. See U.N. SCOR, Comm. Established by Res. 661, 25th mtg. at 2-4, Agenda Item *Review of the Implementation of Security Council Resolution 661 (1990)*, U.N. Doc. S/AC.25/SR.25 (1991) (statement by Undersecretary-General Fleischhauer) (restricted); see also 2 KUWAIT CRISIS, *supra* note 8, at 977-78.

12. See U.N. SCOR, Comm. Established by Res. 661, 22d mtg. at 7, 8, Agenda Item *Other Matters (S/AC.25/1990/COMM.165)*, U.N. Doc. S/AC.25/SR.22 (1991) (statement of the Chairwoman, Ambassador Rasi of Finland) (restricted); see also 2 KUWAIT CRISIS, *supra* note 8, at 968.

Nor should one underestimate the extent of amateurism and "ad-hockery" in such times and circumstances. The *form* of the deal's legal quality is disappointing, suggesting amateur handwork, not super-Machiavellian strategizing in the agreement.

Jordan sent a letter to the Committee on May 16, 1991, informing the Committee that Jordan had "resumed" importing oil from Iraq in limited quantities, but only for domestic needs. Jordan claimed that it was paying for the oil by writing down each debt. The letter further stated that Jordan would report the quantities of oil each month to the Committee. Jordan explained that it was motivated by "difficulties in securing adequate supplies from other sources."<sup>13</sup>

This letter was put on the agenda of the next meeting, which was only two working days away. Chairman of the Committee<sup>14</sup> introduced the matter with introductory background remarks sketching Jordan's previous Article 50 request and citing the relevant documents.<sup>15</sup> The chairman's further remarks drew heavily from a draft response which had been prepared in advance. "Given the unique position of Jordan with respect to Iraq," he "suggested" that the Committee "take note of Jordan's resumption" of oil imports, "pending any arrangements that could be made to obtain supplies from other sources," and "on the understanding that such Iraqi oil exports were subject to the provisions" of Resolution 692.<sup>16</sup>

Resolution 692,<sup>17</sup> which established the U.N. Compensation Fund and the Compensation Commission, had only been adopted the previous day. There was no discussion or objection to the decision. Even the internal secretariat summary of the meeting,<sup>18</sup> which was used to keep the Secretary-General's office informed of Committee's decisions, did not mention this agenda item. Ironically, the agenda item was titled *Review of the Implementation of Resolution 661 (1990)*. Originally done for historical reasons, further "note taking" exercises of the Committee done in later years were systematically put under

13. *Note Verbale Dated 16 May 1991 from Jordan Addressed to the Chairman of the Comm. Established by Res. 661*, U.N. SCOR, U.N. Doc. S/AC.25/1991/COMM.159 (1991) (restricted), quoted in 1991 COMMS LOG at 102, Synopsis (internal secretariat document).

14. The 1991-92 Ambassador Peter Hohenfellner of Austria. The chairman of a sanctions committee is elected *ad personam*, is not the representative of his government in this function and, strictly speaking, is not a member of the committee.

15. See U.N. SCOR, Comm. Established by Res. 661, 41st mtg. at 2, Agenda Item *Review of the Implementation of Resolution 661 (1990)*, U.N. Doc. S/SR.25/SR.41 (1991) (restricted) [hereinafter *Review of the Implementation of Resolution 661*]. For the list of the documents cited at that meeting, see *supra* note 4.

16. *Review of the Implementation of Resolution 661*, *supra* note 15.

17. S.C. Res. 692, U.N. SCOR, 46th Sess., 2987th mtg. at 18, U.N. Doc. S/INF.47 (1991).

18. Comm. Established by Res. 661, 41st mtg., Summary (reissued for technical reasons) (internal secretariat document).

this heading. No reference was made either to Article 50<sup>19</sup> or to paragraph 23 of Resolution 687.<sup>20</sup> The U.N. has recently preferred to speak of the Committee's "taking note" of "Jordan's request for resumption of imports,"<sup>21</sup> but the word "request" was used neither at the meeting of the Committee nor in the chairman's response to Jordan, dated May 21, 1991.<sup>22</sup>

#### D. *The Aftermath of the "Agreement"*

Jordan's ritual of periodically reporting volumes of crude oil and refined product in tons (along with the corresponding dollar values) to the Committee was eventually institutionalized. At Committee meetings, the chairman normally referred to the incoming letter and "suggested" or "proposed" that the Committee "take note" thereof, normally remarking "as has been its custom" or "as it has done on previous occasions." There was never any discussion or debate. By 1995, the instructed delegates of thirty-five governments had at one time or another silently condoned this action as successive chairmen repeated the ritual phrase "taking note . . . as has been its custom." Anyone may guess how many of the delegates knew what was behind this bizarre ritual. Apparently, Jordan's "obligation" to report was not universally recognized. On one occasion, a delegate expressed his appreciation of reporting and stated that he hoped Jordan would continue to keep the Committee informed.<sup>23</sup>

Jordan's reporting was not complete. It submitted figures for only seventeen of the first twenty-four months during which this scheme operated.<sup>24</sup> Further, it submitted one monthly report which contained tonnage figures, but not dollar values. On one occasion,

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19. See Gian-Luca Burci, *The Indirect Effects of United Nations Sanctions on Third States: The Role of Article 50 of the UN Charter*, AFR. Y.B. INT'L L. 157, 162 (1995).

20. S.C. Res. 687, U.N. SCOR, 46th Sess., 2987th mtg. para 23, at 14, U.N. Doc. S/INF.47 (1991).

21. *Implementation of the Provisions of the Charter of the United Nations Related to Assistance to Third States Affected by the Application of Sanctions Under Chapter VII of the Charter: Report of the Secretary-General*, U.N. GAOR, 50th Sess., at 10, U.N. Doc. A/50/361 [hereinafter *Report on Implementation*].

22. *Letter Dated 21 May 1991 from Chairman of the Comm. Established by Res. 661 Addressed to the Permanent Representative of Jordan*, U.N. Doc. S/AC.25/1991/NOTE/55 (1991) (restricted) [hereinafter *Letter, May 21, 1991*].

23. See U.N. SCOR, Comm. Established by Res. 661, 81st mtg. at 3, *Agenda Item Review of the Implementation of Resolution 661 (1990)*, U.N. Doc. S/AC.25/SR.81 (remarks by Mr. Graham of the United States) (restricted).

24. See *Data on Iraqi Trade/Rev.3: Memorandum Dated 1 December 1993 from Paul Conlon Addressed to James C. Ngobi D*, at 3 (internal secretariat document) [hereinafter *Conlon Memorandum*].

the secretariat neglected to put the letter on the agenda.<sup>25</sup> As a consequence, the Committee never "took note" of the oil imports in August 1991. Jordan bore no responsibility for this.

In 1993, the secretariat began to suspect that Jordan's reportings were not truthful. This was confirmed in early 1994 when full comparison data for 1993 became available. The figures submitted by Jordan reflected an approximate monthly flow of 55,000 barrels/day ("b/d"), whereas official Jordanian reportings to the U.N. world trade database<sup>26</sup> showed approximately 75,000 b/d. Additionally, outside press reports discussed details of the scheme which were not discussed by the Committee and were not even in its correspondence archives.

Originally, the pseudo-agreement's existence was held to be a secret. It was never mentioned in any published U.N. document. Even so, international lawyers knew about it at a fairly early date.<sup>27</sup> The Committee steadfastly refused to grant any other concessions of the same kind despite pressure from interested candidates, such as India,<sup>28</sup> Romania,<sup>29</sup> Czechoslovakia,<sup>30</sup> and Turkey. Public discussion concerned the question whether Iraqi debts were fully repaid and whether Jordan should begin paying cash for its imports. The secretariat was greatly annoyed by constant press usage of words like "approval," "permission," and "agreement" in reference to the Committee's actions regarding Jordan's oil purchases. The secretariat felt the Committee's "taking note" was only recognition of the de facto conditions and was not positive authorization for the oil imports.

Research showed that some detailed provisions of the scheme were found in various background documents.<sup>31</sup> The critical centerpiece contained more than one way of calculating Iraqi debt to

25. See *Note Verbale Dated 13 September 1991 from Jordan Addressed to the Chairman of the Comm. Established by Res. 661, U.N. Doc. S/AC.25/1991/COMM.423* (1991) (restricted).

26. See *supra* note 1.

27. See Martti Koskenniemi, *Le Comité des sanctions créé par la résolution 661 (1990) du Conseil de sécurité*, 37 ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL 119, 126 n.33 (1991).

28. See Hannay's Remarks, *supra* note 9.

29. See U.N. SCOR, Comm. Established by Res. 661, 58th mtg. at 4-7, Agenda Item *Consultations Under Article 50 of the Charter*, U.N. Doc. S/AC.25/SR.58 (restricted). The State Secretary of the Romanian Foreign Ministry, Mr. Ionel V. Sandulescu gave a statement; the French text was issued by the Romanian Permanent Mission to the United Nations as a press release on the same date.

30. See *Note Verbale Dated 29 December 1992 from Czechoslovakia Addressed to the Comm. Established by Res. 661, U.N. Doc. S/AC.25/1992/COMM.1822* (1992) (restricted), discussed in U.N. SCOR, Comm. Established by Res. 661, 85th mtg. at 2, 3, U.N. Doc. S/AC.25/SR.85 (restricted).

31. See *Letter, Aug. 20, 1990, supra* note 4; *Letter, Aug. 27, 1990, supra* note 4; *Ripert Report, supra* note 7.

Jordan in August 1990.<sup>32</sup> The exact terms of interest and amortization were not clear. In addition, surviving delegates and secretariat officials were undecided regarding the meaning of the Delphic reference to Resolution 692 in the May 21, 1991, letter. Furthermore, no agreement existed to determine whether the deliveries of oil between August 1990 and May 1991 were to be deducted from the original debt. Indeed, the decision to "take note" at the meeting in May 1991 did not clarify the status of those oil deliveries. An internal best efforts calculation suggested that the original debt was paid by April 1992, and further trade credit debts were cleared by 1993. Therefore, after 1993, Iraq entered into a trade surplus with Jordan.<sup>33</sup>

In early 1994, the secretariat suggested that Chairman of the Committee consider telling the members about the contents of an internal report<sup>34</sup> on these matters, which his delegation and at least five others already had in their possession. The internal report included information on the discrepant sets of oil import statistics, but the matter was never formally brought up in the Committee. Rather, it came to the Committee's attention when the permanent mission of Kuwait faxed the Committee copies of a dispatch<sup>35</sup> from the Kuwaiti News Agency's U.N. correspondent, which divulged some of this information. Two members of the Committee promptly complained orally to the secretariat about this information being leaked. They further complained that the secretariat exceeded its mandate in collecting information. The U.N. later claimed that Jordan also lodged a formal complaint.<sup>36</sup> In this light and in the course of further disputes with Jordan over other matters, a delegate requested that the secretariat prepare information on Jordan's oil imports for the members of the Committee.<sup>37</sup>

The resulting research revealed new information: Jordan increased its dependence on Iraqi oil supplies from eighty-one—eighty-two percent in 1990-91 to over ninety percent in 1992-93. Jordan did not seek substitute suppliers because Iraqi oil was

32. See *Letter, Aug. 27, 1990, supra* note 4.

33. See *Conlon Memorandum, supra* note 24.

34. See *id.*

35. See *Sanctions: Iraq-Jordan*, KUNA (Kuwaiti News Agency) dispatch from United Nations (April 25, 1994); see also Walter Pfäffle, *Irak/Jordanien: UNO will illegalen Ölhandel überprüfen*, LUXEMBURGER WORT, July 2, 1994, at 16; *Die eigenen Statistiken belasten Jordanien: Vereinte Nationen sorgen sich wegen Verstößen gegen Irak-Embargo*, BASLER ZEITUNG, July 11, 1994, at 2.

36. See *Conlon Report: UN Stonewalls Against Allegations*, INT'L REP., June 30, 1995, at 2, 3 (citing statement of Mr. Ahmad Fawzi, the Secretary-General's Spokesman).

37. See U.N. SCOR, Comm. Established by Res. 661, 112th mtg. at 10, Agenda Item *Report on the Visit to Jordan of Mr. Jingzhang Wan*, U.N. Doc. S/AC.25/SR.112 (1994) (remarks by Mr. Rose of the United States) (restricted).

cheaper. In addition, considerable manipulation was involved. The 1993 figures exceeded the figures submitted to the Committee by forty-one percent in tons and eighty-one percent in dollars. A set of tables and graphs, and one press excerpt on Iraqi oil exports to Jordan were distributed to the delegates at the following meeting.<sup>38</sup> At the meeting, one delegate stated that her government would study the information and return to the matter.<sup>39</sup> However, as late as April 1995, the matter had not been discussed again.

### III. THE LEGALITY OF THE DECISION

#### A. *Legal Problems with the Sanctions Committee's Actions*

The winding road traversed by this pseudo-agreement clearly demonstrates the precariousness of law generated in a political and diplomatic environment. The Security Council was instituted "in order to ensure prompt and effective action."<sup>40</sup> Therefore, it has traditionally been granted license to put politics before law. However, the Security Council does not create subsidiary organs like the sanctions committees to decide whether a threat to the peace exists or whether sanctions should be imposed. Sanctions committees exist to administer the *minutiae* of implementation. If we are going to let the Security Council use legally questionable decisions to impose sanctions and abandon minimal legal provisions in their implementation by the Committee, then the Security Council's political prerogatives will no longer appear acceptable. Habits of diplomatic custom, such as the legally nebulous function of "taking note," contribute to the problem. The customary bias in international law leads to mere passive toleration of legally constitutive effects. Consistently "taking note" of questionable acts or documents is inadvisable because it jeopardizes legal positions and undermines credibility. Regarding a related question, the secretariat would occasionally warn the Committee delegates of the potential ramifications of uncritically "taking note" of submissions.<sup>41</sup>

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38. See *Note for the Reference of the Chairman: Iraqi-Jordanian Oil Export Statistics* (revised July 5, 1994) (internal secretariat document), partially reprinted in *Iraq's 1993 Crude Oil and Product Exports to Jordan Average 77,000 b/d*, MIDDLE E. ECON. SURV., July 11, 1994, at A11, A12. [hereinafter *Note for the Reference of the Chairman*].

39. See U.N. SCOR, Comm., 113th mtg., Agenda Item *Reports of Jordan's Importation of Oil from Iraq*, U.N. Doc. S/AC.25/SR.113 (1994) (remarks by Ms. Wade of the United States) (restricted).

40. U.N. CHARTER art. 24, para 1.

41. See *Conlon Memorandum*, supra note 24, at 7 (stating that taking note of noncredible data has caused ongoing damage to Committee's status and dignity).

### B. *Legal Problems with the "Agreement"*

The intention of the agreeing parties was to regulate their agreement in an exchange of correspondence. This contributed to a further dilution of the contents. The reference to "resumption" of oil imports appeared twice in a short letter. This lends itself to the interpretation that the Committee endorsed Jordan's misrepresentations about having ceased to import Iraqi oil. A more neutral phrasing would have been more appropriate. The response on May 21, 1991,<sup>42</sup> by the Chairman of the Committee leaves open more questions than it answers because it does not contain an explicit enunciation of the two parties' obligations, nor does it suggest further correspondence or action. The degree of conditionality in the sentence "pending . . . arrangements . . . to obtain" oil elsewhere does not suffice to show a distinct obligation. The Delphic reference to Resolution 692, which probably intended to stress that cash-less deliveries of oil were exempt from impost for the benefit of the Compensation Fund, states the exact opposite. If the matter became the object of scrutiny by a court, it would be difficult to explain how the Committee continually repeated statements about the applicability of Resolution 692 while failing to ascertain whether Resolution 692 was being applied.

### C. *Other Legal Questions*

#### 1. *On What Powers Did the Committee Act?*

It is easier to determine on what authority the Committee did not or could not act. Misunderstandings arose because outsiders were under the impression that the Committee acted under Article 50 or under paragraph 23 of Resolution 687. Neither was correct. Article 50 is a problematic provision of the U.N. Charter because while Article 50 grants member states the dubious right to "consult" with the Security Council, it does not establish any provisions for relief measures, or any authority for any U.N. body to take concrete action.<sup>43</sup> In re delegating this function to the Committee,<sup>44</sup> the Security Council made matters worse. Because the Committee works in secret, outsiders will never really know if the Committee has granted an exemption under Article 50, or what was said or agreed to in private. India believed that Jordan was allowed to import oil under Article 50. The same general objection applies to paragraph 23 of

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42. Letter, May 21, 1991, *supra* note 22.

43. See Burci, *supra* note 19, at 164.

44. See S.C. Res. 669, U.N. SCOR, 45th Sess., 2942d mtg. at 24, U.N. Doc. S/INF.46 (1990).

Resolution 687. From its adoption to the beginning of 1995, the Committee did not use the powers provided by this paragraph, although pressure to do so continued. This fact was not known, however, because Committee's decisions are secret.

The "taking note" of Jordanian oil imports was not based on paragraph 23 for several reasons. First, no reference was ever made to paragraph 23. Second, the meeting in question was largely devoted to a bitter dispute over Iraq's application to use paragraph 23.<sup>45</sup> Third, the relevant agenda item referred to Resolution 661, not Resolution 687. Finally, the construction of paragraph 23 proceeds from the target state's need to export oil (presumably to any state of destination) to generate income for humanitarian expenses. The pseudo-agreement with Jordan proceeded from Jordan's unique need to import Iraqi oil. The purpose implied in paragraph 23 was not reflected in Jordan's situation.

2. *Has a General Authority for Sanctions Committees to Grant Such Exemptions Evolved in Practice?*

No. There is only one other known instance of this—a banal decision by the Yugoslavia Sanctions Committee allowing the export of a religious statue determined not to be "a commodity."<sup>46</sup> No legal power to grant such an exemption was cited in either the chairman's remarks at the 41st Meeting of the Committee, nor was any legal power to grant such an exemption cited in his reply to Jordan on May 21, 1991. This is not unusual. The Committee rarely cited any authority for its decisions. Jordan cannot be held responsible for either the Committee's lack of authority to grant the exemption or for the Committee's failure to clarify the powers under which it acted.

Patrick Clawson argues that Jordan's claim that it was still collecting on old debts is based on a "polite fiction," whereby Jordan consistently extends new loans.<sup>47</sup> However, the correct explanation may be different: Jordan could be collecting on a much larger debt, a guarantee on an Iraqi loan of \$2.6 billion.<sup>48</sup> The manipulation that

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45. See U.N. SCOR, Comm. Established by Res. 661, 41st mtg. at 3-4, Agenda Item *Request by Iraq Pursuant to Paragraph 23 of Resolution 687 (1991)*, U.N. Doc. S/AC.25/SR.41 (1991) (re-stricted) (discussing *Letter Dated 14 April 1991 from the Permanent Representative of Iraq Addressed to the Chairman of the Comm. Established by Res. 661*, U.N. Doc. S/AC.25/1991/COMM.124 (1991) and *Letter Dated 19 April 1991 from the Permanent Representative of Iraq Addressed to the Chairman of the Comm. Established by Res. 661*, U.N. Doc. S/AC.25/1991.163 (1991)).

46. Michael P. Scharf & Joshua L. Dorosin, *Interpreting UN Sanctions: The Rulings and Role of the Yugoslavia Sanctions Committee*, 19 BROOK. J. INT'L L. 771, 797 (1993).

47. PATRICK CLAWSON, *HOW HAS SADDAM HUSSEIN SURVIVED?* [McNair Paper 22] 49 (1993).

48. See *Letter*, Aug. 27, 1990, *supra* note 4.

Clawson believes Jordan is engaging in is not legal. The Committee questioned the legality of forward barter deals, such as goods now for oil later. Extensions of new loans for immediate delivery of oil should also be included. It is difficult to understand how Jordan could be held to have received permission to import oil for debts in a general sense. The construction of the discussions between Jordan and the U.N. in 1990 and 1991 strongly suggests that the exemption granted was only meant to apply to debts existing before August 1990 (as identified and quantified by Jordan in its dealings with the Committee over Article 50 relief in the fall of 1990). It is not clear exactly how high those debts were or how the debts were to be amortized. Debts not discussed were probably not covered by the agreement.

*3. Does Jordan Have Any Responsibility for Violating the Sanctions?*

It is hard to see any responsibility for Jordan at this point. The Committee has repeatedly "taken note" of its oil imports, failing to object to them. The Committee has not taken any action to notify Jordan of an obligation to either stop or pay thirty percent of its value to the Compensation Fund. It seems the Committee's behavior would undermine the legal position of the Security Council, should the Security Council attempt to hold Jordan responsible for violating the provisions of Resolution 661 or Resolution 692. One very important exception exists. In May 1991, Jordan expressly agreed to report monthly imports to the Committee. The Committee did not object to this agreement. Jordan, then, constantly submitted reports. The Committee acknowledged these reports. Thus Jordan cannot claim legalization for any imports in excess of what it reported, nor is there any lack of clarity regarding the applicability of the thirty percent impost to such imports. As of December 1993, the discrepancy exceeded 4.4 million tons of oil, valued by Jordan at \$475 million.<sup>49</sup> The portion owed to the Compensation Fund would be approximately \$142 million. If these trends continue, approximately \$60 million would be owed each year. This outcome is independent of the question whether the rest of the oil was subject to the same thirty percent impost. Such a conclusion is not certain, but it could still be argued.

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49. See Note for the Reference of the Chairman, *supra* note 38.

#### 4. *Was There Responsibility on the Part of the Committee?*

This problem is less clear as far as it concerns the Committee's duty to prevent or prosecute sanctions violations. The Committee's mandate was implicit. The Committee acted with extreme negligence, first by establishing a practice of granting pseudo-authorization for oil imports by "taking note" of them and, second, in failing to react to what were obvious violations of the terms of the agreement on Jordan's part. Yet, it is more on the issue of the general agreement that the Committee is vulnerable. Lacking authority to authorize Jordan's oil imports from Iraq under any heading, the Committee engaged in practices which Jordan and third parties could only construe as an authorization, and thus violated the sanctions regime itself. The Committee's actions so thoroughly undermined the Security Council's legal position that it is difficult to see if the actual perpetrator, Jordan, could now be held responsible for imports which clearly were in violation of Resolution 661. International lawyers are unanimous about the imports' illegal character.<sup>50</sup>

The Committee's actions also call into question the legitimacy of its discharge of duties vis-à-vis the collective membership of the U.N.<sup>51</sup> Under the U.N. Charter, the members of the Security Council are assumed to act on behalf of the entire membership. It is not clear if this assumption should apply to the Committee because, under the Charter, the Committee's status is very unclear. Nonetheless, responsibility must exist somewhere. If the Committee is not responsible to the members, then the Security Council must be responsible to the members for what the Committee did.

#### 5. *How Was Something of This Nature Actually Accepted and Defended by Those Participating in It?*

Inside the secretariat (or, more properly, the part that services the Security Council and the Committee, now called the Department of Political Affairs), two main justifications were generated. One was that the Committee did not authorize, permit, or grant an exemption, or any such thing, but merely limited itself to "taking note." That act was clearly in the Committee's mandate, so that the Committee needed no further authorization. The second argument suggests that the Committee had the power to grant such exemption under

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50. See, e.g., Burci, *supra* note 19, at 162 (stating that these imports are "of dubious legality under Resolution 661"); Koskeniemi, *supra* note 27, at 126 (stating these the imports are "a conspicuous violation of Resolution 661"). Burci's remark could be interpreted to suggest that the measure might have been lawful under Resolution 687.

51. See U.N. CHARTER art. 24, para 1.

paragraph 23, and, although the Committee admittedly did not do so in that particular instance, the Committee could not be held to have exceeded its powers because the Committee did have such broad authority under paragraph 23. Arguments of this kind have not been articulated by the U.N. Office of Legal Affairs ("OLA"), which has sought subtly to distance itself from the arrangement.<sup>52</sup> In a recent report of a General Assembly committee<sup>53</sup> (prepared by the staff of OLA) on assistance under Article 50, recommendations appear regarding the tightening of control over such exemptions in the future. These recommendations reflect the bitter lessons learned, at least by the U.N. legal officials, from the Jordanian exemption agreement. This report is the first and only published U.N. document to admit the existence of the agreement.<sup>54</sup> Otherwise, the U.N. lawyers have sought refuge in the excuse that the explicit reference to Resolution 692 prudently ensured protection of the Compensation Fund's interests.

#### IV. THE UNITED STATES' POSITION

The position of the United States government would appear to be that all Iraqi oil exports to Jordan are subject to the thirty percent impost, and a claim has even been advanced that the United States was instrumental in crafting the exact wording of paragraph 6 of Resolution 692<sup>55</sup>. The paragraph "allowed the [Compensation] Fund to try to recapture the deduction for any amounts of oil that have left Iraq since [April 2, 1991] . . . to Jordan with the tacit acceptance of the Sanctions Committee."<sup>56</sup> This statement leaves open the possibility that the P-3 proceeded with their legalization of Jordan's oil imports because the tacit agreement and the adoption of Resolution 692 occurred almost simultaneously. The P-3 believed that they had already created the legal basis for collecting thirty percent on these

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52. See Burci, *supra* note 19.

53. See *Report on Implementation*, *supra* note 21, at 11.

54. See *id.* at 10.

55. Resolution 692 provides:

[T]he requirement for Iraqi contributions will apply in the manner to be prescribed by the Governing Council with respect to all Iraqi petroleum and petroleum products exported from Iraq after 3 April 1991 as well as such petroleum and petroleum products exported earlier but not delivered or not paid for as a specific result of the prohibitions contained in Security Council Resolution 661 (1990).

S.C. Res. 692, *supra* note 17, para 6. It is unclear from this wording if the illegal Iraqi exports to Jordan between August 6, 1990, and April 2, 1991, would then be subject to the "thirty-percent requirement."

56. Ronald J. Bettauer, *Establishment of the United Nations Compensation Commission: The U.S. Government Perspective*, in THE UNITED NATIONS COMPENSATION COMMISSION [Thirteenth Sokol Colloquium] 29, 33 (Richard B. Lillich ed., 1995).

transactions. If true, this fact would then raise additional questions as to why the P-3 never tried to press any claims in this direction in the forum of the Committee, where they showed an extreme reluctance to get involved in any discussions on these matters. The P-3 may have feared that further discussion would open an additional can of worms, the exact contents of which can only be a matter of speculation.

In addition, it is not known what the Compensation Fund may have done, if anything, to press such a claim. Officials of the Compensation Fund were aware of most of what has been described in this article. They also had access to the report on Iraqi trade activities,<sup>57</sup> which never officially reached the members of the Committee.

#### V. CONCLUSION

With the passage of time, the practitioners who participated in the Security Council's sanctions expansion of the early 1990s from the inside have started to publish their analyses and reflections in various scholarly publications.<sup>58</sup> A consensus is emerging from these sources. The legal quality of Security Council's work has been deficient, the actors involved have been both quantitatively and qualitatively overwhelmed, the coherence of international law in this area has been more shattered than consolidated by practice, and the traditional conceptual apparatus of international lawyers cannot do justice to what has now evolved. These practitioners also tend to agree that excessive secrecy has contributed to this state of affairs and prevented assistance from the outside in the form of scholarly analysis and the development of doctrine. Meanwhile, sanctions committees and the Security Council have come into ill repute. Modesto Seara-Vázquez recently suggested<sup>59</sup> that the archaic premises on which the Security Council was built condemn it alternately to either impotence or illegality. The subject of the present article certainly bears him out.

The gap between the high legal dignity of Chapter VII actions and the deficient legal culture in which they evolve and are administered has clearly gotten out of hand. Some scholars recommend that

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57. See Conlon Memorandum, *supra* note 24.

58. See, e.g., Koskeniemi, *supra* note 27; Scharf & Dorosin, *supra* note 46; Michael Scharf, *United Nations Sanctions: The Role of the Security Council Sanctions Committee*, INT'L PRACTITIONER'S NOTEBOOK, Oct. 1995, at 1, 8-10; see also HELMUT FREUDENSCHUSS, BESCHLÜSSE DES SICHERHEITSRATES DER VN NACH KAPITEL VII: ANSPRUCH UND WIRKLICHKEIT (Schriftenreihe des Walther-Schücking-Kollegs 16, 1995).

59. Modesto Seara-Vázquez, *The UN Security Council at Fifty: Midlife Crisis or Terminal Illness?*, GLOBAL GOVERNANCE, Issue 3, 1995, at 285, 291.

sanctions committee decision-makers should be appointed from among legally qualified diplomats for a fixed term.<sup>60</sup> Elsewhere, the author of this article has stated that the use of instructed diplomats in this function has been a disaster because it prevents the development of a specialized and qualified core of professional civil servants to assist, guide, and advise them.<sup>61</sup> The author proposes to replace diplomats with individually appointed expert commissioners of suitable background, who can be held responsible for their own decisions. The author believes that such commissioners should not represent their governments because this representation precludes responsibility.

International law can only develop on the basis of the practice of states in their intercourse with each other, and this has made diplomats the embodied actors in generating international law. At the present stage, the need is greatest for procedural norms and practices for professionalized multilateral governance structures. To achieve this goal, another approach and other actors are required.

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60. See, e.g., Scharf & Dorosin, *supra* note 46, at 826.

61. Paul Conlon, *Sanctions Infrastructure and Activities of the United Nations: A Critical Assessment 23* (unpublished paper prepared for the 1995 Carnegie Commission to Prevent Deadly Conflict, on file with author).