

INDEPENDENT INQUIRY COMMITTEE
— INTO —
THE UNITED NATIONS OIL-FOR-FOOD PROGRAMME

THE MANAGEMENT OF
THE UNITED NATIONS OIL-FOR-FOOD PROGRAMME

Volume III - Report of Investigation

United Nations Administration, Part I

The Secretariat and the Office of the Iraq Programme: Functions and Responsibilities

The Secretariat's Administration of the Programme from New York

The Secretariat's Administration of the Programme in Iraq

The Secretariat's Response to Sanctions Violations

The 38th Floor

The Secretariat: Findings and Conclusions

The Selection of Cotecna Inspection S.A.

Paul A. Volcker, Chairman
Richard J. Goldstone, Member
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I. INTRODUCTION

The Secretariat was assigned specific roles and responsibilities in administering the Programme, ranging from reviewing the propriety of humanitarian goods contracts, to reporting formally to the Security Council on the status of the Programme, to making observations in Iraq as to the adequacy and effectiveness of the Programme. The Secretariat's involvement in administering the Programme is the subject of the first six chapters of Volume III.

Chapter 1 explains the functions and responsibilities of the Secretariat in administering the Programme. Part II explains the framework for the Secretariat's authority, specifically Resolutions 661 and 986. Part III discusses Secretary-General Kofi Annan's creation of the Office of the Iraq Programme ("OIP") and the consolidation of sanctions monitoring and humanitarian objectives under the umbrella of OIP. Part IV describes the various divisions that existed under OIP in New York and in Iraq. Part IV further describes the roles of the Secretary-General, the Deputy Secretary-General, and the Chef de Cabinet in overseeing, supervising, and providing advice on OIP's operations.

Chapters 2 through 5 turn to a discussion and analysis of the obstacles and management failures that occurred during the course of the Programme. Chapter 2 considers OIP's management of the Programme from its headquarters office in New York, discussing inadequate expertise in reviewing Programme-related contracts and the marginalization of OIP's role in overseeing field operations. Chapter 3 describes the general conditions in Iraq under which the Secretariat conducted field operations and explains barriers to effective observation and reporting from the field.

Chapter 4 then discusses the Secretariat's knowledge of and response to the Iraqi regime's repeated sanctions violations through which the regime diverted billions of dollars from the humanitarian Programme. Specifically, Chapter 4 describes the Secretariat's failure to address adequately the Iraqi regime's illicit receipt of payments through kickbacks on Programme-related contracts, surcharges on oil sales, and the Iraqi regime's vast network of oil smuggling.

Chapter 5 addresses the accountability of the senior-most officers of the United Nations Secretariat: the Secretary-General, the Deputy Secretary-General, and the former Chef de Cabinet of the Secretary-General. Chapter 5 addresses senior management's reluctance to recognize responsibility for the Programme's shortcomings, its failure to ensure that critical evidence was brought to the attention of the Security Council and the 661 Committee, its minimal efforts to address sanctions violations with Iraqi officials, and its lack of oversight concerning OIP's administration of a more than \$100 billion Programme.

Last, Chapter 6 sets forth the Committee's adverse findings with respect to the Secretariat's management of the Programme, specifically as to Secretary-General Annan, Deputy Secretary-General Louise Fréchet, and OIP's Executive Director Benon Sevan.

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II. THE ROLE OF THE SECRETARIAT UNDER SECURITY COUNCIL RESOLUTIONS 661 AND 986

In 1990, well in advance of the Programme, the Security Council passed Resolution 661, requiring the Secretariat to report on the progress of the implementation of the sanctions regime and provide the 661 Committee with “all necessary assistance.” While Resolution 661 imposed sanctions on Iraq, it allowed for the import of certain goods subject to humanitarian exemptions. Under the procedure in place, applications under the humanitarian exemptions clause were processed within DPA and submitted for approval to the 661 Committee.¹

With the adoption of Resolution 986 and the subsequent signing of the Iraq-UN MOU in 1996, the Secretary-General and the Secretariat were assigned significant roles regarding the Programme’s implementation and the sanctions regime within which it operated. Although the 661 Committee had a central role in the review and approval of the transactions occurring under the Programme, the Secretary-General and the Secretariat’s responsibilities included: (1) the review and approval of Iraq’s distribution plan for goods imported under the Programme; (2) the review of goods contracts submitted for the 661 Committee’s approval; (3) the in-country observation and monitoring of goods that entered Iraq under the Programme; (4) reporting to the Security Council through 90 and 180-day reports as to the implementation of the Programme; and (5) otherwise taking “the actions necessary to ensure the effective implementation” of Resolution 986.²

Resolution 986 did not alter the basic tenets of the Secretariat’s sanctions monitoring responsibilities under Resolution 661. On August 12, 1996, the 661 Committee adopted procedures for implementing the Programme, including the use of “experts” in the Secretariat to examine the propriety of Programme-related contracts and the coordination of communications between various entities and divisions monitoring the Programme and the circumstances in Iraq. The terms of the 661 Committee procedures further included provisions consistent with the manner in which the Secretariat previously had been monitoring compliance with Resolution 661, i.e., coordinating sanctions monitoring bodies (specifically, MIF) and processing contracts with a view towards identifying any irregularities.³

¹ S/RES/661, paras. 3-4, 6, 8, 10 (Aug. 6, 1990); Steven Avedon interview (Jan. 25, 2005); Jeremy Owen interview (Dec. 13, 2004); Loraine Sievers interview (May 5, 2005).

² S/RES/986, paras. 8 (a), 11, 13 (Apr. 14, 1995) (approval of distribution plan; 90 and 180-day reporting; all necessary steps to ensure effective implementation); Iraq-UN MOU, paras. 34-41 (observation of distribution); 661 Committee Procedures, paras. 26-27 (approval of distribution plan), 33 (preliminary review of goods contracts submitted for the 661 Committee’s approval).

³ 661 Committee Procedures, paras. 1, 9, 31-34, 43; Joseph Stephanides note to Kieran Prendergast (Mar. 26, 1997) (“Implementation of Security Council resolution 986 (1995)”). Volume II discusses MIF in Part IV of Chapter 4.

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The Secretariat employed two separate divisions to administer the humanitarian and sanctions monitoring components of the Programme. DHA was charged with the distribution of goods in the three northern governorates and observations in central and southern Iraq.⁴ DHA, in other words, focused on the humanitarian aspect of the Programme.

By contrast, DPA bore responsibility for managing issues concerning the sanctions regime. As explained by Steven Avedon, formerly a Senior Political Affairs Officer within DPA, a so-called “sanctions secretariat” was organized and charged with supporting the Security Council’s sanctions committees, here the 661 Committee. Through the “sanctions secretariat,” DPA monitored how well member states complied with the sanctions regime, coordinated with monitoring and enforcement bodies of the member states, and provided information and advice to the Security Council’s sanctions committee on the efficacy of the sanctions regime. DPA performed these functions for the Secretariat under Resolutions 661 and 986. Moreover, DPA screened applications for humanitarian supplies and examined each contract for “the details of price and value.” DPA customs experts were expected to review contracts for possible fraud and deception. DPA further coordinated with UNSCOM to ensure that items with the potential for dual use were scrutinized.⁵

⁴ Joseph Stephanides memorandum to Marrack Goulding (July 5, 1996); Joseph Stephanides note to Kieran Prendergast (Mar. 26, 1997); Note regarding “Possible Relocation of SCR 986 Functions” (Sept. 8, 1997) (attached to Joseph Stephanides memorandum to Kieran Prendergast (Oct. 17, 1997)).

⁵ Steven Avedon interviews (Jan. 25 and Apr. 28, 2005); Joseph Stephanides note to Kieran Prendergast (Oct. 17, 1997) (attaching memorandum on functions of DPA under Resolution 986); 661 Committee Procedures, paras. 33, 43; Kofi Annan interview (July 26, 2005) (discussing 661 Committee Procedures and noting that detection of fraud and deception was one of the responsibilities of the customs experts); Joseph Stephanides note to Kieran Prendergast (Mar. 26, 1997) (regarding “Implementation of Security Council resolution 986 (1995)”).

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III. CREATION OF THE OFFICE OF THE IRAQ PROGRAMME

Boutros Boutros-Ghali served as Secretary-General when the Security Council passed Resolution 986 in April 1995 and when the United Nations entered into the Iraq-UN MOU in May 1996. Secretary-General Boutros-Ghali's first term expired at the end of 1996, just as the first oil sales transactions took place under the Programme.⁶ The circumstances surrounding the negotiation and implementation of the Programme during Secretary-General Boutros-Ghali's final year in office, amidst his efforts to seek re-appointment, are discussed in Chapter 2 of Volume II.

Kofi Annan was appointed to serve as Secretary-General beginning in January 1997. When Secretary-General Annan inherited the Programme, it was run jointly by DPA and DHA. On July 14, 1997, Secretary-General Kofi Annan released a reform plan and undertook "a major restructuring of the Secretariat machinery responsible for coordinating humanitarian assistance." All operational responsibilities were transferred to "other appropriate entities that provide assistance on the ground." Consequently, the Secretary-General needed to consider a revised mechanism for administering the Programme.⁷

On October 1, 1997, the Secretary-General indicated that the Programme was to be "detached from DHA." At the same time, the Secretary-General assigned Benon Sevan to take charge of the Programme effective October 15, 1997. Questions remained as to the interplay between the Programme and DPA. For example, on October 2, 1997, S. Iqbal Riza, then the Chef de Cabinet, requested advice from the Secretary-General "as to whether the '661 Committee' Secretariat should also be moved from DPA to Mr. Sevan's office."⁸

A memorandum dated October 7, 1997 and prepared in connection with the creation of OIP explained the Secretary-General's view. Specifically, the Secretary-General envisioned OIP as a combination of DPA and DHA staff falling under the leadership of Mr. Sevan. As to DPA in particular, its staff members reported to Mr. Sevan insofar as their work concerned the Programme. Otherwise, DPA staff members continued to report to Kieran Prendergast, the Under-Secretary-General for Political Affairs. The Secretary-General had fashioned OIP in a

⁶ Madeleine Albright, *Madam Secretary-A Memoir* (Miramax Books, 2003), pp. 207-12; Boutros Boutros-Ghali, *Unvanquished: A U.S.-U.N. Saga* (Random House, 1999), pp. 317-18; S/RES/1091 (Dec. 13, 1996).

⁷ A/RES/51/200 (Dec. 17, 1996) (appointing Kofi Annan as Secretary-General); "Renewing the United Nations: A Programme for Reform," A/51/950, paras. 77, 187 (July 14, 1997).

⁸ S. Iqbal Riza memorandum to Joseph Connor (Oct. 1, 1997); S. Iqbal Riza note to Kofi Annan (Oct. 2, 1997).

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manner that appointed Mr. Sevan to supervise both DPA's sanctions monitoring and contracts processing functions as well as DHA's humanitarian objectives.⁹

On October 9, 1997, Mr. Riza drafted a "Note to the Secretary-General" concerning the responsibilities that would be assigned to Mr. Sevan. Mr. Riza's note explained that "Mr. Sevan would take charge of the DHA unit and staff of the Programme . . . as well as functions in DPA performed by the '661 Committee' Secretariat." On October 13, 1997, Mr. Riza forwarded a note to DHA and DPA officials addressing the Secretary-General's intentions with respect to the creation of OIP. Specifically, Mr. Riza explained that "Mr. Sevan will head the Office of the Iraq Programme which will involve consolidation and management of United Nations activities pursuant to Security Council resolutions 986 (1995) and 661 (1990)." Mr. Riza instructed DPA and DHA officials to "work out arrangements with Mr. Sevan for the transfer of those activities now being carried out in your respective departments which relate to Mr. Sevan's area of competence referred to above."¹⁰

⁹ Rolf Knutsson note to S. Iqbal Riza (Oct. 7, 1997); S. Iqbal Riza note to Kofi Annan (Oct. 9, 1997); "Renewing the United Nations: A Programme for Reform," A/51/950, para. 187 (July 14, 1997); Jeremy Owen interview (Dec. 13, 2004); Louise Fréchette interview (May 23, 2005).

¹⁰ S. Iqbal Riza note to Kofi Annan (Oct. 9, 1997); S. Iqbal Riza note to Yasushi Akashi and Kieran Prendergast (Oct. 13, 1997).

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NOTE TO MESSRS AKASHI & PRENDERGAST

MR. BENON SEVAN

1. The Secretary-General has decided to appoint Mr. Benon Sevan as Executive Director of the Iraq Programme effective 15 October 1997. In that capacity, Mr. Sevan will head the Office of the Iraq Programme which will involve consolidation and management of United Nations activities pursuant to Security Council resolutions 986 (1995) and 661 (1990).
2. I should appreciate it if your Departments could work out arrangements with Mr. Sevan for the transfer of those activities now being carried out in your respective Departments which relate to Mr. Sevan's area of competence referred to above.

Thank you.

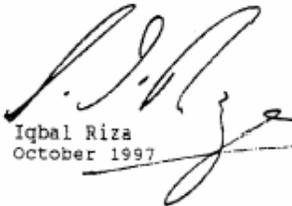

S. Iqbal Riza
13 October 1997

Figure: S. Iqbal Riza note to Yasushi Akashi and Kieran Prendergast (Oct. 13, 1997).

On October 31, 1997, Mr. Sevan on behalf of OIP and Mr. Prendergast on behalf of DPA entered into a written agreement on the division of responsibilities. Mr. Sevan agreed that OIP was established to “consolidate and manage” the activities of the Secretariat relative to Resolutions 661 and 986. Accordingly, Mr. Sevan and Mr. Prendergast agreed that DPA staff, including oil overseers and customs experts, would be funded by “the Iraq Escrow Account” and transferred to OIP. Staff members involved in the processing of contracts for the sanctions branch of the Secretariat would be “loaned” to OIP as well.¹¹

¹¹ Kieran Prendergast and Benon Sevan agreement (Oct. 31, 1997) (agreement signed by Kieran Prendergast as Under-Secretary-General for Political Affairs and Benon Sevan as Executive Director of OIP).

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OFFICE OF THE IRAQ PROGRAMME

1. The Office of the Iraq Programme was established by the Secretary-General, effective 15 October 1997, to consolidate and manage the activities of the United Nations Secretariat pursuant to Security Council resolutions 986 (1995) and 661 (1990). The Secretary-General also decided to appoint Mr. Benon V. Sevan as the Executive Director of the Iraq Programme, effective 15 October.

2. In a Note dated 13 October 1997, Mr. Riza requested Messrs. Akashi and Prendergast to work out the arrangements with Mr. Sevan for the transfer of those activities presently being carried out by their respective Departments which relate to Mr. Sevan's area of responsibility under the Office of the Iraq Programme referred to above.

3. At a meeting held on 29 October, between Messrs. Riza, Prendergast and Sevan (also present were Messrs. Knutsson and Moller and Ms. Scheer), Mr. Riza confirmed the understanding of the Secretary-General that the activities of the United Nations Secretariat pursuant to Security Council resolutions 661 (1990) and subsequent Security Council resolutions related thereto as well as 986 (1995), should be consolidated in, and managed by the Office of the Iraq Programme.

4. Accordingly, the following arrangements have been agreed upon between Messrs. Prendergast and Sevan:

(a) All applications received by the 661 Committee of the Security Council should be transmitted immediately to the Office of the Iraq Programme for logging, review and processing. As soon as the review and processing of an application is finalized, the Office of the Iraq Programme should submit the application through the Security Council Subsidiary Organs Branch of the Department of Political Affairs, for consideration by the 661 Committee.

(b) All reports to the Security Council and the 661 Committee on matters within the competence of the Office of the Iraq Programme, pursuant to the decision of the Secretary-General referred to in paragraphs 1 and 3 above, as well as SCR 986 Weekly Progress Reports, will be prepared by the Office of the Iraq Programme. The relevant reports of the Security Council and the 661 Committee will continue to be prepared by the Secretary of the Committee.

(c) All staff members, and the Oil Overseers and Customs Experts, funded by the Iraq Escrow Account, presently within the Security Council Subsidiary Organs Branch, should be transferred from the Department of Political Affairs to the Office of the Iraq Programme.

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(d) Staff members presently involved primarily in the processing of applications should be loaned from the Security Council Subsidiary Organs Branch to the Office of the Iraq Programme. (Details of the numbers and levels of the staff to be loaned will be worked out in such a manner that it does not adversely affect the capability of the Branch to carry out its responsibilities.)

(e) Lloyd's Register Inspection Ltd. and Saybolt Eastern Hemisphere should report directly to the Office of the Executive Director of the Iraq Programme.

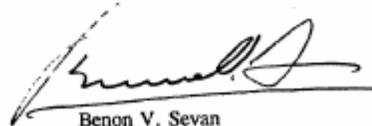
(f) There should be full cooperation and coordination between the Security Council Subsidiary Organs Branch and the Office of the Iraq Programme in order to ensure the provision of timely and effective support services to the 661 Committee. To that end, all staff members involved in the work of the Office of the Iraq Programme referred to in paragraphs 4 (c) and (d) above, will continue to be located in the same office space as they presently occupy. The Secretary of the 661 Committee should be fully associated with the Iraq Programme.

(g) The Steering Committee on Iraq should continue its activities, to ensure overall coordination of the work of the relevant departments and offices involved in and/or associated with the Office of the Iraq Programme. The Steering Committee is comprised of the heads of the following departments and offices: Executive Office of the Secretary-General, Office of Legal Affairs, Department of Political Affairs, Department of Peace-keeping Operations, Department of Humanitarian Affairs, Department of Management, including the Controller and Treasury, as well as the Office of the Iraq Programme.

5. It was agreed that the provisions of the above agreement shall become effective 1 November 1997.



Kieran Prendergast
Under-Secretary-General
for Political Affairs



Benon V. Sevan
Executive Director
of the Iraq Programme

31 October 1997

Figure: Kieran Prendergast and Benon Sevan agreement (Oct. 31, 1997).

In sum, on behalf of the Secretariat, OIP assumed administration of *both* the sanctions aspects of Resolution 661 and the humanitarian aspects of the Programme under Resolution 986. The Secretary-General intended that Mr. Sevan would manage DPA functions relating to the Programme, in particular functions relating to the processing of Programme-related contracts.

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Indeed, Mr. Sevan continued to recognize these terms of reference at later points during the life of the Programme.¹²

¹² Ibid.; Benon Sevan e-mail to J. Christer Elfverson (Oct. 19, 2002).

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IV. THE SECRETARIAT'S ADMINISTRATION OF THE PROGRAMME THROUGH OIP

The roles and responsibilities of OIP's primary divisions—the Contracts Processing and Monitoring Division (“CPMD”), the Programme Management Division (“PMD”) and the United Nations Office of the Humanitarian Coordinator in Iraq (“UNOHCI”)—never were defined officially in a finalized organizational manual. Instead, at various points in time, Mr. Sevan adjusted the functions and the structure of these units within OIP.¹³ The ensuing shifting roles and responsibilities had a detrimental effect on OIP's management and its oversight of field operations, a subject addressed at various points in Chapters 2, 3, and 5. Nonetheless, OIP's basic structure remained the same and consisted of three primary divisions: CPMD, PMD, and UNOHCI.¹⁴ Each of these units within OIP reported to Mr. Sevan, OIP's Executive Director, who in turn was accountable to Secretary-General Annan and Deputy Secretary-General Fréchette.¹⁵

Staffing for OIP generally increased during the Programme. In the early years of the Programme, OIP's staff at its headquarters in New York included less than 50 employees. By 2002, OIP headquarters included 77 employees. In Iraq, UNOHCI employed less than 100 employees in the early years and grew to 140 international staff members as of 2002. In addition, UNOHCI's staff included numerous Iraqi nationals. Payroll records do not indicate the precise numbers. However, OIP budget records for 2002 indicate that \$3.5 million was approved in salaries for local staff comprised of \$2.4 million for central and southern Iraq and \$1.1 million for northern Iraq for the employment of 206 and 93 persons, respectively. As noted in the First Interim

¹³ Bo Asplund interview (July 6, 2005); Stephani Scheer interview (Apr. 25, 2005).

¹⁴ Draft Secretary-General Bulletin, “Organization of the Office of the Iraq Programme,” secs. 2, 6, 7, 12 (undated) (attached to Stephani Scheer note to Benon Sevan (Mar. 12, 2001)) (hereinafter “Draft Organizational Bulletin”). The Draft Organizational Bulletin also discusses other subdivisions.

¹⁵ Draft Organizational Bulletin, secs. 6-7, 12 (Mar. 12, 2001); S. Iqbal Riza note to Benon Sevan (Mar. 4, 1998) (regarding the delegation of authority from the Secretary-General to the Deputy Secretary-General for supervising the Programme); Hans Corell memorandum to Benon Sevan (Apr. 18, 2001) (attaching draft organizational bulletin and commenting that, according to OLA, Mr. Sevan remained accountable to the Secretary-General in accordance with the provisions of a 1997 bulletin issued by the Secretary-General); “Organization of the Secretariat of the United Nations” ST/SGB/1997/5, para. 3.2 (Sep. 12, 1997); Benon Sevan note to S. Iqbal Riza (Mar. 12, 1998) (attaching notes of meeting between the Secretary-General and the Foreign Minister of Iraq held on March 9, 1998 that indicate that Deputy Secretary-General Louise Fréchette was “now responsible for overseeing the Oil for Food programme”). There were several variations of the draft bulletin between 1999 and April 2001, and the names of the divisions within OIP underwent changes at various stages as responsibilities shifted among the divisions. While the Draft Organizational Bulletin was never formally issued, for purposes of this overview section, the Committee has relied upon the most recent version of the Draft Organizational Bulletin that is consistent with the recollections of individuals familiar with the operation of OIP.

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Report, OIP's and UNOHCI's personnel costs for administering the Programme increased annually as the scope of the Programme increased, but at a slower rate, especially as the volume of humanitarian purchases almost tripled from 1999 to 2000. Personnel costs for OIP/UNOHCI's administration of the Programme – as a percentage of total humanitarian expenditures – decreased substantially after 1999.¹⁶

A. THE OFFICE OF THE EXECUTIVE DIRECTOR

As noted above, in October 1997, the Secretary-General appointed Mr. Sevan to the position of Executive Director of OIP, and Mr. Sevan served in that position throughout the life of the Programme.¹⁷ As the Committee concluded in its First and Third Interim Reports, Mr. Sevan compromised his position by secretly soliciting and receiving Iraqi oil allocations on behalf of a small oil trading company from which he corruptly derived nearly \$150,000 of income.¹⁸

In his capacity as the Executive Director, Mr. Sevan played an active, hands-on role in administering the Programme. He participated in the preparation of the Secretary-General's 90 and 180-day reports to the Security Council. According to OIP officials, Mr. Sevan would closely review the reports before further review by the Deputy Secretary-General and signature by the Secretary-General. Similarly, Mr. Sevan took the lead in addressing the 661 Committee on matters that were critical to the Programme. For example, Mr. Sevan routinely addressed the 661 Committee on the subject of expediting the approval of Programme-related contracts and the need to authorize funding for the Government of Iraq's oil production infrastructure. His subordinates regarded him as the person responsible for reporting sanctions violations such as the Iraqi regime's receipt of kickbacks to the Security Council and the 661 Committee. In addition, Mr. Sevan often discussed matters concerning the Programme with senior Iraqi officials.¹⁹

¹⁶ United Nations payroll records (1997-1998 and January 2002) (providing data on the number of OIP personnel in New York and the number of international staff in Iraq coded to the OIP and UNOHCI organizational units); Approved OIP budget proposal for Administrative and Operational Requirements Funded from the Iraq Escrow Account (2002) (noting that amount of funding approved in salaries for local staff); Proposed OIP budget proposal for Administrative and Operational Requirements Funded from the Iraq Escrow Account (2002) (noting that head count of local staff proposed for funding); "First Interim Report," p. 208.

¹⁷ S. Iqbal Riza note to Yasushi Akashi and Kieran Prendergast (Oct. 13, 1997); Kofi Annan letter to Benon Sevan (Mar. 5, 1998) (promoting Mr. Sevan to Under-Secretary-General effective February 1, 1998). Thereafter, the Secretary-General periodically extended Mr. Sevan's appointment. See, e.g., Kofi Annan letter to Benon Sevan (Oct. 7, 1999); Kofi Annan letter to Benon Sevan (Dec. 21, 2000); Kofi Annan letter to Benon Sevan (Dec. 11, 2001); Kofi Annan letter to Benon Sevan (Nov. 25, 2002).

¹⁸ "First Interim Report," pp. 121-164; "Third Interim Report," pp. 5-52.

¹⁹ Gregoire de Brancovan interview (June 6, 2005); Kofi Annan interview (July 26, 2005); Louise Fréchette interview (May 23, 2005); Farid Zarif interviews (July 6, 8, and 14, 2005); Felicity Johnston interview (May 26, 2005); Benon Sevan note to Denis Halliday (June 12, 1998) (attaching "Talking Points for

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Mr. Sevan had access to the United Nations' highest office—the “38th Floor”—namely Secretary-General Annan, Deputy Secretary-General Fréchette, and Mr. Riza, the former Chef de Cabinet. He spoke to Deputy Secretary-General Fréchette nearly every day on matters pertaining to the Programme and frequently met with Secretary-General Annan and Mr. Riza. Mr. Sevan enjoyed Deputy Secretary-General Fréchette's trust, as a result of which the Deputy Secretary-General, as the person charged with overseeing and supervising Mr. Sevan and OIP, granted Mr. Sevan substantial discretion to make decisions regarding the direction of the Programme and to interact as he saw fit with the 661 Committee.²⁰

B. CONTRACTS PROCESSING AND MONITORING DIVISION

Under the management of OIP, CPMD processed applications received from permanent and observer missions in accordance with Resolution 986, an approved distribution plan, and the 661 Committee Procedures.²¹ CPMD also supervised the independent inspection agents (Lloyd's, Cotecna) and was responsible for authenticating the delivery of humanitarian goods into Iraq. For their part, the customs experts were responsible for “examin[ing] each contract, in particular the details of price and value, and whether the items to be exported [were] on the [distribution plan].” The customs experts, moreover, were expected to scrutinize contracts for possible fraud and deception by the Iraqi regime. CPMD was managed by a director, namely John Almstrom (1998-2000) and Farid Zarif (2000-2004); the Chief Customs Experts, who supervised the Customs Office during the Programme, were Jeremy Owen (1997-1999), Urs Christen (1999), and Felicity Johnston (1999-2003).²²

Executive Director's Briefing of the Security Council”); Benon Sevan briefing at informal Security Council consultations, pp. 8-13 (July 22, 1999); Provisional record of 661 Committee Meeting, S/AC.25/SR.192, pp. 3-5 (Jan. 19, 2000); Benon Sevan note (Jan. 19, 2000) (“Briefing by the Executive Director of the Iraq Programme”); OIP note on meeting with Taha Yassin Ramadan (July 1, 1999); OIP note on meeting with the Permanent Representative of Iraq to the United Nations (July 10, 2000); Benon Sevan note to Louise Fréchette (Mar. 3, 2001) (attaching notes of meeting with Iraqi Ambassador, Ministry of Foreign Affairs, and other Iraqi officials on February 28, 2001).

²⁰ Kofi Annan interviews (July 26-27, 2005); Louise Fréchette interviews (May 23, 25, and 31, 2005); S. Iqbal Riza interview (July 7, 2005); S. Iqbal Riza note to Benon Sevan (Mar. 4, 1998) (regarding “Supervision of the Iraq Programme”).

²¹ Until 2001, OIP's contracts processing was conducted by the Contract Processing Section. In 2001, the section was re-named the Contracts Processing and Monitoring Division. Benon Sevan memorandum to OIP Managers, “Contracts Processing and Monitoring Division” (Aug. 29, 2001). For ease of reference, the unit is referred to herein as “CPMD.”

²² Kieran Prendergast and Benon Sevan agreement (Oct. 31, 1997); Draft Organizational Bulletin, paras. 6.1-.2 (Mar. 12, 2001); 661 Committee Procedures, paras. 9, 33; Kofi Annan interview (July 26, 2005); OIP, “Office of Iraq Programme – Staffing Table 1996-2004” (May 17, 2005); John Almstrom interviews (Oct. 28, 2004 and Feb. 17, 2005); Farid Zarif interviews (July 6, 8, and 14, 2005); Jeremy Owen interviews (Dec. 13, 2004 and Apr. 13, 2005); Urs Christen interview (June 20, 2005); Felicity Johnston

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1. Functions of the Contracts Processing and Management Division

The work of CPMD was primarily divided into two sub-units. A processing unit received the applications and entered the relevant data into the OIP computer systems. A group of customs experts reviewed the contracts for price, value, and conformity with the resolutions and guidelines of the 661 Committee. The customs experts' review procedures were documented in a "Customs Compendium" that was updated continually throughout the Programme.²³

In contrast to other OIP personnel, customs experts were seconded by governments and paid by the United Nations as consultants. In order to prevent and avoid appearances of conflicts of interest, it was intended that customs experts serve no more than two years on the Programme. In addition, customs experts were prohibited from reviewing contracts submitted by the missions of their home country. Except in cases of approved humanitarian need, customs experts were required to review contracts on a "first-come-first-served" basis to prevent inappropriate or uneven prioritization of contracts. Finally, customs experts were discouraged from having direct communication with suppliers and instead interfaced with representatives of the suppliers' respective permanent missions.²⁴

2. Contracts Processing (1997-1999)

From the beginning of the Programme until 1999, the procedures for processing contracts remained roughly the same. After negotiating contracts with the Iraqis, suppliers submitted contract applications to CPMD through their permanent missions. The processing unit received the contracts, reviewed them to ensure basic conformity to administrative specifications, and assigned the applications a unique identification code (referred to as a "COMM no.").²⁵

Applications were then reviewed by customs experts who first verified that contract items and quantities were listed in the distribution plan. The distribution plan was a document prepared jointly at the beginning of each phase by the Iraqi regime and the United Nations, listing the items the regime intended to import during that particular phase of the Programme. After review and

interview (May 26, 2005); see Felicity Johnston note-to-file (Oct. 22, 2001) (indicating that Ms. Johnston's title was "Chief Customs Expert").

²³ John Almstrom interview (Oct. 28, 2004); 661 Committee Procedures, para. 33; "Compendium of Procedures Established by the 661 Committee for the Resolution 986 (1995) Programme" (Sep. 14, 1998); "Compendium of Procedures Established by the 661 Committee for the Resolution 986 (1995) Programme" (Mar. 19, 1999); Felicity Johnston interview (May 26, 2005).

²⁴ John Almstrom interview (October 28, 2004); Stephani Scheer interview (July 26, 2005); "Compendium of Procedures Established by the 661 Committee for the Resolution 986 (1995) Programme" (Mar. 19, 1999); Urs Christen interview (June 20, 2005); Felicity Johnston interview (June 10, 2005); Jeremy Owen interview (Dec. 13, 2004).

²⁵ Darko Mocibob interview (July 6, 2004); John Almstrom interview (Oct. 28, 2004).

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comment by the UN-related Agencies, UNOHCI, and OIP, the Secretary-General approved the distribution plan and presented it to the 661 Committee.²⁶

If the contract application was in conformity with the distribution plan, the customs experts proceeded to review pricing and contractual terms to ensure conformity with the resolutions and 661 Committee Procedures. If an application or contract was not in conformity, CPMD could place the application in a “non-compliant” status and communicate the deficiencies to the permanent mission, requesting the supplier to provide additional information and/or re-submit the application correcting the deficiencies. If review by the Customs Office found the application in conformity, CPMD then could circulate the application to the 661 Committee for approval.²⁷

After the contract application was circulated to the 661 Committee, any member could “block” the transaction or place the application on “hold.” A “block” removed the application from further consideration. The member state placing the application on “hold” often communicated its reasons to OIP, which then could work with the supplier’s permanent mission to obtain additional information or modify the contract. If the new information or contract terms were satisfactory, the member state could remove the hold and approve the contract.²⁸

3. Response to Growth in the Programme (1999-2003)

Beginning in 1998, initiatives by the Secretary-General and the Security Council dramatically changed the nature of the Programme, requiring CPMD to adapt through increased staffing and revised review and approval procedures. In February of 1998, during Phase III of the Programme, Secretary-General Annan presented the results of a process review of the Programme that recommended an increase in the size and scope of the Programme and recommended process improvements to alleviate existing problems. In his report, Secretary-General Annan recognized the negative impact of holds on the humanitarian Programme and urged several changes to address the issue. He also promised increased emphasis on speeding the approval process, directing OIP to “process within two business days all applications received that are in compliance.” When items were placed on hold he urged the Committee to provide “written and

²⁶ S/RES/986, para. 8(a)(ii) (Apr. 14, 1995); Iraq-UN MOU, paras. 5-11 (distribution plan); 661 Committee Procedures, paras. 26-27, 33; John Almstrom interview (Oct. 28, 2004).

²⁷ Darko Mocibob interviews (July 6, 2004 and Aug. 16, 2005) (indicating that if there was an irregularity in a contract, a customs expert would talk with the supplier (through the supplier’s mission) in order to rectify the problem); John Almstrom interview (Oct. 28, 2004); Jeremy Owen interview (Dec. 13, 2004); Farid Zarif note to Benon Sevan (Mar. 15, 2001) (indicating that “if the value of goods appeared to be excessively high or low, the application concerned is transferred to noncompliant status and a written application is requested from the supplier, via the relevant submitting mission”).

²⁸ John Almstrom interview (Oct. 28, 2004).

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explicit explanations . . . within 24 hours in order to enable the applicants to provide any additional information required.”²⁹

On February 20, 1998, the Security Council authorized an increase to the ceiling on oil exports from \$2 billion to \$5.256 billion per phase, causing a dramatic increase in the number of contract applications flowing into CPMD for review. With the increased funding, the Secretary-General also approved the addition of several new sectors beyond the original focus on food and medicine. These sectors brought about more complex contracts for highly-specialized goods intended to upgrade the infrastructure of Iraq. Service contracts, initially prohibited under the original terms of the Programme, were authorized and became more prevalent as specialized goods necessitated installation and training services. In order to meet the new levels of Programme funding, on June 19, 1998, the Security Council for the first time authorized Programme funding for oil spare parts.³⁰

By December of 1999, the growth in size and scope of the program as well as the emphasis on alleviating holds precipitated significant change in the work of CPMD. Security Council Resolution 1284 instituted fast track procedures which, for the first time, delegated authority directly from the 661 Committee to the Secretariat to affirmatively approve contracts. Under these procedures, lists of items (called “green lists”) would be approved by the 661 Committee. Contracts for items on the “green list” could be approved by OIP, requiring only notification to the Committee that the contract was approved. Contracts with items not on the “green list” or with other irregularities would continue to be circulated to the Committee for approval.³¹

In May 2002, the Security Council passed Resolution 1409, providing for the use of the Goods Review List (“GRL”). UNMOVIC prepared the GRL, delineating all items prohibited because they had direct military application or were considered dual-use items with civilian as well as potential military application. All contracts, once registered by OIP, were forwarded to UNMOVIC/IAEA for review. If UNMOVIC/IAEA’s review determined that a contract contained no items of military or dual use concern, OIP approved the contract, notifying the 661 Committee. All others were circulated to the 661 Committee for review. This procedure was

²⁹ “Report of the Secretary-General Pursuant to Paragraph 7 of Resolution 1143,” S/1998/90, paras. 53(a), 58-60 (Feb. 1, 1998).

³⁰ S/RES/1153, para. 2 (Feb. 20, 1998); S/RES/1175, paras. 1-3 (June 19, 1998); Farid Zarif interview (July 5, 2005); Jeremy Owen interview (Dec. 13, 2005); “Report of the Secretary General Pursuant to Paragraph 7 of Resolution 1143,” S/1998/90, paras. 25-27 (Feb. 1, 1998) (discussing infrastructure rehabilitation, electricity sector rehabilitation). Later phases would see the addition of even more varied sectors, including religious affairs, culture, and sports. See Kofi Annan letter to the President of the Security Council (July 25, 2000) (attaching distribution plan for Phase VIII with table at page 8 showing allocations by sector); John Almstrom memorandum to Bruce Rashkow (Sep. 17, 1998) (regarding “Request for Legal Advice – Service and Long-Term Construction Contracts”).

³¹ Farid Zarif interview (July 5, 2005); S/RES/1284, paras. 17, 25 (Dec. 17, 1999). Later in this Volume, Part II of Chapter 2 discusses the increase in complexity and variety of contracts processed by CPMD.

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designed to expedite the approval of large volumes of contracts. CPMD gathered detailed end-use information from the field to inform the 661 Committee's decision in deciding on particular contracts.³²

In response to the addition of sectors and the swell in number of contracts submitted for approval to CPMD, the number of both general and specialized staff increased.³³ In December 1997, the CPMD employed seven staff members.³⁴ In August 2001, as a result of the growth in size and scope of the Programme, CPMD was promoted to divisional status.³⁵ Mr. Zarif was installed as the Director of the division.³⁶ By the end of 2002, CPMD employed forty-nine staff members, over half of OIP's staff in New York.³⁷

C. PROGRAMME MANAGEMENT DIVISION

After OIP began administering the Programme on behalf of the Secretariat, coordination of the Programme's field operations occurred across several divisions. In the field, operations were carried out by a Humanitarian Coordinator, who was charged with running UNOHCI. From New York, Mr. Sevan's Executive Office and PMD interfaced with UNOHCI. During the Programme, there were two persons who served as directors of PMD: Bo Asplund (1998-1999) and J. Christer Elfverson (2000-2003). The directors reported to Mr. Sevan.³⁸

The key functions of PMD were to provide policy and management advice to OIP's Executive Director and to support the work of UNOHCI relating to the implementation and observation of the Programme in the field. PMD was also tasked with coordinating the preparation of the 90 and

³² S/RES/1409, para. 2 (May 14, 2002) (attaching procedures for processing contracts in view of the GRL process). In September 2001, the Contracts Processing Section was renamed the Contracts Processing and Monitoring Division to reflect, inter alia, its increased role in end-use monitoring. Benon Sevan memorandum to OIP Managers (Aug. 29, 2001) (regarding the "Contracts Processing and Monitoring Division").

³³ Jeremy Owen interview (Dec. 13, 2004) (noting the number of customs experts in 1997); "Briefing Note: Office of the Iraq Programme" (Oct. 3, 2003) (attaching table revealing history of OIP staffing, including reference to existence of fifteen customs experts as of 2003); Farid Zarif interview (July 5, 2005).

³⁴ United Nations payroll records, United Nations Office of Human Resources Management.

³⁵ Benon Sevan memorandum to OIP Managers (Aug. 29, 2001) (regarding "Contracts Processing and Monitoring Division").

³⁶ Farid Zarif interview (July 5, 2005); Benon Sevan memorandum to OIP Managers (Aug. 29, 2001).

³⁷ United Nations payroll records, United Nations Office of Human Resources Management.

³⁸ Kieran Prendergast and Benon Sevan agreement (Oct. 31, 1997); Draft Organizational Bulletin, paras. 3.2, 5.1, 6.2(h), 7.1-.2, 12.1-14.1 (Mar. 12, 2001); Bo Asplund interview (July 6, 2005); J. Christer Elfverson interview (Dec. 4, 2004); OIP, "Office of Iraq Programme – Staffing Table 1996-2004" (May 17, 2004).

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180-day reports of the Secretary-General to the Security Council and ensuring that the Programme was effectively implemented. PMD further was charged with providing strategic thinking on the development and planning of the Programme, identifying Programme-related issues, and proposing solutions for the more effective implementation of the Programme.³⁹

By 1999, PMD was comprised of two primary sections: the Operations Support Section (“OSS”) and the Observation and Analysis Section (“OAS”). OSS oversaw and provided support for the Programme’s implementation in the three northern governorates. Specifically, OSS was responsible for evaluating the impact of the Programme’s implementation, supporting UNOHCI in its coordination function, providing analysis regarding the allocation of resources, reviewing projects, and providing input as to the Secretary-General’s reports to the Security Council.⁴⁰

OAS provided recommendations to UNOHCI in managing the observation activities in the central and southern governorates of Iraq. The section also received information from UNOHCI’s observers in the field and prepared the 90 and 180-day reports that the Secretary-General submitted to the Security Council. OAS’s basic focus was on the Programme’s effectiveness, adequacy, and equitability in meeting the humanitarian and essential civilian needs of the Iraqi population in central and southern Iraq. Additional functions of OAS included the responsibility for reviewing and assessing draft distribution plans and annexes submitted by the Government of Iraq, suggesting amendments to the priorities set forth in the distribution plan prior to approval by the Secretary-General, and processing requests for amendments to the annexes of the approved distribution plan.⁴¹

D. UNITED NATIONS OFFICE OF THE HUMANITARIAN COORDINATOR IN IRAQ

On the ground in Iraq, operations were carried out by a Humanitarian Coordinator who was charged with running UNOHCI. The Humanitarian Coordinator served as the Secretariat’s representative in Iraq. The Humanitarian Coordinator was accountable to OIP’s Executive Director, namely Mr. Sevan, and was responsible for managing the Programme’s implementation in Iraq. In the course of the Programme, the Secretary-General appointed six Humanitarian Coordinators who in sequence ran the Secretariat’s field operations: Gultiero Fulcheri (December 1996-March 1997), Staffan de Mistura (March 1997-September 1997), Denis Halliday (September 1997-September 1998), Hans von Sponeck (October 1998-March 2000), Tun Myat (May 2000-July 2002), and Ramiro Armando Lopes da Silva (July 2002-November 2003). Each

³⁹ Draft Organizational Bulletin, paras. 7.1-.2 (Mar. 12, 2001); Gregoire deBrancovan interview (June 6, 2005).

⁴⁰ Draft Organizational Bulletin, paras. 9.1-.2 (Mar. 12, 2001).

⁴¹ *Ibid.*, paras. 8.1-.2.

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Humanitarian Coordinator was based in Baghdad and supported by a Deputy Humanitarian Coordinator located in the northern Iraqi governorate of Erbil.⁴²

Resolution 986 and the MOU provided that while the United Nations was responsible for implementing the Programme in the three northern governorates, the Government of Iraq would be responsible for implementing the Programme in the fifteen governorates in the southern and central regions of Iraq. UNOHCI's role was to ensure the equitable distribution of humanitarian supplies by the former Iraqi regime, verify the efficiency of the operation, and determine the adequacy of available resources to meet the humanitarian needs of the Iraqi people. In order to accomplish these functions, the Humanitarian Coordinator was responsible for managing the United Nations' observation mechanism in Iraq, supervising and coordinating operational activities of the Programme, and developing an overall strategy for the implementation of the policy directives of the Executive Director.⁴³

As noted above, the United Nations, as opposed to the Iraqi regime, was responsible for implementing the Programme in the northern governorates. UN-related Agencies were employed in this implementation process. As discussed in Chapter 4 of Volume IV, which addresses the role of the Agencies in detail, each agency had its own memorandum of understanding with the United Nations. The Deputy Humanitarian Coordinator in Erbil coordinated and facilitated the efficient and equitable implementation of the Programme in the northern governorates and was responsible for coordinating the Agencies and their programs in the three northern governorates.⁴⁴

E. OVERSIGHT FROM THE 38TH FLOOR

In March 1998, Secretary-General Annan appointed Louise Fréchette to the newly created position of Deputy Secretary-General and delegated to her authority for the "overall supervision" of OIP. Thereafter, Mr. Sevan reported directly to the Deputy Secretary-General, who in turn reported to the Secretary-General. Mr. Sevan reported to the Secretary-General as well and continued to meet with and advise Secretary-General Annan concerning developments in the Programme, directly and through Mr. Riza, the Secretary-General's Chef de Cabinet.⁴⁵ The structure, in other words, contemplated oversight and supervision from the 38th Floor.

⁴² OIP, "Programme Chronology," <http://www.un.org/Depts/oip/background/chron.html>; Draft Organizational Bulletin, paras. 12.1-14.1, 16.1-2 (Mar. 12, 2001).

⁴³ S/RES/986, para. 8 (Apr. 14, 1995); Iraq-UN MOU, paras. 34-35 and Annex I; Draft Organizational Bulletin, paras. 12.2-.3, 13.1 (Mar. 12, 2001) (discussing the role of the Humanitarian Coordinator).

⁴⁴ John Almstrom interview (June 2, 2005); see, e.g., WHO-UN memorandum of understanding (Dec. 30, 1997); Draft Organizational Bulletin, paras. 16.1-2 (Mar. 12, 2001) (discussing the role of the Deputy Humanitarian Coordinator).

⁴⁵ S. Iqbal Riza note to Benon Sevan (Mar. 4, 1998) (regarding "Supervision of the Iraq Programme"); Kofi Annan interview (July 26, 2005); Louise Fréchette interviews (Feb. 16 and May 25, 2005); S. Iqbal Riza

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As Chef de Cabinet, Mr. Riza headed the Executive Office of the Secretary-General. His responsibilities included assisting both the Secretary-General and the Deputy Secretary-General “in the exercise of executive direction in relation to the work of the Secretariat and of United Nations programmes and other entities within the Organization.” Mr. Riza received copies of significant documents and memoranda concerning the Programme. Mr. Riza frequently met with the Secretary-General and Mr. Sevan to discuss major matters concerning the Programme, and he also participated in meetings with the Iraqi officials relating to the Programme. Mr. Riza was further charged with “assist[ing] the Deputy Secretary-General” in the exercise of her responsibilities. Mr. Riza explained in a recent interview that the Chef de Cabinet had the discretion to determine which matters required the attention of and action by the Secretary-General and which matters could be addressed by the Chef de Cabinet on behalf of the Secretary-General.⁴⁶

F. ORGANIZATIONAL CHART

OIP’s structure and reporting lines never were officially defined in an approved manual and varied throughout the life of the Programme. The structure and relationships are thus not conducive to producing a definitive organizational chart that covers the life of the Programme. What follows, therefore, is a chart of OIP’s structure as of March 2001 according to a draft organizational manual that never was approved, but is consistent with the documentary evidence and witness accounts described above. With some variations in the names and functions of the referenced divisions, during the Programme, OIP operated under the following basic structure.

interview (July 7, 2005); see also Hans Corell memorandum to Benon Sevan (Apr. 18, 2001) (attaching draft organizational bulletin and commenting that, according to OLA, Mr. Sevan remained accountable to the Secretary-General in accordance with the provisions of a 1997 bulletin issued by the Secretary-General); “Organization of the Secretariat of the United Nations” ST/SGB/1997/5, para. 3.2 (Sept. 12, 1997).

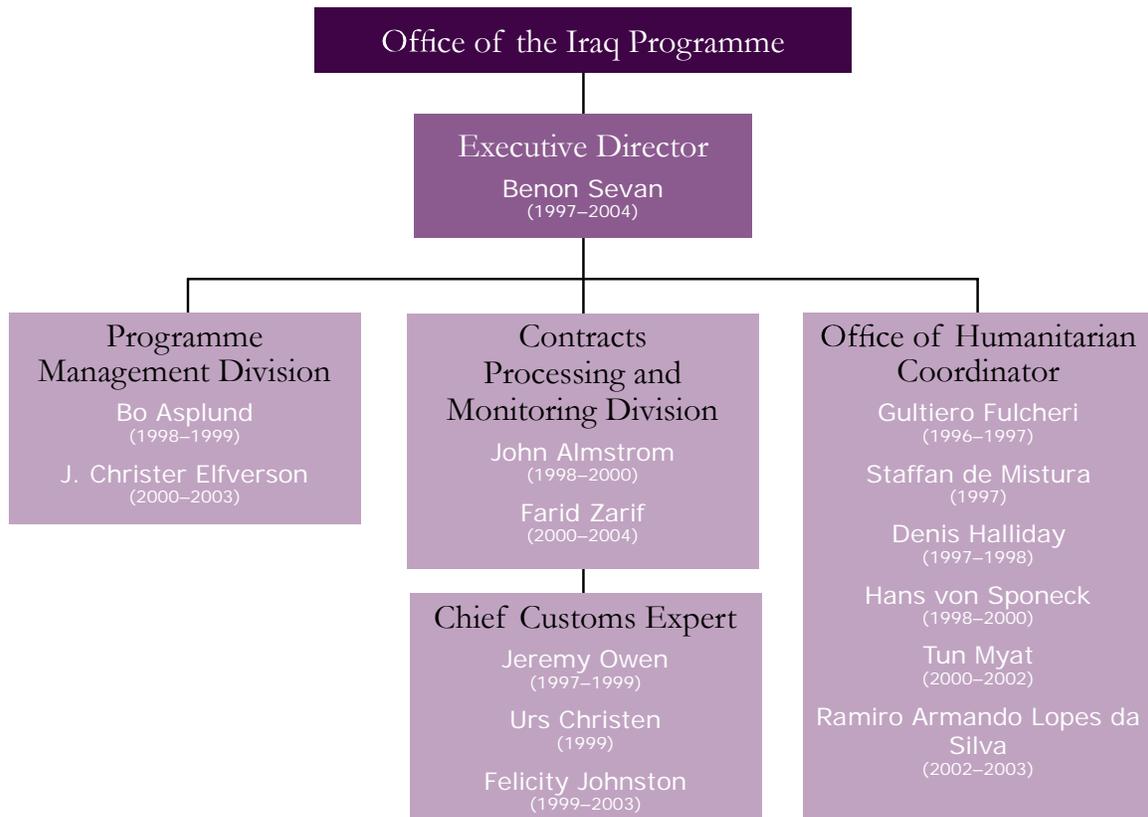
⁴⁶ “Organization of the Executive Office of the Secretary-General,” ST/SGB/1998/18, paras. 2.1(a), 2.2 (Dec. 3, 1998); see, e.g., Benon Sevan note to S. Iqbal Riza (Mar. 12, 1998) (attaching minutes of meeting between the Secretary-General and the Foreign Minister of Iraq, through which the Secretary-General introduced the Deputy Secretary-General as “now responsible for overseeing the Oil for Food programme”); Joseph Connor note to S. Iqbal Riza (Nov. 8, 2000) (advising the Secretary-General through Mr. Riza of illegality of Iraq’s contemplated imposition of oil surcharges); Benon Sevan note to Louise Fréchette (Nov. 21, 2000) (explaining reports from Saybolt concerning the Iraqi regime’s use of the Syrian pipeline to smuggle oil, with a copy to Mr. Riza); Benon Sevan note to S. Iqbal Riza (Mar. 7, 2001) (explaining the nature of media reports concerning kickbacks and surcharges); Kofi Annan interview (July 26, 2005); Louise Fréchette interview (May 25, 2005); S. Iqbal Riza interview (July 7, 2005); Vladimir Grachev note to Kofi Annan (Nov. 6, 2000); Notes of Kofi Annan’s meeting with the Iraqi delegation (Feb. 26-27, 2001).

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Chart A – Basic Organization of OIP



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FROM NEW YORK

I. INTRODUCTION

From its headquarters in New York, the Secretariat administered the Programme through two primary divisions: the Contracts Processing and Monitoring Division (“CPMD”) and the Programme Management Division (“PMD”).⁴⁷

Part II of this Chapter addresses the challenges that CPMD faced as the Programme expanded and as the demands placed on the division’s customs experts increased.

Part III explains the unclear division of authority between OIP’s operations in New York and the operations of the United Nations Office of the Humanitarian Coordinator in Iraq (“UNOHCI”). It further explains Mr. Sevan’s marginalization of PMD’s role in overseeing field operations beginning in 2000.⁴⁸

⁴⁷ By 2001, OIP’s Contract Processing Section was renamed the Contracts Processing and Monitoring Division. See, e.g., Stephani Scheer memorandum to John Almstrom (Feb. 5, 2001) (attaching draft Secretary-General’s Bulletin referencing the Processing Section); Stephani Scheer note to Benon Sevan (Mar. 12, 2001) (attaching a subsequent draft Secretary-General’s Bulletin referencing the Processing and Monitoring Division). For ease of reference, the term “CPMD” is used throughout this Chapter to refer to both the Contracts Processing Section and the Contracts Processing and Monitoring Division.

⁴⁸ Chapter 1 provides a more detailed description of the functions and responsibilities of CPMD, PMD, and UNOHCI.

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II. CHALLENGES TO CONTRACTS PROCESSING

Customs experts within CPMD faced significant challenges in conducting their review of Programme-related contracts, particularly beginning in Phase VI (May through November 1999), by which time the diversity of goods, services, and programs and the complexity of contract terms had dramatically increased. This Part focuses on the expansion of the Programme and OIP's response to the resulting difficulties in contracts processing. As set forth below, the customs experts lacked expertise in international commodities, conducted only a limited review of contracts in connection with preparing reports for the 661 Committee, and were unclear about the scope of OIP's authority to reject contracts on pricing grounds. Regarded by Secretary-General Kofi Annan as one of the major weaknesses in the Secretariat's administration of the Programme, the inability of CPMD to properly review Programme-related contracts facilitated the Iraqi regime's efforts to obtain illicit payments from goods suppliers.

A. INADEQUATE EXPERTISE AMONG CUSTOMS EXPERTS

During the course of the Programme, the volume and complexity of contracts increased significantly as did the diversity of goods and services. While the number of customs experts increased as the Programme expanded, their expertise was inadequate to conduct a thorough review of the proposed pricing for Programme-related goods.

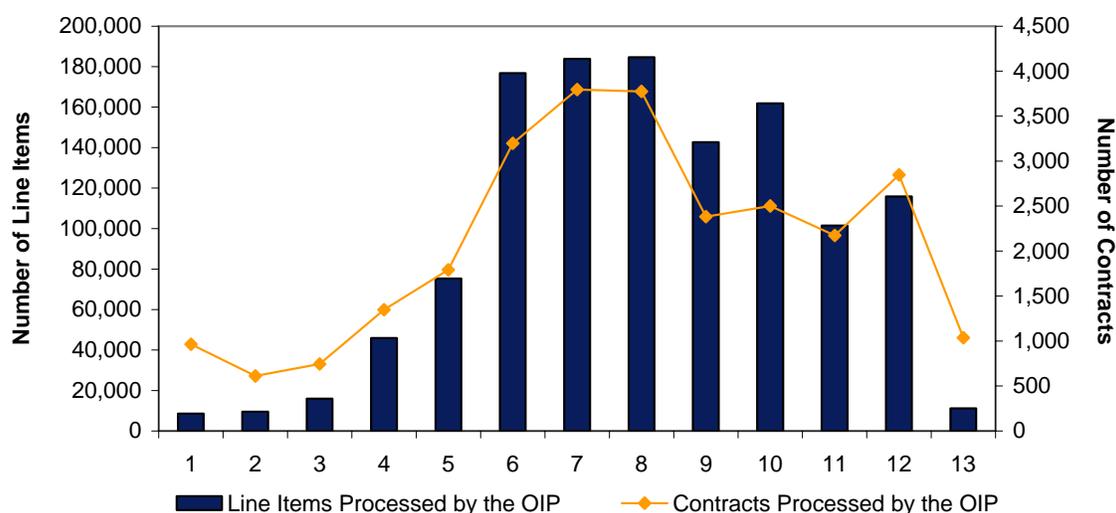
As set forth in the chart below, by Phase VII, the volume of contracts had climbed from several hundred to nearly 4,000. The total number of line items (i.e., the total number of items covered in the contracts) rose from a low of 8,571 in Phase I to a high of 184,647 in Phase VIII.

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Chart A – History of Volume of Contracts and Line Items Per Phase⁴⁹



Compounding the dramatic increase in the volume of contracts and Programme-related goods, the customs experts contended with a widening variety of sectors and subsectors with which familiarity was necessary. For example, running from June through December 2000, Phase VIII represented the peak of the Programme in terms of the value of oil exported and the number of contracts processed. As shown in the figure below, the distribution plan for Phase VIII included allocations for items such as education, settlement rehabilitation, transportation, communications, housing, and mine-related activities.⁵⁰

⁴⁹ TaR (1996-2003) (OIP humanitarian contracts).

⁵⁰ Jeremy Owen interview (Dec. 13, 2004); Felicity Johnston interview (May 26, 2005); OIP, “Phases of the Programme,” <http://www.un.org/depts/oip/background/phases.html>; OIP, “Basic Figures,” <http://www.un.org/depts/oip/background/basicfigures.html>. The chart above shows the volume of contracts and line items. Kofi Annan letter to the President of the Security Council (July 25, 2000) (attaching distribution plan for Phase VIII with table at page 8 showing allocations by sector).

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Sector/Activity	Allocations in US\$m (countrywide)	Allocations for Dihouk, Erbil, Suleimaniyeh (US\$m)
SECTOR		
Food **	1,266.00	183.32
Food supporting supplies of equipment/ spare parts for food supply, goods transportation / trucks/ standardization and quality control labs.	518.42	1.42
Medicines and medical supplies	548.00	50.00
Water and Sanitation	604.09	161.09
Electricity	752.38	134.38
Agriculture	431.63	216.63
Irrigation	373.50	
Primary , Secondary Education	227.09	67.59
Higher Education	161.89	41.89
Settlement Rehabilitation	202.35	202.35
Mine Related Activities	36.89	36.89
Nutrition	16.08	16.08
Health Rehabilitation	147.66	147.66
Transport and Communications / Rehabilitation of Railway Network	488.50	8.00
Housing	757.00	
SUB TOTAL	6,531.48	1,267.30
Oil	600.00	
GRAND TOTAL	7,131.48	

Figure: Distribution Plan, Phase VIII (July 25, 2000) (Table 1).⁵¹

Later phases would add even more and varied sectors including religious affairs, culture, and sports.⁵² This expansion required customs experts to review contracts for goods well beyond the initial focus on food and medicine.

Still further, the contracts themselves became increasingly complex. By March 2001 (Phase IX), for example, CPMD reviewed contracts for deferred automatic payment clauses, performance bonds, and counter guarantees. The customs experts also examined provisions for training, supply of warranty goods, and “free of charge” goods. Special authentication procedures were required for service contracts with assigned values. Service contracts became a common form of

⁵¹ Kofi Annan letter to the President of the Security Council (July 25, 2000) (attaching distribution plan for Phase VIII with table at page 8 showing allocations by sector).

⁵² Kofi Annan letter to the President of the Security Council (June 13, 2002) (attaching distribution plan for Phase XII with table at page 7 showing allocations by sector).

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contract submitted by the Iraqis for examination and were “nearly impossible” for the customs experts to price.⁵³

Ms. Johnston, OIP's Chief Customs Expert, explained to the Committee that as of 2001: (1) a wide range of goods was being purchased through the Programme; (2) there had been a “huge increase in the number of contracts coming in” to OIP; and (3) pricing review had become a complex matter. According to Ms. Johnston “pricing was an area of weakness” within the customs office and there were serious problems with staffing her team with the requisite expertise. Darko Mocibob, an OIP Programme Officer, similarly noted that it was tough to gauge the fairness of pricing for an item that was tailor-made for Iraq or where there was no competitive product to which it easily could be compared.⁵⁴

The challenges faced by the customs experts became a source of discussion within OIP in March 2001, when the media reported allegations that the Iraqi regime was receiving sanctions-busting kickback payments in connection with the very contracts that the customs experts were charged with reviewing. The chronology of events concerning kickbacks is discussed in detail below in Chapter 4. The point here is that the widely reported allegations of kickback payments and contract pricing concerns required Mr. Sevan's attention, particularly because the issue was thrust onto the Secretary-General's radar screen, as Mr. Sevan well knew.⁵⁵

On March 10, 2001, therefore, Mr. Sevan requested that Farid Zarif, director of CPMD, “review immediately the criteria used by our customs officers in reviewing applications for contracts.” Mr. Sevan noted that it was “essential that we tighten up our procedures and requirements” in order to ensure appropriate pricing. On March 15, 2001, Mr. Zarif replied, explaining the various efforts that CPMD was employing to review pricing. Mr. Zarif noted that high prices were “routinely subject to queries,” and, when the value was deemed excessively high or low, the application was placed on “noncompliant status” pending further information from the supplier. The customs experts were also instructed in their review, especially regarding food items, to pay particular attention to payment arrangements and “to bring to the attention of the Senior Customs Expert any case that involves direct payment by the supplier to the Government of Iraq, rather than to the Iraq account.”⁵⁶

In addition to explaining the efforts that the customs experts were undertaking, Mr. Zarif conceded that price evaluation was not as accurate as desired. He emphasized in a note to Mr. Sevan that “[e]valuating the price of goods is a somewhat difficult task, and although this is one of the main duties of the customs evaluations, *the Customs Experts are not actually experts in*

⁵³ Farid Zarif note to Benon Sevan (Mar. 15, 2001); Felicity Johnston interview (June 10, 2005).

⁵⁴ Felicity Johnston interviews (May 26 and June 10, 2005); Darko Mocibob interview (Sept. 20, 2004).

⁵⁵ Part III of Chapter 4, later in this Volume, discusses the Iraqi regime's illicit kickback scheme and the Secretariat's response.

⁵⁶ Benon Sevan note to Farid Zarif (Mar. 10, 2001); Farid Zarif note to Benon Sevan (Mar. 15, 2001).

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international commodities markets” and would require the assistance of price specialists for each sector. Mr. Zarif pointed to varying market prices, fluctuating international stocks and currency exchange rates, and the custom-design nature of some of the goods to explain price discrepancies.⁵⁷

In response to Mr. Zarif’s note of March 15, Mr. Sevan agreed that price evaluations were difficult and customs experts lacked expertise in international commodities markets. Mr. Sevan proposed to hire “one or two experts in international commodities markets” and asked that “Customs Experts keep themselves up to date on matters falling under their responsibilities.” In Ms. Johnston’s view, Mr. Sevan’s proposal for “one or two experts in international commodities markets” was not likely to resolve the difficulties associated with assessing fair prices.⁵⁸

On March 22, 2001, Mr. Zarif, Ms. Johnston, and Carl de Cruze, Deputy Chief of Contracts Processing, met to discuss “the need to strengthen and support” the Customs Office by providing additional expertise with respect to commodity pricing. At that meeting, CPMD officers decided that Palani Raj, already employed as an expert in dual use items, would be able to provide analytical support with respect to the review of humanitarian contracts. Later that afternoon, Ms. Johnston, Mr. de Cruze, and Mr. Raj met to discuss the best approach to improve OIP’s pricing analysis. It was agreed that Mr. Raj would develop a reference database to record the pricing of commonly ordered items for each phase. The customs experts would perform market research and establish acceptable price ranges in the database. Any applications for goods with prices outside those ranges would be transferred to “non-compliant status,” and clarifications would be obtained from the suppliers. There is no indication that the initiative proved useful in detecting the widespread increases in pricing that enabled the Iraqi regime to obtain illicit payments through side agreements with suppliers.⁵⁹

Taken as a whole, the correspondence among Mr. Sevan, Mr. Zarif, Ms. Johnston, and Mr. de Cruze in March 2001 portrays a recognition that OIP was ill-suited to combat the Iraqi regime’s efforts to generate illegal revenues on humanitarian contracts. In particular, OIP’s resources and expertise in pricing were stretched thinly, and the stop-gap measures taken by OIP did nothing to curb the regime’s abuses of the Programme.⁶⁰

⁵⁷ Farid Zarif note to Benon Sevan (Mar. 15, 2001) (emphasis added).

⁵⁸ Benon Sevan note to Farid Zarif (Mar. 20, 2001); Felicity Johnston interview (May 26, 2005).

⁵⁹ Carl de Cruze e-mail to Palani Raj (Mar. 22, 2001) (copying Ms. Johnston); Felicity Johnston e-mail to Farid Zarif and Darko Mocibob (Mar. 22, 2001); Felicity Johnston interview (June 10, 2005) (noting that the results of the initiative were inadequate). As explained later in this Volume, in Part III of Chapter 4, the kickback scheme surfaced in late 1999 and continued through the CPA handover in 2003.

⁶⁰ Chapter 4 of Volume III discusses the Iraqi regime’s ongoing sanctions violations through the final phase of the Programme in 2003.

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B. LIMITED NATURE OF THE CUSTOMS REVIEW PROCESS

The Committee's investigation has revealed that the customs experts performed a limited review of Programme-related contracts and thus did not provide detailed information for the 661 Committee's consideration in the process of approving contracts. Customs experts carried out the review of contract pricing informally.⁶¹ In fact, this concern was raised in 1997 in connection with an audit of the Programme: "Unlike the Oil Overseers, [the customs experts] had no access to Reuters [*sic*] weekly commodity bulletins or FMB Consultants LTD, London weekly telefax reports on world commodity prices; nor [had they] received any inputs from agencies like Crown Agents London."⁶² Customs experts continued to find the pricing tools and resources at their disposal insufficient to conduct a proper customs review. By 1998 and 1999, because of the Programme's sectoral expansions, the complexity of contract pricing had gone "well beyond" the capability of CPMD's Customs Office. As of 2000, pricing was evaluated by comparison with previously approved applications and through internet research.⁶³

The review process resulted in the transfer of incomplete and limited information to the 661 Committee. In connection with OIP's review process, customs experts generated reports for the 661 Committee, very few of which included any quantitative or qualitative assessment beyond a generic notation that pricing seemed high or was higher than in previous applications for similar goods.⁶⁴ When asked why, Ms. Johnston indicated that a customs expert would ask for clarification from a supplier, and—so long as the response provided "sounded credible" (e.g., "steel prices have been high")—it was accepted, and the customs expert would not seek to corroborate the explanation (e.g., by checking whether steel prices actually had increased). Ms. Johnston stated that OIP's resources were finite and limited OIP's ability to conduct extensive investigations (though she would have welcomed this possibility). In addition, there was a

⁶¹ Jeremy Owen interview (Dec. 13, 2004).

⁶² B. B. Pandit memorandum to Yohanes Mengesha and Joseph Stephanides (July 23, 1997) (setting forth findings of the lead auditor in Iraq).

⁶³ Urs Christen interview (June 20, 2005); Felicity Johnston interview (May 26, 2005) (noting inadequate staffing); Jeremy Owen interview (Dec. 13, 2004); Frances Kinnon note-to-file (Apr. 21, 2004) (regarding "Teleconference between Office of Iraq Programme and various staffers of the US Congress and Senate").

⁶⁴ John Ruggie statements to the United States House of Representatives, International Relations Committee (Apr. 28, 2004) (indicating that the 661 Committee approved 36,000 contracts); Darko Mocibob interview (Sept. 20, 2004). Mr. Mocibob indicated that seventy contracts were referred to the 661 Committee with notations concerning overpricing. *Ibid.* Committee investigators have accumulated thousands of records that indicate kickbacks were levied on all or nearly all contracts executed between Phase VIII and XIII. In particular, the Committee has obtained records from Iraqi ministries detailing the number of kickbacks they levied and collected. These records indicate that the ministries levied kickbacks on nearly all goods they procured after Phase VII. As described in Chapter 1 of Volume II, this evidence—as well as evidence from various witnesses and directives from the Iraqi regime—suggests that all of the more than 10,000 contracts signed in Phase VIII or later included a kickback of some form.

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“culture of caution” within OIP to avoid overstating things, and it was OIP’s policy that it would be unfair to speculate without specific evidence of wrongdoing, which limited the concerns that OIP expressed to the 661 Committee. Moreover, Ms. Johnston noted that the customs experts had to balance two competing obligations: ensuring compliance with the sanctions regime and maximizing the flow of humanitarian goods to Iraq.⁶⁵

C. UNCLEAR AUTHORITY TO REJECT CONTRACTS ON PRICING GROUNDS

Another area of contention involved whether OIP possessed the actual authority not to forward contracts to the 661 Committee because pricing appeared high. With regard to OIP’s mandate, Ms. Johnston asserted that if OIP identified irregularities in an application, it was empowered to seek further information from the supplier and to request an amendment. Accordingly, if a customs expert raised a concern that pricing for a particular contract seemed high, OIP would ask the supplier for an explanation. If OIP did not receive any clarification (usually through the respective mission), the contract would be deemed “inactive,” and no further action would be taken.⁶⁶

In Ms. Johnston’s view, OIP lacked the authority to reject outright a contract on account of irregularities. For that reason, Ms. Johnston indicated she was irked by the suggestion, in a letter from the United Kingdom about possible kickbacks (discussed below in Chapter 4 and in Chapter 3 of Volume II), that OIP could have decided not to circulate certain contracts in light of opportunities for Iraq “to obtain uncontrolled revenue.” Similarly, Mr. Mocibob stated that, even though OIP rejected thousands of contracts on technicalities, it was not within its mandate to reject contracts as being overpriced. Like Ms. Johnston, he commented that the customs experts’ general goal was to ascertain an explanation for any unusual pricing and then to send the matter to the 661 Committee. If OIP had pricing concerns about a particular contract, even if OIP were permitted to approve it without the 661 Committee (under the “green list” or GRL), OIP nonetheless sometimes forwarded the contract to the 661 Committee for approval. OIP’s submissions to the 661 Committee included not only the proposed contract, but also a cover sheet containing a customs report. In several instances, the customs experts would flag pricing concerns for the 661 Committee’s attention.⁶⁷ As explained above, however, the customs reports presented only limited information.

⁶⁵ Felicity Johnston interviews (May 26 and June 10, 2005); see also 661 Committee Procedures, para. 33.

⁶⁶ Felicity Johnston interview (May 26, 2005); Darko Mocibob interview (Sept. 20, 2004).

⁶⁷ Felicity Johnston interviews (May 26 and June 10, 2005); United Kingdom letter to J. Christer Elfverson (Apr. 9, 2001); Darko Mocibob interviews (Sept. 20, 2004; Jan. 6 and Aug. 16, 2005). Mr. Mocibob indicated that seventy contracts were referred to the 661 Committee with notations concerning overpricing. *Ibid.* Committee investigators have accumulated thousands of records that indicate kickbacks were levied on all or nearly all contracts executed between Phases VIII and XIII. In particular, the Committee has

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However, when presented with an extreme hypothetical of a contract involving the sale of 100 pencils for \$10,000, Mr. Mocibob conceded that a customs expert could have rejected that contract without sending it to the 661 Committee. As a general matter, therefore, Mr. Mocibob noted that each contract would go to the 661 Committee, assuming the 661 Committee's approval was required, unless the pricing was patently absurd or the contract was technically deficient.⁶⁸

D. EFFECT OF INADEQUATE CUSTOMS REVIEW

Charged with scrutinizing Programme-related contracts and rooting out irregularities and potential fraud, OIP's customs experts played a key role in the Programme's operation, particularly because the Iraqi regime had the authority to choose the companies with whom it conducted business. Certainly, by March 2001, when allegations of kickbacks surfaced in earnest, the need for meaningful review of Programme-related contracts was readily apparent.⁶⁹

Mr. Sevan was made aware of the problem and agreed that expertise in international commodities was lacking. Ultimately, despite the availability of Programme administrative funds, Mr. Sevan did not hire customs experts with the requisite expertise to conduct thorough pricing evaluations. Without proper pricing tools and expertise, the customs experts could not fulfill their mandate to "examine each contract, in particular the details of price and value."⁷⁰ This is evidenced by the small percentage of contracts these experts found to be overpriced relative to the number of contracts that actually included kickback costs. As potential overpricing became a publicized issue, OIP minimally compensated for the lack of pricing expertise—despite acknowledgment of the deficiency and the availability of resources to correct it. The Programme was thus vulnerable to abuse, particularly the Iraqi regime's manipulation of pricing on Programme contracts through which many suppliers illicitly paid the Iraqi government. (The kickback scheme perpetrated by

obtained records from Iraqi ministries detailing the number of kickbacks they levied and collected. These records indicate that the ministries levied kickbacks on nearly all goods they procured after Phase VII. As described in Chapter 1 of Volume II, this evidence—as well as evidence from various witnesses and directives from the Iraqi regime—suggests that nearly all of the more than 10,000 contracts signed in Phase VIII or later included a kickback of some form.

⁶⁸ Darko Mocibob interview (Sept. 20, 2004).

⁶⁹ 661 Committee procedures, para. 28; Kofi Annan interviews (July 26-27, 2005) (noting the role of customs experts and the Government of Iraq's right to choose the goods suppliers); Benon Sevan note to S. Iqbal Riza (Mar. 7, 2001); Benon Sevan note to Farid Zarif (Mar. 10, 2001); Benon Sevan note to Farid Zarif (Mar. 20, 2001).

⁷⁰ Farid Zarif note to Benon Sevan (Mar. 15, 2001); Benon Sevan note to Farid Zarif (Mar. 20, 2001); "First Interim Report," pp. 203-204 (indicating accumulation of surpluses in the ESD Account, leaving a surplus of \$229 million as of the end of 1999 and \$216 million as of June 2004—despite transfers of excess funds to increase funds available for humanitarian purchases); *ibid.*, p. 219 (explaining that OIP's personnel costs for administering the Programme—as a percentage of total humanitarian expenditures—decreased substantially after 1999); 661 Committee Procedures, para. 33.

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the Iraqi regime and the Secretariat's response thereto is the subject of Chapter 4, Part III of this Volume.)

Secretary-General Annan told the Committee that, in hindsight, OIP should have hired more customs personnel with the proper expertise to more diligently scrutinize contracts. Specifically, Mr. Annan was asked to reflect upon strengths and weaknesses of the Programme. Among the Programme's principal weaknesses, Secretary-General Annan focused on the mechanism whereby the Iraqi regime selected the companies who supplied Programme-related goods and the resultant burden placed on OIP's customs experts:

If I were to set up the program from scratch, there were certain things I would do. I think giving Saddam Hussein the right to select whom he sold oil to and whom he bought [goods] from gave him a leverage which made it very difficult for the operations to be run as effectively as it could have been. . . . On the Secretariat side, given what we know now, we probably should have had *many more customs people*, people checking prices and other things to be able to advise and support the 661 Committee much more effectively.⁷¹

⁷¹ Kofi Annan interview (July 27, 2005) (emphasis added).

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III. INADEQUATE OVERSIGHT OF FIELD OPERATIONS

From its New York headquarters, OIP administered the Programme not only through CPMD, but through PMD as well. As explained in greater detail in Chapter 1, PMD provided policy and management advice to OIP's Executive Director in New York. PMD also coordinated with UNOHCI officials in Iraq to gain an understanding of the Programme's field operations. PMD, moreover, was tasked with coordinating the preparation of the 90 and 180-day reports of the Secretary-General to the Security Council.⁷²

As explained below, OIP's oversight of the field operations suffered because of a lack of clarity in the headquarters-based functions of PMD and an unclear division of responsibility among OIP's Executive Office, PMD, and UNOHCI. Adding to the confusion, in the absence of an approved organizational structure, Mr. Sevan often made adjustments to the roles and responsibilities of PMD and UNOHCI. In fact, from 2000 through the summer of 2003, Mr. Sevan substantially—if not completely—marginalized the role of PMD in overseeing field operations. By 2002, serious concerns were voiced by PMD officials about confusion over managerial roles and the marginalization of their division. PMD officials maintained that OIP had lost an important check on the process by which the Secretariat was to ensure the effective implementation of the Programme.

A. UNCLEAR ROLES, RESPONSIBILITIES, AND REPORTING LINES

1. Lack of Defined Roles and Reporting Lines

OIP never formally defined the roles and responsibilities of PMD and UNOHCI, or a reporting structure within which the divisions were to operate. Bo Asplund, Director of Programme Management in 1998 and 1999, told the Committee that beyond the basic provisions of the Iraq-UN MOU and Resolution 986, “there weren't really any parameters that defined the relationships” between PMD and UNOHCI. In fact, the Iraq-UN MOU and Resolution 986 themselves did not “necessarily define the relationship between PMD and UNOHCI” either. As a result, “decision-making authority came more through trial and error.”⁷³

Efforts to create a formal and approved organizational structure never materialized. Stephani Scheer, OIP's Chief of Office, explained to the Committee that in 1999, when it was clear that the Programme was likely to continue for a significant period of time, she began to create an organizational manual. Ms. Scheer envisioned that the manual ultimately would be published as a bulletin issued by the Secretary-General. Ms. Scheer and Georges Nasr, an OIP Programme

⁷² Draft Organizational Bulletin, secs. 7-9; J. Christer Elfverson interview (Dec. 4, 2004); Gregoire de Brancovan interview (June 6, 2005).

⁷³ Bo Asplund interview (July 6, 2005); Stephani Scheer interview (Apr. 25, 2005); Stephani Scheer note to Benon Sevan (Mar. 12, 2001) (regarding an OIP organizational manual).

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Officer, participated in the drafting, with input from department heads and OLA. Drafts of the bulletin included detailed sections devoted to the roles, responsibilities, and relationships of PMD and UNOHCI (among other divisions). The draft organizational bulletin, however, was never finalized, and the initiative dissolved upon Ms. Scheer's departure from OIP in 2001. Ms. Scheer stated that Mr. Sevan's opinions frequently changed as to how the division of responsibility should be structured within OIP. For example, Ms. Scheer explained that during the years in which Mr. Zarif served as Director of CPMD and Mr. Elfverson served as the Director of PMD, Mr. Sevan shifted certain PMD functions, notably its monitoring of field operations in southern and central Iraq, to CPMD.⁷⁴

The point is that throughout the life of the Programme, OIP operated without an approved organizational manual, which contributed to a lack of clarity between headquarters functions assigned to PMD and field operations assigned to UNOHCI. To be sure, the absence of a formal organizational manual may have reflected the fact that, as explained above, the Programme was initially designed as a temporary measure. Nevertheless, it is also apparent that the lack of clarity in functions and reporting lines allowed Mr. Sevan to assign responsibilities at will, despite efforts by others to clarify PMD and UNOHCI's roles, Mr. Sevan never took steps to finalize various drafts of a proposed organizational manual.⁷⁵

2. Resulting Confusion

By 2002, the lack of clarity in the respective roles of PMD and UNOHCI emerged as a significant point of contention. Mr. Elfverson served as the director of PMD from 2000 until his departure in 2003. In Mr. Elfverson's view, PMD was responsible for supervising field observation, analysis, and operations, and overseeing the implementation of the Programme in the north. Mr. Elfverson also viewed PMD as having a role in serving as a "think tank" on Programme-related matters. OIP records and the Committee's interviews with numerous witnesses confirm that, in theory, PMD was designed to at least monitor and serve as a check on OIP's operations in Iraq. For example, in a draft of the above-referenced organizational manual, one of PMD's functions was defined as "providing recommendations to the Humanitarian Coordinator in Iraq on the functioning of the United Nations observation mechanism in Iraq." Furthermore, according to the draft, PMD played a role in "[l]iasing with, and rendering full support to, the Humanitarian Coordinator in Iraq."⁷⁶

⁷⁴ Stephani Scheer interview (Apr. 25, 2005); Draft Organizational Bulletin, secs. 7-9, 12-16 (Mar. 12, 2001); Hans Corell memorandum to Benon Sevan (Apr. 18, 2001).

⁷⁵ Bo Asplund interview (July 6, 2005); Stephani Scheer interview (Apr. 25, 2005); Stephani Scheer note to Benon Sevan (Mar. 12, 2001); J. Christer Elfverson e-mail to PMD Staff (Jan. 8, 2003) (regarding "PAMSD—the new acronym for PMD"); Benon Sevan e-mail to OIP personnel (Jan. 8, 2003) (regarding "Reorganization of the Programme Management Division of OIP").

⁷⁶ J. Christer Elfverson memorandum (undated) (regarding "PMD's role in the Management of the Humanitarian Programme") (hereinafter "Elfverson memorandum regarding role of PMD (Spring 2002)");

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While this was the understanding of many within OIP, Mr. Sevan held a different view as to PMD's role in coordinating field operations. Thus, on October 19, 2002, when Mr. Elfverson sought clarification as to PMD's role in field operations, Mr. Sevan offered the following curt response:

If any confusion there is, it is because of the name of the Programme Management Division, which has led some of our colleagues in PMD thinking that they are responsible for the management of the programme in Iraq. The Humanitarian Coordinator is responsible for the management of the programme in the field, and the entire field staff is under the supervision of the Coordinator. This is the reason that I address all of my correspondence only to the Coordinator.

Mr. Sevan further remarked that Mr. Elfverson's unit "should be called the Programme Division and not the Programme Management Division"⁷⁷

While Mr. Sevan purported to view the management of field operations as the responsibility of UNOHCI through the Humanitarian and Deputy Humanitarian Coordinators, the extent and limitations of UNOHCI's responsibilities were themselves never clearly established. As with PMD, there was a general perception of how UNOHCI was to function, but again the Secretariat never formalized a reporting structure. As a result, it appears that the Executive Office, PMD, and UNOHCI each had a different understanding of their respective responsibilities.⁷⁸

3. Effect on Oversight of OIP's Field Operations

The effect of this lack of formal structure is evident in UNOHCI's coordination with the UN-related Agencies and their operations in Iraq's three northern governorates. While there was no

J. Christer Elfverson interview (Aug. 23, 2005). Mr. Elfverson explained that he prepared the memorandum with assistance from others in approximately March or April 2002. While he did not recall sending the memorandum to Mr. Sevan directly, he recalled addressing the points in the memorandum with Mr. Sevan. Ibid.; J. Christer Elfverson interview (Dec. 4, 2004) (noting PMD's terms of service and role); Alan Fellows interview (Dec. 18, 2004) (same); Draft Organizational Bulletin, paras. 7.1-2, 8.2(d) (Mar. 12, 2001) (describing PMD's role).

⁷⁷ J. Christer Elfverson interview (Dec. 4, 2004); J. Christer Elfverson e-mail to Benon Sevan (Oct. 19, 2002); Benon Sevan e-mail to J. Christer Elfverson (Oct. 19, 2002) (regarding "Terms of reference, Director of CPMD").

⁷⁸ Stephani Scheer interview (Apr. 25, 2005); Stephani Scheer memorandum to John Almstrom (Feb. 5, 2001) (regarding a draft organizational manual for OIP); Stephani Scheer note to Benon Sevan (Mar. 12, 2001) (same); J. Christer Elfverson interview (Dec. 4, 2004) (noting his understanding of organizational structure); Benon Sevan e-mail to J. Christer Elfverson (Oct. 19, 2002) (noting his understanding of organizational structure); Alan Fellows memorandum (Feb. 13, 2002) (explaining UNOHCI's view toward PMD); Tun Myat interview (May 4, 2005).

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formalized reporting structure among Mr. Sevan's Office, PMD, and UNOHCI, on the ground in Iraq, UNOHCI developed procedures (i.e., the project document mechanism) to improve its coordination of project proposals. The project document mechanism and the related review and appraisal process were among the procedures that UNOHCI fashioned to monitor the Agencies' various projects.⁷⁹

Humanitarian Coordinator Ramiro Lopes da Silva asserted that—notwithstanding UNOHCI's development of the project document procedure—UNOHCI's authority was compromised by OIP headquarters' overriding authority to fund the Agencies' projects. According to Mr. Lopes da Silva, as of September 2002, the Agencies were submitting project documents for review and appraisal by UNOHCI as a “mere formality.” Mr. Lopes da Silva had received information informally from the Agencies that funds were issued by Mr. Sevan's Executive Office and that UNOHCI “was wasting its time to review and appraise project documents.” According to Mr. Lopes da Silva, UNOHCI's appraisal procedures were “irrelevant” because the Agencies had access to funds from the Executive Office of OIP “with no reference to the work carried out and the outputs delivered.” As a result, Mr. Lopes da Silva complained to Mr. Sevan that UNOHCI was relegated to the role of on-looker with no “teeth” to assert any influence on the Programme.⁸⁰

In the spring of 2002, Mr. Elfverson wrote a pointed memorandum expressing concerns about the effect of the confused interplay between OIP headquarters in New York and its field operations in Iraq. In Mr. Elfverson's view, the confusion was negatively affecting OIP's ability to oversee field operations. Mr. Elfverson emphasized that OIP's headquarters in New York needed to “exercise oversight over operations ‘in the field’” and that PMD needed latitude to carry out the oversight function. Mr. Elfverson cautioned that a “supervisory body,” such as OIP's Executive Office, should not delegate oversight of field operations to the field operation itself. Regarding the Programme's administration in northern Iraq, Mr. Elfverson noted as follows:

The coordination role of OIP/UNOHCI needs to be clearly defined and reaffirmed in regard to roles and functions. In order to ensure that this responsibility is discharged effectively, it is essential that OIP/UNOHCI be provided with staff in sufficient number with requisite expertise. This will also require that the agencies and programmes be made to accept the coordinating role of UNOHCI. Unless these corrective actions are taken, OIP's management of the Programme in the three northern governorates will risk being characterized as directionless and incapable of meeting its objectives.⁸¹

⁷⁹ Ramiro Lopes da Silva cryptofax to Benon Sevan (Sept. 25, 2002); J. Christer Elfverson note to Benon Sevan (Jan. 10, 2003) (attaching draft procedures for UNOHCI's operations in northern Iraq); Cecilia Charles interview (Mar. 15, 2005); Balan Kurup interview (Mar. 19, 2005).

⁸⁰ Ramiro Lopes da Silva cryptofax to Benon Sevan (Sept. 25, 2002).

⁸¹ Elfverson memorandum regarding role of PMD (Spring 2002); J. Christer Elfverson interview (Aug. 23, 2005).

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Regarding operations in southern and central Iraq, confusion was evident in the shifting of reporting lines for OIP's Multi-Disciplinary Observation Unit ("MDOU"). The initial design of the observation mechanism contemplated that MDOU would report directly to OIP through PMD. For the first several years of the Programme, this direct reporting line provided a mechanism by which OIP received "factual information on sensitive issues and . . . [on] . . . potential problems [in the field]." Before 2001, PMD received detailed and raw observation records and reports compiled by MDOU. This raw data was used by PMD to ensure the accuracy of the characterizations and information presented to the Security Council. Very often, PMD found discrepancies between what the MDOU reported and the information that appeared in the final report.⁸²

When Tun Myat became Humanitarian Coordinator in 2000, he proposed to Mr. Sevan that MDOU report directly to the Humanitarian Coordinator and not to PMD. Mr. Myat's proposal was accepted as a result of which the practice of sending the raw data to PMD ceased. When interviewed, Mr. Myat stated that the change in the reporting line obviated the requirement that MDOU send raw data to PMD. At the same time, Mr. Myat "refused to establish a regular exchange of views with PMD on observation activities and findings."⁸³

The situation deteriorated causing Alan Fellows, PMD's Chief of the Observation and Analysis Section, to document his concerns about the relationship between PMD and UNOHCI. In February 2002, Mr. Fellows wrote a memorandum identifying concerns about the integrity of the observation mechanism in southern and central Iraq. His concerns centered around the fact that "the Executive Director [was] frequently left with only one source of advice on programme implementation and OIP [had] no means of verifying what the Executive Director [was] told except by going back to the field." In Mr. Fellows' view, this problematic relationship contributed to the demise of PMD's role in providing quality control to the observation and reporting mechanism, which was essential to ensuring the Programme's effectiveness.⁸⁴

The results of an unpublished audit conducted by OIOS in 2003 are consistent with the views of Mr. Lopes da Silva, Mr. Elfverson, and Mr. Fellows. As explained in more detail below, OIOS opined that the inappropriate reporting between PMD and UNOHCI obstructed PMD's ability "to implement the Division's advisory and supportive role." The auditors recommended that PMD

⁸² Yohannes Mengesha interviews (Dec. 13 and 20, 2004); Tun Myat interview (July 7, 2005); Alan Fellows note to Benon Sevan (July 26, 1999); Bo Asplund letter to Benon Sevan (Dec. 31, 1999); J. Christer Elfverson interviews (July 20-21, 2005); Alan Fellows memorandum (Feb. 13, 2002) (regarding "OAS Workplan").

⁸³ Tun Myat interview (July 26, 2005); Benon Sevan memorandum to the 661 Committee (Apr. 25, 2000); Tun Myat memorandum to Benon Sevan (Mar. 12, 2001) (attaching draft Secretary-General's bulletin on organization of OIP); Tun Myat memorandum to Benon Sevan (May 17, 2001); J. Christer Elfverson interviews (July 20-21, 2005); Alan Fellows memorandum (Feb. 13, 2002).

⁸⁴ Alan Fellows memorandum (Feb. 13, 2002); Alan Fellows interview (Aug. 16, 2005).

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“discharge its role as an extended arm of the Executive Director and not through the Humanitarian Coordinator or the Deputy Humanitarian Coordinator.”⁸⁵

B. MARGINALIZATION OF PROGRAMME MANAGEMENT DIVISION

1. PMD's Initial Authority and Role in OIP (1998-2000)

Under the leadership of Mr. Asplund from 1998 to 2000, PMD enjoyed a relatively workable relationship with UNOHCI and with Mr. Sevan's Executive Office. Mr. Asplund's approach was to give OIP's field operations significant latitude and autonomy. In his view, PMD's role was to provide what he called “enlightened supervision.” Thus, while seeking to avoid micro-management, Mr. Asplund saw PMD as providing support to UNOHCI and developing initiatives to improve field operations. Recognizing some inevitable tension between PMD and UNOHCI's field operations, Mr. Asplund told the Committee that PMD was relatively well-received by UNOHCI officials and staff. Mr. Asplund believed that PMD retained a veto authority over the decisions of the Humanitarian Coordinator, but he did not recall PMD exercising such authority very often.⁸⁶

Mr. Asplund found Mr. Sevan to be approachable and regarded PMD as having considerable autonomy. Mr. Asplund regarded Mr. Sevan as very attentive on issues pertaining to contract holds, while lacking interest in “programme issues,” such as OIP's field operations. At the outset of Mr. Asplund's tenure, the Contracts Processing Section fell under the authority of PMD, reflecting PMD's considerable degree of authority within OIP's headquarters.⁸⁷

2. PMD's Marginalization (2000-2003)

In 2000, Mr. Elfverson replaced Mr. Asplund as director of PMD and served OIP in that capacity until his departure in the summer of 2003. During his tenure, Mr. Elfverson did not hesitate to confront Mr. Sevan on sensitive issues. Nor was he reticent about recommending courses of action to be taken. For example, as noted below in Chapter 4 of this Volume, Mr. Elfverson

⁸⁵ Esther Stern memorandum to Benon Sevan (June 12, 2003) (attaching OIOS Audit No. AF2003/22/1 of the Programme Analysis, Monitoring and Support Division). It should be noted that the report was declared final again following input from Mr. Elfverson. See Esther Stern memorandum to Benon Sevan (July 28, 2003) (regarding OIOS Audit No. AF2003/22/1). The later version again noted the problematic coordination among PAMSD, UNOHCI, and the Executive Director. *Ibid.*

⁸⁶ Bo Asplund interview (July 6, 2005); see also John Almstrom interview (June 2, 2005).

⁸⁷ Bo Asplund interview (July 6, 2005); see also Gregoire de Brancovan interview (June 6, 2005). By 2001, the Contract Processing Section was renamed Contracts Processing and Monitoring Division. See, e.g., Stephani Scheer memorandum to John Almstrom (Feb. 5, 2001) (attaching draft Secretary-General's Bulletin referencing the Contracts Processing Section); Draft Organizational Bulletin, sec. 6 (referring to the Processing and Monitoring Division).

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raised concerns about reports that the Iraqi regime was demanding kickbacks on Programme-related contracts. He further urged Mr. Sevan to notify the Deputy Secretary-General and the 661 Committee about the increase in reports that the Iraqi regime appeared to be violating the sanctions regime. While such concerns related more to Mr. Zarif's CPMD, PMD was responsible for "identifying programme related issues," at least according to the draft organization manual. Surely, it was within PMD's purview to raise the issue of kickbacks with Mr. Sevan, particularly since PMD had received the reports in the first place and played an active role in preparing the Secretary-General's 90 and 180-day reports. Witnesses familiar with the matter noted that Mr. Sevan was not receptive to Mr. Elfverson's memorandum of December 5, 2000 in which Mr. Elfverson expressed concerns about the Iraqi regime's emerging kickback scheme and that Mr. Sevan did not follow the advice that Mr. Elfverson offered concerning a general course of action to address the regime's sanctions violations.⁸⁸

OIP officials, including Mr. Sevan, regarded Mr. Elfverson as someone who had "access" to the United Nations' 38th Floor (i.e., the offices of the Secretary-General, the Deputy Secretary-General, and the Chef de Cabinet). Witnesses confirmed that during his tenure, Mr. Elfverson spoke with Mr. Sevan's superiors within the Secretariat on matters pertaining to the Programme and Mr. Sevan's administration of OIP. Mr. Elfverson also sought to play a proactive role in overseeing field operations being conducted by UNOHCI.⁸⁹

Mr. Elfverson, in other words, sought to play a substantial role in OIP's administration of the Programme through its headquarters and field-based operations. This threatened Mr. Sevan's authority and had the potential to complicate matters for Mr. Sevan, particularly since Mr. Elfverson was willing to confront thorny issues such as kickbacks and had access to Mr. Sevan's superiors on the 38th Floor. Moreover, documentary evidence and reports from numerous witnesses reveal that Mr. Sevan and Mr. Elfverson simply did not get along.⁹⁰

⁸⁸ Bo Asplund interview (July 6, 2005); J. Christer Elfverson interview (Dec. 4, 2004); Alan Fellows interview (Dec. 18, 2004); J. Christer Elfverson note to Benon Sevan (Dec. 5, 2000); J. Christer Elfverson interview (Aug. 24, 2005) (noting that he raised many of the points with Mr. Sevan that he set forth in the Elfverson memorandum regarding role of PMD (Spring 2002)); Elfverson memorandum regarding role of PMD (Spring 2002); Draft Organizational Bulletin, para. 7.2; Farid Zarif interview (July 6, 2005); Felicity Johnston interview (May 26, 2005). Later in this Volume, Part III of Chapter 4 discusses the Iraqi regime's receipt of illicit kickbacks.

⁸⁹ Farid Zarif interview (July 6, 2005); J. Christer Elfverson interview (Mar. 15, 2005); Louise Fréchette interview (May 31, 2005); S. Iqbal Riza interviews (July 7 and 25, 2005); J. Christer Elfverson interview (Dec. 4, 2004); J. Christer Elfverson note to Benon Sevan (Oct. 5, 2001).

⁹⁰ J. Christer Elfverson interview (Dec. 4, 2004); J. Christer Elfverson note to Benon Sevan (Dec. 5, 2000); J. Christer Elfverson note to Benon Sevan (Mar. 29, 2001); Farid Zarif interview (July 5, 2005); J. Christer Elfverson interview (Mar. 15, 2005); Stephani Scheer interview (Apr. 25, 2005); Louise Fréchette interview (May 31, 2005); Elfverson memorandum regarding role of PMD (Spring 2002).

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While Mr. Elfverson sought to execute what he perceived to be his responsibilities as director of PMD, Mr. Sevan took several steps that had the distinct effect of marginalizing PMD's role within OIP. In June 2000, PMD's offices were physically relocated to a building that was separate from Mr. Sevan's Executive Office and Mr. Zarif's CPMD. Mr. Elfverson was driven to communicate only in writing with the Executive Director and was not provided the overall strategy, objectives, and plans for achieving the Programme's overall goals. Mr. Sevan routinely ignored Mr. Elfverson's correspondence and refused to engage in discussions with Mr. Elfverson about annual work plans, despite Mr. Elfverson's multiple requests.⁹¹

Mr. Sevan's lack of interest in PMD's work plans further illustrates the marginalization of PMD. Under Mr. Elfverson's leadership, PMD regularly prepared and submitted work plans to Mr. Sevan. The work plans were intended to serve as a planning tool, in which PMD anticipated activities and specified its objectives and intended action on a task-by-task basis. Moreover, the work plans offered OIP an important tool for clarifying PMD's roles and responsibilities, a function that was particularly important given the lack of clear guidelines on the roles and reporting lines of OIP's respective divisions. During Mr. Elfverson's tenure as PMD's director, he and others within the department repeatedly attempted to delineate PMD's roles and responsibilities through the work plans. Mr. Elfverson pressed Mr. Sevan for feedback, but Mr. Sevan was not responsive.⁹²

Mr. Sevan's failure to respond to PMD's work plans in 2001 and 2002 reflects a clear lack of oversight and a breakdown in communication between PMD and Mr. Sevan. Mr. Sevan's failure to respond to Mr. Elfverson, moreover, was particularly problematic since the role of PMD and its relationship with UNOHCI's field operations had become increasingly ambiguous. As discussed below, the failure to approve work plans was one of the management weaknesses identified in the unpublished audit of PMD in 2003.⁹³

The transfer of MDOU's reporting lines similarly evinces the marginalization of PMD. As explained above, following Mr. Myat's installation as Humanitarian Coordinator, MDOU ceased

⁹¹ Benon Sevan e-mail to J. Christer Elfverson (Oct. 19, 2002); Benon Sevan e-mail to J. Christer Elfverson (Jan. 8, 2003); J. Christer Elfverson interview (Dec. 4, 2004); Elfverson memorandum regarding role of PMD (Spring 2002).

⁹² J. Christer Elfverson interview (July 21, 2005); Jayanti Prasad interview (Mar. 22, 2005); Programme Management Division Work Plan (Mar. 29, 2001); Bo Asplund interview (July 6, 2005); J. Christer Elfverson note to Benon Sevan (Mar. 29, 2001); J. Christer Elfverson note to Benon Sevan (Apr. 26, 2001); J. Christer Elfverson note to Benon Sevan (Oct. 5, 2001); J. Christer Elfverson note to Benon Sevan (Apr. 4, 2002); Elfverson memorandum regarding role of PMD (Spring 2002).

⁹³ Jayanti Prasad interview (Mar. 22, 2005); Bo Asplund interview (July 6, 2005); "Programme Management Division Work Plan" (Mar. 29, 2001); Benon Sevan e-mail to J. Christer Elfverson (Oct. 19, 2002) (noting potential confusion in the functions of PMD); Benon Sevan e-mail to J. Christer Elfverson (Jan. 8, 2003) (noting change in PMD's functions); Esther Stern memorandum to Benon Sevan (June 12, 2003) (attaching an OIOS audit of the Programme Management, Analysis and Support Division).

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to provide information from the field to PMD. Instead, a new arrangement took hold whereby MDOU reported to the Humanitarian Coordinator, thus cutting off a valuable flow of information from the field to PMD, which was responsible for assembling the 90 and 180-day reports.⁹⁴

In the spring of 2002, Mr. Elfverson prepared a memorandum that memorialized his concerns about PMD's decreasing role in OIP's operations. Although Mr. Elfverson could not recall if he forwarded the memorandum to Mr. Sevan, Mr. Elfverson recalled addressing many of the concerns directly with him. Mr. Elfverson noted "the growing alienation" of PMD. He cited several examples of PMD's marginalization, including PMD's relocation to a separate building in June 2000 and the cessation of OIP's weekly senior management meetings. Mr. Elfverson recalled "only one such meeting" since 2001, notwithstanding the fact that all had agreed that the weekly meetings were productive. Mr. Elfverson urged Mr. Sevan to share his "overall strategy, objectives and plans for achieving the Programme's goals" to ensure that PMD was "fully geared toward the goals set by the head of the Programme."⁹⁵

Focusing on field operations in southern and central Iraq, Mr. Elfverson explained his view that "over the past two years, PMD has been increasingly isolated, marginalized and alienated."⁹⁶ Mr. Sevan at the time was focused highly on lifting contracts holds and expediting the approval process for humanitarian and oil spare parts contracts.⁹⁷ Mr. Elfverson thus stated that there was a lack of "a regular dialogue on observation issues" and "an over-concentration of attention on holds" which negatively affected other OIP responsibilities, "primarily reporting on the equity of distribution." Mr. Elfverson understood that the operation of the observation mechanism in Iraq was squarely within PMD's range of responsibilities. Mr. Elfverson complained that "over the past two years, with the exception of drafting the Secretary-General's [90 and 180-day] reports, the Division's views and recommendations have received diminishing attention."⁹⁸

Beginning in the fall of 2002, Mr. Sevan took further and more concrete steps to marginalize PMD. As noted, on October 19, 2002, when Mr. Elfverson sought clarification as to PMD's role

⁹⁴ Tun Myat interview (July 26, 2005); Benon Sevan memorandum to the 661 Committee (Apr. 25, 2000); Tun Myat memorandum to Benon Sevan (Mar. 12, 2001) (attaching a draft OIP organization manual); Tun Myat memorandum to Benon Sevan (May 17, 2001); J. Christer Elfverson interviews (July 20-21, 2005).

⁹⁵ Elfverson memorandum regarding role of PMD (Spring 2002); J. Christer Elfverson interview (Aug. 24, 2005); J. Christer Elfverson note to Benon Sevan (Oct. 5, 2001).

⁹⁶ *Ibid.*; Elfverson memorandum regarding role of PMD (Spring 2002).

⁹⁷ See, e.g., Benon Sevan note to Denis Halliday (June 13, 1998) (attaching "Talking Points for Executive Director's Briefing of the Security Council"); Benon Sevan briefing at informal Security Council consultations, p. 6 (July 22, 1999); Provisional record of 661 Committee Meeting, S/AC.25/SR.192, pp. 1-3 (Jan. 19, 2000); Benon Sevan note (Jan. 19, 2000) (including the Executive Director's briefing).

⁹⁸ J. Christer Elfverson note to Benon Sevan (Oct. 5, 2001); Elfverson memorandum regarding role of PMD (Spring 2002); J. Christer Elfverson interview (Dec. 4, 2004); see also Draft Organizational Bulletin, paras. 7.2(b), 8.2(c)-(d) (noting PMD's role).

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in field operations, Mr. Sevan responded noting that the unit “should be called the Programme Division and not the Programme Management Division”⁹⁹ This correspondence reflects Mr. Sevan’s efforts to diminish PMD’s role in overseeing OIP’s field operations.

Mr. Sevan took the matter a step further in January 2003, when he reorganized PMD and changed its line of authority. The essence of the change was captured in e-mails from Mr. Elfverson and Mr. Sevan on January 8, 2003. First, Mr. Elfverson forwarded an e-mail to PMD staff entitled “PAMSD—the new acronym for PMD.” In the e-mail, he explained that Mr. Sevan reorganized PMD and merged some of its functions with CPMD. Mr. Elfverson reported that the change reflected the increased role of Mr. Zarif’s CPMD in OIP’s observation mechanism in the field. In an e-mail that same day, Mr. Sevan explained to OIP personnel that “effective immediately” PMD was to be called the Programme Analysis, Monitoring and Support Division (“PAMSD”), the word “Management” being conspicuously absent from the title.¹⁰⁰

In essence, through a gradual marginalization process, Mr. Sevan took PMD from a position of substantial authority to a position with no clear function at all. In 1998, under Mr. Asplund’s leadership, PMD was responsible for contracts processing and the oversight of field operations and had the support of Mr. Sevan. By 2003, as one of the United Nations’ auditors remarked, PMD “might as well have been abolished.”¹⁰¹

3. Effect of PMD’s Marginalization

The reduced role of PMD compromised OIP’s oversight of its field operations. As explained above, witnesses have portrayed Mr. Sevan as avoiding OIP’s field operations while at the same time marginalizing PMD’s role in managing UNOHCI. The effect of this dynamic was discussed in a report prepared on February 13, 2002 by Mr. Fellows, who worked for PMD during the tenures of Mr. Asplund and Mr. Elfverson. Mr. Fellows regarded one of PMD’s primary purposes as providing “a check on the quality of reporting from the field in general.” Mr. Fellows explained that challenges to coordinating OIP’s field operations were occurring on two fronts. One consequence of the transfer of the reporting line of the MDOU from PMD to UNOHCI was that Tun Myat, the Humanitarian Coordinator at the time, was frustrating PMD’s efforts to provide support to the field by “refus[ing] to establish a regular exchange of views with PMD on observation activities and findings.” Consistent with Mr. Fellows’ observation, Mr. Myat told the Committee that he had no dealings with PMD and reported to Headquarters through Mr. Sevan.) Mr. Fellows remarked that “[a]t the same time [Mr. Sevan had] given little or no

⁹⁹ Benon Sevan e-mail to J. Christer Elfverson (Oct. 19, 2002).

¹⁰⁰ J. Christer Elfverson e-mail to PMD Staff (Jan. 8, 2003) (noting that “PAMSD” was “the new acronym for PMD”); Benon Sevan e-mail to OIP personnel (Jan. 8, 2003) (regarding the “Reorganization of the Programme Management Division of OIP”).

¹⁰¹ Bo Asplund interview (July 6, 2005); Jayanti Prasad interview (Mar. 22, 2005).

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feedback on PMD briefing[s] and recommendations on issues relating to ... implementation of the programme's mandate" in southern and central Iraq.¹⁰²

Mr. Fellows further offered his views on the effect of PMD's marginalization. He opined that Mr. Sevan was "frequently left with only one source of advice on programme implementation" without any "means of verifying" information from the field. The effect of the "isolation of PMD" was that OIP was losing a mechanism for "quality control." As an example, Mr. Fellows cited UNOHCI's "reluctance to tackle issues perceived as contentious and likely to offend the Government of Iraq and local authorities," a reluctance that carried over into the Secretary-General's 90 and 180-day reports. Mr. Fellows criticized the marginalization of PMD as running afoul of the United Nations' "moral obligation to ensure objective and accurate reporting on the utilization of Iraq's resources." He added that "[t]he intended beneficiaries of [the Programme], the civilian population of Iraq, [had] no means of knowing whether resources for their benefit [were] being procured and used appropriately."¹⁰³

In other words, the marginalization of PMD meant the loss of a necessary check on OIP's field operations, the effect of which was to threaten OIP and the Secretary-General's ability to accurately assess and report on the Programme's effectiveness.¹⁰⁴

C. INTERFERENCE WITH EFFORTS TO AUDIT THE PROGRAMME MANAGEMENT DIVISION

1. Background on Audits

The First Interim Report described the mechanics of OIOS under the direction of an Under-Secretary-General for Internal Oversight Services. Five critical functions fall within OIOS's purview: (1) monitoring; (2) internal audit; (3) inspection and evaluation; (4) investigation; and (5) implementation of recommendations and reporting procedures. A bulletin issued by the Secretary-General provides that OIOS shall "discharge its responsibilities without any hindrance or need for prior clearance" and shall have access to all relevant evidence (both documents and witnesses). Moreover, the bulletin empowered the Under-Secretary-General of OIOS to "demand compliance from programme managers concerned if information or assistance requested is refused, delayed or withheld." OIOS has adopted various organizational structures and divisions to address its principal functions. The Internal Audit Division ("IAD") is one such division, and

¹⁰² Alan Fellows memorandum (Feb. 13, 2002) (including the "OAS Workplan"); Tun Myat interview (May 4, 2005).

¹⁰³ Alan Fellows memorandum (Feb. 13, 2002).

¹⁰⁴ The subject of the effectiveness of UNOHCI's observation and reporting structure is addressed below in Chapter 3, Part III of this Volume).

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its mission is to assess whether “there is an adequate and effective system of internal controls for providing reasonable assurance with respect to”:

- Integrity of financial and operational information; compliance with regulations, rules, policies and procedures in all operations; and safeguarding of assets;
- The economic and efficient use of resources in operations and identifying opportunities for improvement in a dynamic and changing environment; [and]
- Effectiveness of programme management for achieving stated objectives consistent with policies, plans and budgets.¹⁰⁵

On August 30, 2000, the Under-Secretary-General of OIOS, Dileep Nair, wrote Deputy Secretary-General Fréchette, suggesting an overall risk assessment of the Programme. Because OIOS considered the Programme a “high risk activity,” it identified it as a priority audit area. IAD engaged the accounting firm of Arthur Andersen to assist in the risk assessment (for approximately \$70,000), and it was decided that evaluation of PMD made the most sense. However, Mr. Sevan declined to approve the risk assessment. In a memorandum to OIOS on May 11, 2001, he stated that for financial reasons—given uncertainty regarding the Programme’s continuation—he did not approve the expense for the proposed risk assessment. After receiving Mr. Sevan’s memorandum, it appears that OIOS abandoned its plans for a comprehensive risk assessment of PMD, which, in order to be effective, would have required management’s cooperation. As explained below, PMD was again targeted for an IAD audit in early 2003.¹⁰⁶

2. Purpose and Process of the PAMSD Audit

In early 2003, OIOS formulated its audit plan for the year, which included a review of OIP’s two main divisions in New York, namely CPMD and PAMSD. OIOS contemplated conducting risk assessments of the two divisions with assistance from an outside accounting firm. A risk assessment, however, was only undertaken for PAMSD. According to Dagfinn Knutsen of OIOS, who participated in the assessment and subsequent audit process, whereas OIOS itself could conduct the PAMSD risk assessment process, an additional \$70,000 was necessary to assess CPMD. Mr. Knutsen recalled that Mr. Sevan did not grant approval for the expenditure. Hence, the risk assessment and ensuing audit focused exclusively on PAMSD.¹⁰⁷

OIOS conducted a risk assessment of PAMSD in March 2003. The assessment detected significant risk factors relating to the Programme’s communication and implementation

¹⁰⁵ “First Interim Report,” pp. 167-68.

¹⁰⁶ *Ibid.*, pp. 178-79.

¹⁰⁷ As noted above, in January 2003, Mr. Sevan reorganized and re-named PMD; in its new form PMD became PAMSD. Dagfinn Knutsen interview (Mar. 7, 2005); Esther Stern interview (Aug. 3, 2005).

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procedures. Other risk factors identified by the assessment included the weak coordination role being played by OIP and UNOHCI over the Agencies and a lack of clear reporting lines.¹⁰⁸

The audit was conducted in New York through a review of key documents and reports and through interviews of OIP and PAMSD staff members. Mr. Sevan was not interviewed for the audit and was uncooperative in the process. Jayanti Prasad conducted the audit, drawing on his experience as the former Resident Auditor of UNOHCI and his familiarity with the implementation of the Programme in three northern governorates. Mr. Knutsen, Uwe Hain, and Esther Stern also participated in the audit process on behalf of IAD and OIOS. The audit was strictly a management audit and did not include a review of financial practices. Consistent with the risk assessment, the audit focused on assessing the policies, procedures, and guidelines established by PAMSD for the observation mechanism and the support provided to UNOHCI and the Agencies in the Programme's implementation. Overall, the audit sought to measure and evaluate PAMSD's performance against standard management practices.¹⁰⁹

3. Key Findings of the OIOS Audit

On June 13, 2003, OIOS approved the audit report as final. The report criticized OIP and identified issues pertaining to OIP's management of the Programme. Specifically, OIOS found that PAMSD's roles as policy advisor and as monitor of field operations had been "increasingly marginalized." OIOS noted several weaknesses that were limiting PAMSD's ability to adequately support field operations including:

- Poor communication among Mr. Sevan, UNOHCI, and PAMSD;
- Lack of formally approved work plans; and
- Unclear reporting lines and coordination among PAMSD, UNOHCI, and Mr. Sevan.

Moreover, the findings of the audit indicated that weaknesses in the organizational structure of the division had hindered PAMSD's ability to effectively discharge its role as policy advisor to

¹⁰⁸ Jayanti Prasad e-mail to Dagfinn Knutsen (Mar. 18, 2003) (attaching a summary of risk of assessment); Jayanti Prasad interview (Mar. 22, 2005); see also Jayanti Prasad memorandum (Mar. 3, 2003) (attaching a risk assessment).

¹⁰⁹ Jayanti Prasad interview (Mar. 22, 2005); Jayanti Prasad memorandum (Mar. 3, 2003); Dagfinn Knutsen interview (Mar. 7, 2005); J. Christer Elfverson interview (July 20, 2005); Esther Stern interview (Aug. 3, 2005); Esther Stern memorandum to Benon Sevan (June 12, 2003).

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the Executive Director. The audit report noted the “[i]nadequate coordination between PAMSD, UNOHCI, and the Executive Director’s Office.”¹¹⁰

In recent interviews with Committee investigators, the auditors offered additional comments as to their observations during the audit process. Mr. Knutsen, for example, discussed flaws in the reporting structure relative to decisions being made in the field. It appeared to Mr. Knutsen that the Deputy Humanitarian Coordinator in Erbil reported to the Humanitarian Coordinator in Baghdad, who in turn reported to Mr. Sevan. This structure relegated PAMSD to insignificance and impeded PAMSD’s ability to support field operations. Similarly, Mr. Prasad told the Committee that Mr. Sevan had “totally marginalized” PAMSD’s role. While PAMSD had tried to offer policy guidance on issues pertaining to UNOHCI’s operations in the three northern governorates, Mr. Sevan was unresponsive. Mr. Prasad also observed that Mr. Sevan’s failure to respond to PAMSD work plans reflected a serious breakdown in communication.¹¹¹

4. Interference with Circulation of the Audit

Under OIOS’s audit procedures, exit conferences typically occurred with members of the audited entity. Regarding the PAMSD audit, Mr. Sevan directed Mr. Elverson to avoid participating in the exit conference and to comment only after OIOS issued the final report. Similarly, Mr. Sevan was sent an early version of the audit report for his comments, but never provided a response to the auditors. Mr. Prasad recalled that Mr. Sevan was uncooperative and hostile towards the auditors to the point that his actions often “bordered on abusive.” Mr. Sevan told the auditors that he was annoyed that suggestions of his strained relationship with Mr. Elverson were included in the audit report.¹¹²

¹¹⁰ Dileep Nair handwritten note to Esther Stern (June 13, 2003) (approving audit); Esther Stern memorandum to Benon Sevan (June 12, 2003). It should be noted that the report was declared final again following input from Mr. Elverson. See Esther Stern memorandum to Benon Sevan (July 28, 2003).

¹¹¹ Dagfinn Knutsen interview (Mar. 7, 2005); Jayanti Prasad interview (Mar. 22, 2005).

¹¹² Dagfinn Knutsen interview (Mar. 7, 2005); Esther Stern interview (Aug. 3, 2005); J. Christer Elverson interview (July 20, 2005); J. Christer Elverson e-mail to Jayanti Prasad (May 8, 2003). After issuance of the report in June 2003, Mr. Elverson in fact did offer input. The audit report was redrafted to incorporate Mr. Elverson’s input and sent to Dileep Nair for his approval. See Dagfinn Knutsen e-mail to Uwe Hain (July 28, 2003); Esther Stern memorandum to Benon Sevan (July 28, 2003); Jayanti Prasad interview (Mar. 22, 2005) (noting the lack of response from Mr. Sevan); Dagfinn Knutsen interview (Mar. 7, 2005) (same); J. Christer Elverson interview (July 20, 2005) (noting Mr. Sevan’s refusal to comment on audit); Esther Stern memorandum to Benon Sevan (May 30, 2003). This was not the first audit to trigger hostile reactions from Mr. Sevan. Mr. Prasad recalled that Mr. Sevan was similarly upset about an audit concerning the activities of Saybolt. Jayanti Prasad interview (Mar. 22, 2005); see also Esther Stern memorandum to Benon Sevan, (Apr. 9, 2002); Benon Sevan memorandum to Dileep Nair, (May 3, 2002); Esther Stern memorandum to Benon Sevan (June 12, 2003) (noting problems in relationship between Mr. Sevan and PMD).

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When Mr. Nair approved the audit for publication on June 13, 2003, he remarked in the comment section that it was a good report. Mr. Nair further stated that it was “a pity that the audit had not been done earlier” and that the recommendations were academic, “except as lessons learned for future operations.”¹¹³ The audit report, however, was never published. In a handwritten note on the June 24, 2003 version of the report, Mr. Nair revoked the approval for publication, stating:

As discussed with [Mr. Knutsen], rather than issuing this report at this time, we should aim towards producing an overall assessment report that can go to the GA, providing us both successes and shortcomings. On the latter, we should recommend that the lessons learned should be seriously considered and documented, and a system devised to learn from them when a future similar programme is mounted.¹¹⁴

Mr. Nair's approach to incorporating the report into an “overall assessment” of the Programme met some resistance within OIOS. Mr. Knutsen disagreed with Mr. Nair and was concerned that Mr. Nair was withholding information in the report because the audit was fairly critical of the United Nations management of the Programme and came at a time that coincided with fresh criticism of the Programme. In fact, in June 2003, outside criticism of the Programme was under consideration by the United Nations' senior-most officials, including Secretary-General Annan, Deputy Secretary-General Fréchette, Mr. Riza, and Mr. Sevan.¹¹⁵

On July 29, 2003, Mr. Hain of OIOS forwarded an e-mail to Mr. Nair, explaining that apart from integrating information from the audit into a lessons learned report, “there is value in issuing the findings in a more detailed fashion as a conclusion to our work on this subject.” Mr. Nair, however, was not interested in widely disseminating a detailed audit report. Instead, in a handwritten note to Mr. Hain and Mr. Knutsen, Mr. Nair responded: “As discussed, we can subsume this in a future overall assessment of OIP.”¹¹⁶

¹¹³ Esther Stern memorandum to Dileep Nair (June 11, 2003) (including a form for approving OIOS reports and containing Mr. Nair's handwritten notes dated June 13, 2003).

¹¹⁴ Esther Stern interview (Aug. 3, 2005); Dileep Nair handwritten note on Esther Stern memorandum to Benon Sevan (June 12, 2003). According to Esther Stern, Mr. Nair's handwritten note was sent to IAD via facsimile. Esther Stern interview (Aug. 3, 2005); Jayanti Prasad interview (Mar. 22, 2005).

¹¹⁵ Dagfinn Knutsen interview (Mar. 7, 2005); Edward Mortimer note to Sergio Vieira de Mello (June 10, 2003) (copied to the Secretary-General, the Deputy Secretary-General, Mr. Riza, and Mr. Sevan) (discussing allegations of the Iraqi regime's sanctions violations and explaining that “you can see what the line of attack will be, and you may want to guard against it—particularly in your public appearances and statements”).

¹¹⁶ Uwe Hain e-mail to Dileep Nair (July 29, 2003); Dileep Nair handwritten note on Uwe Hain e-mail to Dileep Nair (Aug. 6, 2003).

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Thereafter, in the latter half of 2003, Mr. Knutsen prepared the General Assembly Report as a consolidation of various challenges associated with the administration of the Programme. Mr. Nair received a draft of the report in approximately February 2004 (after the Programme had ended). In another handwritten note dated February 23, 2004 and forwarded to Mr. Hain and Mr. Knutsen, Mr. Nair changed his position on releasing the audit results in any fashion. While noting that the draft was “a good summary report,” Mr. Nair ultimately concluded that it was not an appropriate time to issue it. Putting matters in context, as of February 2004, the United Nations had been criticized widely in the media, and reports of Mr. Sevan’s receipt of oil allocations from the Iraqi regime and other alleged Programme-related controversies already had surfaced. According to Mr. Hain, Mr. Nair stated that he did not want to publish the report because the timing was such that it would “hurt the United Nations.”¹¹⁷

The decision to withhold the audit results from any form of publication came as a surprise to the auditors. The decision disappointed Mr. Prasad, who believed that the audit results reflected a candid and useful assessment of weaknesses in OIP’s management. Mr. Knutsen was “shocked” that the audit results were not more widely circulated. In his view, it was highly unusual that OIOS would refrain from publishing an audit report. Three auditors with close to twenty years of collective experience all stated that they had never encountered an audit that was completed but withheld from circulation.¹¹⁸

¹¹⁷ Dagfinn Knutsen interview (Mar. 7, 2005); Dileep Nair handwritten note to Uwe Hain and Dagfinn Knutsen (Feb. 23, 2004); Sabah Jerges, “Iraq council asks Oil Ministry to supply information on Saddam oil-for-food scandal,” *Associated Press*, January 29, 2004; Uwe Hain interview (Aug. 9, 2005). Efforts by investigators to contact Mr. Nair in August and September 2005 were unsuccessful.

¹¹⁸ Jayanti Prasad interview (Mar. 22, 2005); Dagfinn Knutsen interview (Mar. 7, 2005); Esther Stern interview (Aug. 3, 2005); Uwe Hain interview (Aug. 9, 2005).

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I. INTRODUCTION

The Secretariat administered the Programme in the field through the United Nations Office of the Humanitarian Coordinator in Iraq (“UNOHCI”). Run by a Humanitarian Coordinator in Baghdad, UNOHCI’s key functions included implementing observation and reporting mechanisms and ensuring the efficient and equitable distribution of Programme goods to Iraq. UNOHCI was also responsible for coordinating the implementation of the Programme in northern Iraq by the UN-related Agencies.¹¹⁹

Part II of this Chapter explains the various means by which the Government of Iraq resisted and impeded the Secretariat’s field operations. Even before the Programme began, the Government of Iraq viewed UNOHCI with suspicion and sought to limit UNOHCI’s ability to conduct thorough observations. Thereafter and throughout the life of the Programme, the Government of Iraq carefully monitored UNOHCI personnel and, at times, employed aggressive tactics designed to expel UNOHCI officials. For the international staff, in other words, the atmosphere in Iraq was hostile. The perception of UNOHCI personnel was that they were subject to constant surveillance by Iraqi intelligence officials and faced the specter of expulsion at the whim of the Government of Iraq.

Part III discusses the mechanics of the Secretariat’s observation and reporting functions and the roles of the three observation units in Iraq: the Multi-Disciplinary Observation Unit, the Geographical Observation Unit, and the Sectoral Observation Unit. It also discusses the Government of Iraq’s interference with United Nations efforts to conduct thorough and candid observations. Part III then discusses challenges to the observation mechanism, including tensions between the three observation units and the erosion of safeguards initially built into the observation mechanism.

¹¹⁹ Draft Organizational Bulletin, secs. 12-16; Iraq-UN MOU, paras. 37-41. Chapter 1 sets forth a more detailed description of UNOHCI’s operations.

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II. THE GOVERNMENT OF IRAQ'S INTERFERENCE WITH THE SECRETARIAT'S FIELD OPERATIONS

A. EARLY RESISTANCE TO UNOHCI'S OPERATIONS

Before the Programme commenced, the Government of Iraq sought to limit the United Nations' ability to fulfill its fundamental observation and monitoring responsibilities. For guidance in implementing the Programme, the United Nations personnel generally looked to the provisions of Resolution 986 and the subsequent MOU between the United Nations and the Government of Iraq. Several adjustments to the terms of the Iraq-UN MOU that occurred during the negotiations weakened the United Nations' ability to maintain control of the Programme's operations.¹²⁰ The negotiations revealed the Government of Iraq's distrust of United Nations personnel in Iraq. The resulting revisions to the Iraq-UN MOU ultimately allowed Iraq to create obstacles to the Programme's implementation and even jeopardized the safety of United Nations personnel in Iraq.

To begin with, throughout the Iraq-UN MOU negotiations, the Government of Iraq openly and actively resisted the then-existing UNSCOM model for monitoring activities in Iraq. UNSCOM inspectors: (1) were not required to obtain visas to enter the country; (2) were permitted to travel freely within the country; and (3) were allowed to visit any facility in the country without any notice to Iraqi authorities. In connection with the Programme's implementation, Iraqi negotiators categorically rejected any inspection, observation, or monitoring provisions that incorporated the UNSCOM model.¹²¹

To appease these objections, the Iraq-UN MOU ultimately provided that United Nations personnel shall have the right of unimpeded entry into and exit from Iraq and "shall be issued visas by the Iraqi authorities promptly and free of charge." Further, the Iraq-UN MOU granted United Nations personnel "unrestricted freedom of movement," but specifically limited this travel to that which was "in connection with the performance of their functions."¹²² Earlier drafts of the Iraq-UN MOU contemplated that the Government of Iraq would "take all the effective and

¹²⁰ Farid Zarif interview (May 11, 2005); Bo Asplund interview (July 6, 2005) (noting that Resolution 986 and the MOU were principle sources defining the relationship between UNOHCI and the Programme Management Division); Ramiro Lopes da Silva interview (May 7, 2005). Chapter 2 of Volume II details the negotiations that led to the memorandum of understanding between the Government of Iraq and the United Nations.

¹²¹ Rolf Ekeus interview (Feb. 19, 2005); Rachel Davies interview (July 19, 2005); Iraq official interview.

¹²² Iraq-UN MOU, paras. 44, 46.

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adequate measures to ensure the appropriate security, safety and protection of personnel of the United Nations.” These provisions were removed from the final version.¹²³

Similarly, while early drafts of the Iraq-UN MOU proposed that United Nations personnel would have access “to all documentary material they deem relevant,” the final Iraq-UN MOU limited this access to “documentary material which they find relevant *having discussed the matter with the Iraqi authorities concerned.*” In addition, the Iraq-UN MOU required United Nations personnel to “coordinate with the competent Iraqi authorities.”¹²⁴ This revision to the Iraq-UN MOU became a tool used by the Government of Iraq to require “ministry escorts” for UNOHCI observers and to impede the United Nations’ efforts to conduct thorough observations and candidly report on the Programme’s implementation.

The Iraq-UN MOU negotiations further revealed that basic provisions concerning effective communications from the field were diluted. An early draft of the Iraq-UN MOU required the Government of Iraq to “secure the inviolability of the official communications and correspondence” of the United Nations personnel and prohibited any “censorship to their communications and correspondence.” These provisions ultimately were omitted from the Iraq-UN MOU.¹²⁵

B. IRAQ’S EFFORTS TO MONITOR UNOHCI STAFF

UNOHCI personnel operated in an atmosphere in which they believed their actions were closely monitored by the Government of Iraq. Mr. Zarif was assigned to UNOHCI first as an observer in early 1997 and later as Deputy Humanitarian Coordinator under Mr. von Sponeck, then the Humanitarian Coordinator. Mr. Zarif openly acknowledged that throughout his duties in Iraq, “it was commonly known that Iraq monitored the United Nations more than the United Nations monitored Iraq.” According to Mr. von Sponeck, the Government of Iraq carefully monitored his behavior and that of his staff. Similarly, UNOHCI officials were mindful of the Government of Iraq’s continuous surveillance efforts throughout the Programme’s operation. Notes from a “core group” meeting, for example, indicate that UNOHCI officials learned from Iraq’s Ministry of Foreign Affairs that the government continued to monitor UNOHCI personnel as of October 2000. The meeting notes explain that “some staff are still being monitored” and cautioned that UNOHCI personnel “should restrict their duties to those required by virtue of their work and

¹²³ “Non-Paper Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the Implementation of Security Council Resolution 986 (1995),” para. 50 (Apr. 22, 1996) (“Version at the request of the Secretary-General”) (hereinafter “Non-Paper MOU”); Iraq-UN MOU, sec. VIII.

¹²⁴ Non-Paper MOU, para. 45 (Apr. 22, 1996); Iraq-UN MOU, paras. 43-44 (emphasis added).

¹²⁵ Non-Paper MOU, para. 49 (Apr. 22, 1996); Iraq-UN MOU, sec. VIII.

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comply strictly with the travel requirements.”¹²⁶ Several examples of the Government of Iraq’s monitoring efforts and the perceptions of UNOHCI personnel are set forth below.

First, UNOHCI personnel perceived that the Government of Iraq’s surveillance activities occurred in the very building in which they conducted the business of the United Nations (i.e., the Canal Hotel in Baghdad). (For most of UNOHCI’s international staff, the Canal Hotel served as UNOHCI’s headquarters office.) Humanitarian Coordinator Tun Myat was told that everything was “bugged” at the Canal Hotel. Roger De Weever, Chief of the Communications Section, recalled that when one of his local staff, an experienced communications engineer, wanted to discuss sensitive issues, he routinely used hand signals to suggest leaving of the building for further discussions. International staff noted that many times materials in the office noticeably had been searched. On several occasions, international staff saw that locked doors had been breached.¹²⁷

Second, throughout the Programme, the Government of Iraq and its Ministry of Information tightly controlled UNOHCI’s media reports about the Programme’s progress. Press releases were required to go through the Ministry of Information. The Ministry of Information refused to release UNOHCI’s prepared statements. Likewise, reports by UNOHCI’s information officers were monitored by the Government of Iraq and often censored. Consequently, some UNOHCI staff would prepare reports in an effort to avoid confrontation with the Government of Iraq. This censorship notably curtailed the ability of UNOHCI to describe the progress of the Programme to the public.¹²⁸

¹²⁶ OIP, “Programme Background,” <http://www.un.org/Depts/oip/background/chron.html> (setting forth term of Mr. von Sponeck’s service as Humanitarian Coordinator); Farid Zarif interview (May 11, 2005); Hans von Sponeck interviews (May 16-18, 2005); UNOHCI Core Group meeting notes (Oct. 22, 2000).

¹²⁷ Staffan de Mistura interview (May 2, 2005); Tun Myat interview (May 4, 2005). Due to the Programme’s expansion, for a period of time United Nations personnel also worked in the Sa’adoun Building in Baghdad, which was also provided by Iraqi authorities. In 2001, the UNOHCI staff was consolidated under a single roof in the Canal Hotel. See, e.g., UNOHCI Core Group meeting notes (Sept. 22, 2001) (noting the movement of the Geographical Observation Unit into the Canal Hotel). Mr. Myat learned of the Government of Iraq’s surveillance efforts from Iraqi personnel with whom he worked. Tun Myat interview (July 26-27, 2005). Mr. Myat assumed that UNOHCI headquarters were “bugged” to some extent. *Ibid.* Mr. Myat was also told that his car and residence were “bugged.” *Ibid.*; see also Michael Soussan interview (Mar. 16, 2005) (noting that there was a sense that United Nations facilities in Iraq were bugged); Roger De Weever interview (Mar. 10, 2005); Adnan Jarrar interview (Apr. 24, 2005) (recalling apparent searches by the Government of Iraq). The Committee has identified a former United Nations employee with information on the subject of the Iraqi regime’s surveillance efforts. He now resides in Europe and initially had agreed to an interview. However, soon thereafter, he changed his mind and has resisted contact with the Committee.

¹²⁸ *Ibid.*; Staffan de Mistura interview (May 2, 2005). Avoiding confrontation with Government of Iraq officials could help reduce the risk of being targeted for a persona non grata designation. Adnan Jarrar interview (Apr. 24, 2005). The Government of Iraq’s use of “persona non grata” was a tactic used to intimidate UNOHCI personnel and to manipulate the makeup of the UNOHCI staff. It is discussed in more detail in Part II, Section D of this Chapter.

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Humanitarian Coordinator Staffan de Mistura sought to take photographs to confirm that the Programme's operation was underway and to demonstrate the Programme's success. Mr. de Mistura recognized that such photographs undermined Saddam Hussein's active campaign to lift the sanctions imposed through Resolution 661. The photographs were intercepted by Iraqi intelligence officials and destroyed. Iraqi authorities continually prohibited observers from using cameras or recording devices in their observation and monitoring assignments. Mr. de Mistura noted that he had to rely upon the international media to release information about the Programme's success in Iraq.¹²⁹

Third, as a general rule, Iraqis working with UNOHCI personnel were required to report to Iraqi authorities about the activities of their international colleagues, their local colleagues, and the Programme itself. Mr. von Sponeck noted concerns that local staff working for UNOHCI reported to Iraqi intelligence officials to further the Government of Iraq's efforts to monitor the United Nations' activities. UNOHCI personnel were cognizant of this method of monitoring their actions throughout the Programme. The subject was discussed with Iraqi authorities, who merely denied such activity.¹³⁰

Depending on the nature of their positions, Iraqi employees working for UNOHCI were contacted regularly for updates on activities occurring at the United Nations compound. Those who worked with the United Nations observers were required to present weekly reports. Similarly, because the Humanitarian Coordinators and their Iraqi drivers spent considerable time together, the drivers were required to report every two to three weeks to Iraqi authorities. Iraqi employees understood that the Humanitarian Coordinators' drivers were routinely debriefed by Iraq's Ministry of Foreign Affairs.¹³¹

As a fourth and final example of the monitoring efforts, international staff members were subject to direct summons by Iraqi authorities to appear at the Ministry of Foreign Affairs and the Ministry of Trade. Early in the Programme's implementation, three United Nations observers were summonsed to the Ministry of Trade, purportedly so that Iraqi officials could ensure that the observers understood the need to refrain from asking questions that the Government of Iraq considered outside the scope of the Iraq-UN MOU. Mr. de Mistura confronted the issue, firmly opposing any similar contemplated attempts in the future by the Ministry.¹³² Nevertheless, according to Mr. Fellows of PMD, OIP officials in New York were aware that international staff

¹²⁹ Staffan de Mistura interview (May 2, 2005); Alan Fellows interview (Dec. 18, 2004).

¹³⁰ Staffan de Mistura interview (May 2, 2005); Roger De Weever interview (Mar. 10, 2005); Omar Mall interview (May 1, 2005); Iraq official interview; Hans von Sponeck interviews (May 16-18, 2005). UNOHCI Core Group meeting notes (Oct. 22, 2000); Tun Myat interviews (July 26-27 and Aug. 10, 2005); Farid Zarif interview (May 11, 2005).

¹³¹ Iraq official interviews.

¹³² Iraq official interview; Staffan de Mistura event/development chronology (Apr. 15, 1997); Staffan de Mistura interview (May 2, 2005) (noting that Mr. de Mistura provided copies of his "Event/Development Chronology" to Committee investigators).

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members, particularly UNOHCI's observers, continued to report to Iraqi officials by telephone and in person.¹³³

C. AN ATMOSPHERE OF FEAR AND INTIMIDATION

Many of the United Nations' international staff feared for their well-being during their service in Iraq. Some UNOHCI personnel were fearful due to threats directly communicated to them by the local staff. International staff naturally cultivated friendships with Iraqis, who warned them to be careful in dealing with various Iraqi employees at UNOHCI. For example, an Iraqi assisting an MDOU international staff member with Arabic counseled him not to "mess with these people" because of their known connections to Iraqi intelligence officials. Iraqi employees, some from prominent families, would caution the international staff not to bother Iraqi officials or "bad things could happen."¹³⁴

UNOHCI personnel informed United Nations headquarters that observation units were threatened directly by Iraqi authorities and warned not to go into certain areas to perform their work. Similarly, the United Nations independent inspectors were stationed in more remote parts of Iraq and thus isolated from the protections of the UNOHCI compound. Independent inspectors reported incidents of hearing firearms "being cocked" behind them. They also reported experiences in which armed men would line up in front of the inspection agents' "container" or work area and train their weapons.¹³⁵

In the northern governorates, United Nations staff members were fired upon and de-mining dogs were shot and killed. In southern Iraq, Mr. Myat learned in July 2000, that a Ministry of Foreign Affairs official had warned that insurgents armed with rifles and pistols intended to ambush a United Nations vehicle between Basrah and Umm Qasr and kidnap the passengers. Mr. Myat and Mr. Sevan considered the threat through an exchange of correspondence. The matter was also brought to the attention of Deputy Secretary-General Fréchette. As a result, OIP suspended all missions in that area for two weeks.¹³⁶

Additionally, reports circulated among the staff concerning a shooting incident inside FAO, during which two FAO staff members were killed and others were injured. A trial concerning the incident ensued, which was monitored by UNOHCI officials. The Iraqi court adjudged the

¹³³ Alan Fellows interview (Aug. 17, 2005).

¹³⁴ Adnan Jarrar interview (Apr. 24, 2005); Michael Soussan interview (Mar. 16, 2005); Rehan Mullick interview (Mar. 29, 2005).

¹³⁵ J. Christer Elfverson interviews (Dec. 4, 2004 and Mar. 15, 2005); Jeremy Owen interview (Apr. 13, 2005).

¹³⁶ Michael Soussan interview (Mar. 16, 2005); Tun Myat interview (July 26-27, 2005); Benon Sevan cryptogramme to Tun Myat (July 11, 2000) (noting existence of threat and copying Deputy Secretary-General Fréchette); Tun Myat cryptofax to Benon Sevan (July 13, 2000) (noting suspension of missions to the targeted area for two weeks).

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alleged assailant not guilty of murder of two FAO staff members and injuries to others. However, the assailant was found guilty for the unlawful wounding of two Iraqi security guards during the incident. According to UNOHCI's legal adviser, the court opined that "the UN, whose commitment should be the alleviation of hardships in the world, was culpable of the sufferings of the Iraqi people."¹³⁷

As another example, in June 2001, an explosive device was detonated underneath a UNOHCI vehicle assigned to UNOHCI's legal office. When the explosion occurred, the United Nations vehicle was parked in front of a guest house for United Nations staff in Erbil. The windows of the guest house were shattered by the blast. Nnenna Uchegbu, UNOHCI's Legal Advisor, prepared a detailed report on the matter which she forwarded to UNOHCI officials including Mr. Myat and John Almstrom, at the time UNOHCI's Officer in Charge.¹³⁸ (As discussed below, three months later, Iraqi officials targeted Ms. Uchegbu as "persona non grata" and requested her immediate departure from Iraq.)

The examples listed above are not intended to be all-inclusive of the threatening circumstances under which UNOHCI staff operated. Instead, they are set forth to demonstrate the difficult working environment that existed relative to the Secretariat's field operations.

D. EXPULSION OF UNOHCI STAFF

The Government of Iraq commonly used the tactic of designating certain UNOHCI and international staff as "persona non grata"—"png"—to force their removal from Iraq. To justify its expulsion efforts, the Government of Iraq often employed generalized accusations that the targeted staff members posed a threat to Iraq's security and national safety. Targeted staff members typically were required to leave Iraq within seventy-two hours. Otherwise, the Government of Iraq refused to ensure their safety.¹³⁹

The Government of Iraq's so-called "png" tactics were an issue in the early years of the Programme, specifically during Mr. de Mistura's tenure as Humanitarian Coordinator. Mr. de Mistura believed it was his job to resist such attempts to expel United Nations staff, particularly when there was no factual basis for the expulsions. Mr. de Mistura noted that Iraqi authorities would often back down when there was nothing of substance to support the designation or resulting expulsion from Iraq.¹⁴⁰

¹³⁷ Nnenna Uchegbu note-to-file (Jan. 9, 2001) (noting progress of murder trial stemming from the shooting incident that occurred at FAO offices in Iraq on June 28, 2000); Nnenna Uchegbu note-to-file (May 28, 2001) (noting verdict in murder trial stemming from shooting incident at FAO offices).

¹³⁸ UNOHCI Core Group meeting notes (July 1, 2001); Nnenna Uchegbu report (July 5, 2001).

¹³⁹ Farid Zarif interview (May 11, 2005); J. Christer Elfverson interview (Dec. 4, 2004).

¹⁴⁰ Staffan de Mistura interview (May 2, 2005).

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In 1999, during Mr. von Sponeck's term as Humanitarian Coordinator, UNOHCI again faced the expulsion tactics, which surfaced as a subject of discussion before the Security Council. Specifically, the Government of Iraq "request[ed] that the United States and United Kingdom nationals engaged in humanitarian activities in Iraq leave the country." UNOHCI officials in Baghdad had been informed orally by the Government of Iraq that: (1) visas for personnel from the United States and United Kingdom would not be renewed because of "popular sentiments in Iraq" in the aftermath of recent air strikes; and (2) the Government of Iraq "could not provide security for them." The United Nations requested that Iraqi authorities provide a justification for the expulsions, but the Government of Iraq offered none.¹⁴¹

On January 5, 1999, Rolf Knutsson, Deputy to the Chef de Cabinet, addressed the Security Council on the Government of Iraq's efforts to expel United Nations staff. Mr. Knutsson explained that in the Secretariat's view, it was the responsibility of Iraqi authorities under international law to ensure the safety and security of all United Nations humanitarian personnel. The Secretariat noted that it was not aware of any specific risks to the targeted United Nations personnel and declined to accede to Iraq's request to remove personnel on the grounds of their nationality. The Security Council expressed its support for the Secretariat's position and emphasized that it was the decision of the Secretariat—not the Government of Iraq—to select those who should participate in implementing the Programme, and that Iraq as a member of the United Nations was obligated to ensure the security and safety of United Nations personnel. Meeting notes of the informal Security Council session on January 5, 1999 were circulated to Mr. Riza and Deputy Secretary-General Fréchette.¹⁴²

The issue of Iraq's "png" designations arose again during Mr. Myat's tenure as Humanitarian Coordinator, specifically within UNOHCI's "core group" in October 2000. During a meeting of UNOHCI department heads on October 22, 2000, Denis Nwachukwu, Officer in Charge, noted that "the days of staff being declared persona non grata were not over." In addition to Mr. Nwachukwu, participants in the discussion were Ms. Uchegbu, Legal Advisor, and Abraham Mathai, Security Advisor. Mr. Nwachukwu warned that the Government of Iraq was likely to target those who strayed beyond the "bounds of their Terms of Reference." Mr. Mathai further explained that in previous cases "of staff being declared persona non grata," the Government of Iraq had indicated that "measures shall be taken against whoever conducts a violation or goes beyond the scope of his/her work."¹⁴³ Within a year, the Government of Iraq had targeted each of these individuals for expulsion from the country.

¹⁴¹ OIP, "Programme Background," <http://www.un.org/Depts/oip/background/chron.html> (setting forth term of Mr. von Sponeck's service as Humanitarian Coordinator); Hans von Sponeck interviews (May 16-18, 2005) (noting that "png" designations occurred regularly during his tenure); DPA notes of Security Council consultations (Jan. 5, 1999).

¹⁴² Ibid.

¹⁴³ OIP, "Programme Background," <http://www.un.org/Depts/oip/background/chron.html> (setting forth term of Mr. Myat's service as Humanitarian Coordinator); UNOHCI Core Group meeting notes (Oct. 22, 2000).

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Beginning in May 1998, Mr. Mathai served as Security Advisor to the Humanitarian Coordinator. He simultaneously held the position of UNOHCI's Chief of Security. In June 2001, Mr. Mathai learned that Iraqi authorities had declared him persona non grata and that he had to leave the mission. Mr. Mathai appreciated that to contest the issue would have placed him at personal risk. In response to this designation, Mr. Myat informed the Iraqi authorities that, "as UNOHCI was a mission operating under Chapter VII of the UN Charter, there was no legal basis for declaring any member of the mission persona non grata and that this was therefore out of the question." Mr. Myat immediately notified Mr. Sevan of the action by the Iraqi authorities. There is no indication of any further resistance to the Government of Iraq's efforts to expel Mr. Mathai. Instead, Mr. Myat requested Mr. Sevan to transfer Mr. Mathai out of Iraq. Mr. Mathai left Iraq almost immediately and was reassigned to a United Nations position in New York. Mr. Myat believed that Mr. Mathai was targeted because "he became too good at his job" and therefore became a threat to the Iraqi authorities."¹⁴⁴

Three months after the expulsion of Mr. Mathai, the Government of Iraq simultaneously designated as "png" several senior officials within UNOHCI, including Mr. Nwachukwu, Ms. Uchegbu, Lawrence Awopeto (Senior Reports Officer), Roberts Onebunne (Reports Officer), and Ljiljana Miletic (a data analyst). The Iraqi authorities instructed each of these UNOHCI officials to depart Iraq within seventy-two hours. On September 2, 2001, Mr. Almstrom, the UNOHCI Officer-in-Charge (Mr. Myat was not in Iraq at the time), was summonsed to the Ministry of Foreign Affairs. A ministry official claimed that the targeted individuals had engaged in activities that "infringed on Iraqi national security and sovereignty." Iraqi officials refused to provide any factual information to serve as a basis for their action, stating: "We have evidence but will not disclose it in this case."¹⁴⁵

Mr. Almstrom notified OIP in New York, specifically Mr. Sevan and Mr. Elfverson. Mr. Almstrom denied any awareness of improprieties by the targeted UNOHCI personnel and noted that Iraqi authorities refused to provide any such information. Mr. Elfverson responded and cautioned against the removal of the staff as it gave the impression that OIP too readily acquiesced to unsubstantiated allegations by Iraqi authorities. In Mr. Elfverson's view, the Government of Iraq needed to provide "proof and evidence of wrong-doing that would warrant such an action" though he noted that evacuation might be necessary as a matter of "personal safety and security." Mr. Elfverson saw the matter as one that should be reported to the Security

¹⁴⁴ Abraham Mathai interview (Feb. 9, 2005); Tun Myat cryptofax to Benon Sevan (June 13, 2001); Tun Myat interview (May 4, 2005).

¹⁴⁵ Ministry of Foreign Affairs, Directorate International Organizations, and Conferences Department note verbale to UNOHCI (Sept. 2, 2001) (unofficial UNOHCI translation from Arabic); Benon Sevan letter to Iraq Permanent Mission (Sept. 3, 2001); John Almstrom cryptofax to Benon Sevan (Sept. 2, 2001); John Almstrom note-to-file (Sept. 2, 2001).

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Council in “the forthcoming 90-day report,” particularly if the Government of Iraq was unable to provide any basis for its actions.¹⁴⁶

Subsequently, Mr. Elfverson conferred with OLA and with Mr. Sevan and advised Mr. Almstrom that: (1) UNOHCI staff members could not be declared “persona non grata” by the host government; (2) decisions regarding conduct of staff members and whether to recall them rested solely with the Secretary-General; and (3) to make such decisions, the Secretary-General must receive all details and evidence concerning the allegations against the staff member. On September 3, 2001, Mr. Sevan forwarded a letter to the Permanent Representative of Iraq to the United Nations, in which he reiterated these points and reinforced the position that “persona non grata” designations of United Nations personnel were impermissible. Nevertheless, apparently within the Government of Iraq’s deadline of seventy-two hours, Mr. Sevan advised the Iraqi Permanent Representative that “purely out of concern for their personal safety and security” he was requesting that these “senior officials” depart Iraq as soon as possible.¹⁴⁷

“[I]n view of the seriousness of the matter,” Mr. Sevan notified the President of the Security Council and Deputy Secretary-General Fréchette of the Government of Iraq’s efforts to expel UNOHCI senior officials and OIP’s response. The Security Council requested a briefing from Mr. Sevan. On September 6, 2001, Mr. Sevan appeared before the Security Council for informal consultations on the subject of the expulsion of UNOHCI staff. In his briefing, Mr. Sevan relayed warnings from Iraqi officials that the United Nations “will bear full responsibility of not letting the staff members leave Iraq within [the regime’s] 72 hour[]” time limit. Mr. Sevan informed the Security Council that “in the absence of any additional information regarding the allegations made by the Government of Iraq, and taking into full account the statement made by the Iraqi official concerned,” he instructed the respective UNOHCI personnel to leave the country, which they did on September 4, 2001.¹⁴⁸

In short, UNOHCI personnel conducted the Secretariat’s field operation without the benefit of cooperation from the Government of Iraq. Instead, during the Programme, UNOHCI contended

¹⁴⁶ John Almstrom cryptofax to Benon Sevan (Sept. 2, 2001); J. Christer Elfverson cryptofax to John Almstrom (Sept. 1, 2001).

¹⁴⁷ J. Christer Elfverson cryptofax to John Almstrom (Sept. 1, 2001); Benon Sevan letter to Mohammed Al-Douri (Sept. 3, 2001). It is noteworthy that the *Associated Press* published an article entitled “Iraq Expels Two More U.N. Officials” on September 7, 2001. That article cited an Iraqi official from the Foreign Ministry in Baghdad who announced that Iraq had expelled “two more U.N. staffers . . . for security reasons.” The article identified these staffers as two Argentinean peacekeepers from the United Nations force monitoring the Iraq-Kuwait border, known as UNIKOM. In the article, the Iraqi official stated that these persons had been expelled “for the same reasons that led to the expulsion of the other six U.N. employees staffers” earlier in the week, allegedly for “passing sensitive information to ‘enemy states’ and not abiding by Iraqi laws.” “Iraq Expels Two More U.N. Officials,” *Associated Press*, Sept. 7, 2001.

¹⁴⁸ Benon Sevan note to the President of the Security Council (Sept. 3, 2001); Benon Sevan note to Louise Fréchette (Sept. 6, 2001); DPA notes of Security Council consultations (Sept. 6, 2001); Benon Sevan briefing at informal meeting of Security Council (Sept. 6, 2001).

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with monitoring and surveillance efforts by the Government of Iraq, safety concerns, and the lingering possibility of unjustified expulsion from Iraq through the Government of Iraq's unlawful "png" designations.

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III. THE OBSERVATION MECHANISM IN IRAQ

A. BACKGROUND

One of the Secretariat's responsibilities under the Programme was to ensure, through observations by United Nations staff in Iraq and reporting to the Security Council, that Programme-related goods were adequate and distributed equitably and effectively. Resolution 986 required the Secretary-General to provide the Security Council with reports (i.e., the "90 and 180-day reports"), which the Security Council and the 661 Committee relied on to make informed decisions on the implementation and the extension of the Programme.¹⁴⁹

1. The Initial Observation and Reporting Mechanism (1996-2000)

The operation of the observation mechanism was described in a November 1996 Secretary-General's report. As contemplated in the report, observation activities were to be carried out by 151 internationally-recruited observers organized in a three-tiered mechanism consisting of the Geographical Observation Unit ("GOU"), the Sectoral Observation Unit ("SOU"), and the Multi-Disciplinary Observation Unit ("MDOU"). The purpose of the three-tiered system was to ensure that reporting on the Programme's implementation would be accurate and objective.¹⁵⁰

The observation mechanism involved a tracking process through which goods were tracked from their entry into Iraq to their point of utilization. The principal tracking activities included routine scrutiny of items, tracking items of special interest to the 661 Committee, and tracking project-related items to provide a picture of the end-use of the goods imported. The mechanism also assessed the extent to which the arriving goods were adequate for the population's needs, distributed equitably, and utilized effectively. The assessment examined the links between specific commodities imported under the Programme and their effects. Assessments also involved self-contained studies, which were designed to gather information, identify implementation problems, and propose solutions to increase the effectiveness of the humanitarian program.¹⁵¹

Acting on behalf of the various UN-related Agencies in Iraq, SOU included sectoral observers who were supposed to be specialists in each of the areas for which their respective agencies were

¹⁴⁹ Iraq-UN MOU, para. 35; Kofi Annan interviews (July 26-27, 2005); S/RES/986, para. 11 (Apr. 14, 1995).

¹⁵⁰ "Interim Report of the Secretary-General on the Implementation of Security Council Resolution 986 (1995)," S/1996/978, paras. 26, 29-30 (Nov. 25, 1996); Gregoire de Brancovan interview (Aug. 12, 2005); Alan Fellows interview (Aug. 16, 2005); Bo Asplund memorandum to Benon Sevan (Dec. 31, 1999) ("Handover Notes").

¹⁵¹ "United Nations Observation Mechanism in Iraq – Briefing by Benon V. Sevan, Executive Director of the Iraq Programme, to the Security Council Committee established by resolution 661 (1990) on Tuesday, 25 April 2000," pp. 2-3 (Apr. 25, 2000).

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responsible. SOU included seventy-five observers who were directly employed by the Agencies and who reported also to the Humanitarian Coordinator. SOU was tasked with providing regular assessments to the Humanitarian Coordinator regarding the equitability of distribution and adequacy of supplies in their respective sectors.¹⁵²

GOU was tasked with the inspection of warehouses. This second layer of observers who were independent of the Agencies was built into the observation mechanism due to concerns about the objectivity of the Agencies' observers. GOU was staffed with sixty-five observers who reported directly to UNOHCI. Its observation activities focused on defined geographical areas. GOU was established to enable the Humanitarian Coordinator to independently undertake observation activities.¹⁵³

MDOU analyzed, synthesized, and cross-checked the findings of the other two units. MDOU was comprised of thirteen technical experts in specialized sectors who would collate, analyze and integrate the findings of the other two observation units into reports. These reports were used by PMD in New York to cross-check the information in the 90 and 180-day reports for the Security Council. Although MDOU would communicate its analysis and recommendations simultaneously to OIP and to the Humanitarian Coordinator, its direct reporting line was to OIP headquarters in New York.¹⁵⁴

The preparation of the 90 and 180-day reports began with the information gathered from observation visits by GOU and SOU. The office of the Humanitarian Coordinator would then collate the submissions into monthly composite reports that were forwarded to OIP in New York. At the same time, MDOU would assemble a monthly progress report separately and forward its report to OIP. OIP would draw on these reports to prepare reports for the 661 Committee. The reports were forwarded to the Security Council at the conclusion of each phase, in part, for consideration of whether the Programme should be extended for another phase.¹⁵⁵

¹⁵² "Interim Report of the Secretary-General on the Implementation of Security Council Resolution 986 (1995)," S/1996/978, para. 29 (Nov. 25, 1996).

¹⁵³ Umara B. Wurie memorandum to J. Christer Elfverson (Apr. 13, 2000) (regarding "Comments from the Three Tier Observation Mechanism: The UNOHCI Consolidated Report"); Bo Asplund memorandum to Benon Sevan (Dec. 31, 1999); "Interim Report of the Secretary-General on the Implementation of Security Council Resolution 986 (1995)," S/1996/978, para. 29 (Nov. 25, 1996); Gregoire de Brancovan interview (Aug. 12, 2005).

¹⁵⁴ Alan Fellows interview (Aug. 16, 2005); "Interim Report of the Secretary-General on the Implementation of Security Council Resolution 986 (1995)," S/1996/978, paras. 28-29 (Nov. 25, 1996); J. Christer Elfverson interview (July 21, 2005).

¹⁵⁵ Gregoire de Brancovan interview (Aug. 12, 2005); Seth Kumi interview (May 4, 2005); Tun Myat fax to Benon Sevan (July 29, 2001) (regarding the "New Observation Mechanism"); Alan Fellows interview (Aug. 16, 2005); Yohannes Mengesha interview (Dec. 13, 2004); S/RES/1111, para. 2 (June 4, 1997).

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2. The Restructured Observation and Reporting Mechanism (2000-2003)

The expansion of the Programme from its original relief-focused objectives to the inclusion of rehabilitation of infrastructure presented two principal challenges to the observation mechanism. First, the growth in the size of the Programme raised concerns about the capacity of the initial complement of 151 observers to discharge effectively the observation obligations of the Secretariat. Second, the expansion of the scope of the Programme into new sectors necessitated the use of more technically-qualified observers. Furthermore, with the increase in the sectors came an increase in the number of requests for special interest tracking by members of the 661 Committee. Special interest tracking reflected concerns over potential dual-use items and the possible of diversion of Programme goods for non-humanitarian purposes.¹⁵⁶

In 1998, the Secretary-General directed OIP “to utilize the United Nations observers in Iraq in such a way as to provide the required assurances to the Security Council Committee that all supplies authorized for procurement, including potential dual-usage items and/or spare parts are indeed utilized for the purpose for which they have been authorized.” Thereafter, there was a shift in focus of the observation mechanism from confirming the arrival and equitable distribution of goods to clarification for the release of contracts on hold and the monitoring of potential dual-use items. The requests for special interest tracking placed additional strains on the already overburdened observation mechanism.¹⁵⁷

In response to a request from the Security Council to strengthen the observation mechanism in central and southern Iraq, Mr. Sevan presented a proposal to the 661 Committee on April 25, 2000. Mr. Sevan proposed a Countrywide Observation Advisory Group chaired by the Deputy Humanitarian Coordinator with representation from each of the Agencies. This proposal had been the subject of consultation with UNOHCI and the various UN-related Agencies involved in the operation of the observation mechanism in central and southern Iraq. In his presentation to the 661 Committee, Mr. Sevan claimed that the new observation mechanism would “result in a reduction in the number of contracts on hold.”¹⁵⁸

Under the direction of the Countrywide Advisory Observation Group, a system of Sectoral Groups was established for each of ten sectors. Each of the observers from the previous three-tiered system was assigned to a Sectoral Group. After a little over a year of the implementation

¹⁵⁶ Benon Sevan briefing to the 661 Committee (Apr. 25, 2000) (regarding the observation mechanism); OIP briefing to 661 Committee (Apr. 25, 2000); Tun Myat fax to Benon Sevan (July 29, 2001); Tun Myat interview (July 26, 2005); Alan Fellows interview (Aug. 16, 2005); Bo Asplund memorandum to Benon Sevan (Dec. 31, 1999).

¹⁵⁷ “Report of the Secretary General Pursuant to Paragraph 7 of Resolution 1143,” S/1998/90, para. 53(c) (Feb. 1, 1998); Gregoire de Brancovan interview (Aug. 12, 2005); Alan Fellows interview (Aug. 16, 2005).

¹⁵⁸ Benon Sevan briefing to the 661 Committee (Apr. 25, 2000) (regarding the observation mechanism); OIP briefing to 661 Committee (Apr. 25, 2000).

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of the new observation mechanism, the distinction between MDOU and GOU was abolished. The activities of the observers were directed and managed by Sectoral Working Groups. The new observation mechanism transferred the reporting line of MDOU from PMD in New York to the Humanitarian Coordinator, at the time Tun Myat.¹⁵⁹

B. INADEQUACIES OF THE OBSERVATION AND REPORTING MECHANISM

1. Iraq's Interference with the Observation Mechanism

As discussed in Part II of this Chapter, it was very clear from the outset that the Government of Iraq was resistant to the Programme and that the staff members of the United Nations were not welcome in Iraq. The Government of Iraq's distrust impeded UNOHCI's operations. There was a general perception among UNOHCI personnel that the Government of Iraq was closely monitoring their activities. As noted, Iraqis employed at UNOHCI were required to report to Iraqi authorities about the activities of their international colleagues, their local colleagues, and the Programme itself. Iraqi officials told the Committee's investigators that Iraqis working with UNOHCI were approached by Iraqi intelligence officials through the Ministry of Foreign Affairs and were required to report about the work of their international counterparts. Depending on the nature of their positions, Iraqi employees were in regular contact with the Government of Iraq for updates on UNOHCI's activities at its headquarters in the Canal Hotel. Local staff members working with GOU were required to produce reports on a weekly basis.

From the outset of the Programme, the Government of Iraq resisted observations in particular. Observations were usually carried out by a pair of observers accompanied by a driver/interpreter and an escort from one of the Government of Iraq's ministries. The Government of Iraq purportedly provided ministry escorts to facilitate the observation process. UNOHCI was required to inform the relevant ministries of the site and date of its inspection, and the ministries in turn would arrange for escorts. Mr. Zarif learned from Iraqi officials that the escorts were required to prevent the observers from spying or asking questions about issues that fell outside the scope of the humanitarian programme.¹⁶⁰

¹⁵⁹ Tun Myat fax to Benon Sevan (July 29, 2001). Each Sectoral Working Group was chaired by the head of the agency for the particular sector, the head of unit within the agency for that sector, one member of UNOHCI, two individuals from other agencies with observers in the same sector, and a UNOHCI Reports Officer. Each Sectoral Working Group was responsible for all observation activities in its designated sector. *Ibid.*; Tun Myat interview (July 26, 2005); Gregoire de Brancovan interview (Aug. 12, 2005).

¹⁶⁰ Omar Mall interview (May 1, 2005); Seth Kumi interview (May 4, 2005). Paragraph forty-three of the Iraq-UN MOU required that the "Iraqi authorities will provide to United Nations personnel the assistance required to facilitate the performance of their functions." Iraq-UN MOU, para. 43; Rehan Mullick interview (Mar. 29, 2005); Farid Zarif interview (May 11, 2005).

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It appears that the level of interference by the escorts varied. On some occasions, the Government of Iraq impeded observations from taking place by not making escorts available, thus precluding scheduled observations. On other occasions, ministry escorts met with the local facility authorities to discuss what information was permissible to share with the observers. Furthermore, escorts at times instructed the observers not to ask certain questions. Early in the Programme's implementation, three geographical observers were summoned to the Ministry of Trade, purportedly to ensure that the observers understood the need to refrain from asking questions that the Government of Iraq considered outside the scope of the Iraq-UN MOU. Mr. de Mistura confronted this action, firmly rejecting any similar attempts in the future by the Ministry. Not all of the observers had a negative experience with escorts. A report in 1997 by MDOU stated that "in some cases escorts accompanied observers into facilities to be inspected, and tended to participate in the discussions [but that] the motivation for this behavior was probably excessive zeal and a misdirected desire to be helpful, rather than any conscious intention of interfering in the observation process."¹⁶¹

Regardless of the utility of having escorts present at the observations, the escorts documented the questions asked by the observers and reported these back to the Iraqi authorities. Furthermore, one UNOHCI observer noted that observers were careful not to ask questions or include information in their reports that might be disagreeable to the Iraqis. The presence of the escorts also had an effect on persons that UNOHCI observers interviewed. Several observers reported incidents where interviewees indicated that they had more information to share, but were reluctant to do so because of the presence of the escorts.¹⁶² The limits on the observers' ability to ask questions freely and gather information inherently affected OIP's ability to offer the Security Council and the 661 Committee full and complete reports from the field.

2. Conflicts among the Three Observation Units (1997-2000)

The original three-tiered observation system provided a system of checks and balances in the process and was designed to ensure objective reporting on the implementation of the Programme in Iraq. The mechanism, however, was not without its share of difficulties. GOU and MDOU

¹⁶¹ Rehan Mullick interview (Mar. 29, 2005); Hans von Sponeck interviews (May 16-18, 2005); Alan Fellows interview (Dec. 18, 2004); Omar Mall interview (May 1, 2005); Staffan de Mistura event/development chronology (Apr. 15, 1997); Staffan de Mistura interview (May 2, 2005); Multi-Disciplinary Observation Unit weekly progress report (Apr. 23, 1997). Mr. von Sponeck held the view that given the familiarity of the escorts with the physical locations and travel routes of the observers, the escorts were able to ensure the safety of the observers. Hans von Sponeck interview (May 16, 2005). Mr. Fellows, head of OIP's Observation and Analysis Section of OIP, was of the opinion that the observation mechanism could not function without the use of the escorts as there were often no maps or street signs provided to the observers. Alan Fellows interview (Dec. 18, 2004). Mr. Fellows also suggested that the presence of the escorts served as an indication that official approval had been granted by the Government of Iraq for the observation to take place. Ibid.

¹⁶² Hans von Sponeck interviews (May 16-18, 2005); Omar Mall interview (May 1, 2005); Francis Faraay interview (Mar. 31, 2005); Alan Fellows interview (Aug. 16, 2005).

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were deployed to ensure objectivity in the reporting of the Agencies operating in Iraq. However, the division of responsibility was a source of conflict among the various observation units. The three-tiered mechanism included an element of discord as the respective units perceived the others as obtrusive rather than as complementary to their functions. Michael Stone, head of MDOU, told investigators that the attitude of the other observation units towards MDOU was one of “tremendous rivalry and suspicion.” Mr. von Sponeck regarded the dispute between GOU and MDOU as one of the primary problems with the observation mechanism in Iraq. Mr. Fellows, who coordinated with MDOU from New York, informed the Committee that there were frequent clashes between MDOU and SOU. Specifically, there were frequent conflicts between the two observation units over issues ranging from the type of medical supplies that were required for the country to how Programme resources should be allocated.¹⁶³

Conflicts between the three observation units often manifested themselves during the writing of reports. In 1998, Mr. Fellows was required to travel to Iraq to mediate the conflicts to ensure completion of the Secretary-General's reports. MDOU also frequently complained that the sectoral observers refused to share information that they received from the Government of Iraq.¹⁶⁴

3. Erosion of Built-in Safeguards (2000-2003)

Tension between the three observation units was one reason for the transition in 2000 to an observation mechanism that was centrally coordinated by Country Observation Advisory Group and organized into Sectoral Working Groups. So too was the need for the observation mechanism to respond to the expansion of the Programme.¹⁶⁵ The benefits of organizing observers into sectoral working groups, however, came at the expense of inherent safeguards that existed under the three-tiered system.

To begin with, the consolidation of the three independent observation units meant the loss of a mechanism for corroborating and verifying observations. Under the three-tiered system GOU and SOU conducted separate site visits, sometimes to the same location, and prepared separate reports, which were forwarded to MDOU. When a discrepancy was noted or a specialist observation was required, MDOU would conduct a site visit. Clearly, there was an element of thoroughness to the three-tiered system. Following the creation of the Sectoral Working Groups, the observers avoided the duplication of visits to the same site. While this change may have resulted in a greater number of sites visited, it eliminated the safeguard that was in place to improve the accuracy of the information gathered by the observers.¹⁶⁶

¹⁶³ Gregoire de Brancovan interview (Aug. 12, 2005); Alan Fellows interview (Aug. 16, 2005); Bo Asplund memorandum to Benon Sevan (Dec. 31, 1999); Michael Stone interview (May 12, 2005).

¹⁶⁴ Alan Fellows interview (Aug. 16, 2005); Pierre Boekhorst interview (Oct. 6, 2004).

¹⁶⁵ Tun Myat interview (July 26, 2005); Tun Myat fax to Benon Sevan (July 29, 2001).

¹⁶⁶ Gregoire de Brancovan memorandum to J. Christer Elfverson (Mar. 24, 2000) (regarding the “Report on Mini-review of UNOHCI Programme and Observation Activities”); Alan Fellows interview (Aug. 16, 2005); “MDOU Operational Procedures,” paras. 9, 23 (Aug. 19, 1998); “Evolution of the UN observation

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Still further, the consolidation of the observation mechanism had the effect of eliminating a check on the Agencies. In 1999, Mr. Asplund in his handover notes to his successor cautioned: "The nature of [the Government of Iraq's] influence over how UN agencies operate, not least the exceptionally close links between local staff and individual ministries or senior Government of Iraq figures, is unlikely to diminish and will continue to act as a potential complication." Despite concerns over the Agencies' lack of independence, UNOHCI's role diminished with the Agencies placement at the helm of the Sectoral Working Groups.¹⁶⁷

Prior to the adoption of the enhanced observation mechanism, Mr. Nwachukwu, the head of MDOU, spotted this issue and voiced concern about the loss of independence that would result from a merger of the reports of the three units. By 2002, following the consolidation of the observation units, Mr. Fellows observed that the "lack of quality control is repeatedly seen when draft 90 and 180-day reports are presented to OIP. These have shown the observation mechanism's general reluctance to tackle issues perceived as contentious and likely to offend the Government of Iraq and local authorities."¹⁶⁸

A further safeguard built into the original structure of the observation mechanism was the direct reporting line from MDOU to OIP headquarters in New York. The direct reporting line between MDOU and PMD served to ensure that pressures and influence from the Government of Iraq did not override the objectivity of reporting from the field. Mr. Asplund viewed MDOU as effective and saw value in the unit's reporting relationship with PMD in New York. He noted that the "reporting line has proven its worth in providing factual information on sensitive issues and identifying potential problems."¹⁶⁹ This reporting structure was lost with the consolidation of the observation units.

In a recent interview, Mr. Myat explained that he recommended and Mr. Sevan accepted a proposal to sever the link between MDOU and OIP's headquarters in New York. Mr. Sevan had resisted attempts by the two previous humanitarian coordinators to change the line of reporting. Mr. Myat justified the reorganization by noting that the Government of Iraq curtailed the freedom of movement of MDOU because it was uncomfortable with the direct reporting line between MDOU and OIP headquarters. Mr. Fellows disagreed with the decision to change the reporting

mechanism in Iraq – Synopsis of the New Observation Mechanism" presented at the Orientation Seminar for United Nations International Observers on the New Observation Mechanism, (Oct. 7, 14, and 21, 2000).

¹⁶⁷ Bo Asplund memorandum to Benon Sevan (Dec. 31, 1999); Seth Kumi interview (May 4, 2005); Alan Fellows interview (Aug. 16, 2005).

¹⁶⁸ Denis Nwachukwu fax to Gregoire de Brancovan (Mar. 19, 2000) (including suggestions on observation); Alan Fellows memorandum (Feb. 13, 2002) ("OAS Workplan").

¹⁶⁹ Bo Asplund memorandum to Benon Sevan (Dec. 31, 1999); Alan Fellows memorandum to Benon Sevan (July 26, 1999).

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line, noting that, “in severing the direct link with OIP, the [Humanitarian] Coordinator has not increased the integrity of the observation system, only his own control over it.”¹⁷⁰

In short, the restructuring of the observation mechanism in 2000 came at a price. The consolidation of observation units diminished the observers' ability to cross-check their respective observations, a much needed verification tool given the Government of Iraq's interference with UNOHCI's observations. The intended check on the Agencies was diminished as well. Moreover, PMD's ability to ensure the efficacy of the observation mechanism from New York was all but eliminated. These changes in field observations ultimately limited the Secretary-General's ability to present thorough, candid, and corroborated information to the Security Council.

¹⁷⁰ Tun Myat interview (July 26, 2005); Alan Fellows interview (Aug. 16, 2005); Alan Fellows e-mail to J. Christer Elfverson (Oct. 12, 2001) (including “Comments on the Review of the Observation Mechanism”).

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THE SECRETARIAT'S RESPONSE TO SANCTIONS VIOLATIONS

I. INTRODUCTION

During the Programme, the Iraqi regime became increasingly bold in its efforts to obtain revenues in violation of the sanctions regime. By November 2000, Iraq was engaging in a pattern of sanctions breaches that ultimately generated billions of dollars in illegal revenues. The illicit revenues were collected through kickback payments on Programme contracts, surcharge payments on oil purchases, and oil smuggling to neighboring countries. Chapters 3 and 4 of Volume II discuss the 661 Committee's response to these sanctions violations. With respect to the United Nations Secretariat and OIP, the subject of this Chapter, OIP's Executive Director Benon Sevan, Deputy Secretary-General Louise Fréchette and Secretary-General Kofi Annan each was aware—in varying degrees—of efforts by the Iraqi regime to divert revenues from the Programme. As explained below, their response was inadequate.

Regarding kickbacks on humanitarian contracts, OIP was particularly well-positioned to investigate and understand the true scope of the regime's activities. OIP's customs experts were attuned to the issue and, as much as their resources and expertise would permit, tracked contract irregularities. OIP's sources provided increasingly detailed evidence that the Iraqi regime was engaging in a widespread kickback scheme through which suppliers were required to make payments to the regime, often in amounts representing ten percent or more of the full contract value. Some suppliers and their respective missions, in fact, provided OIP with documents confirming illicit side agreements with the Iraqi regime.

By October 2001, OIP's Chief Customs Expert, Felicity Johnston, was convinced that the Iraqi regime's kickback scheme was occurring "left, right and center." She brought her concerns and specific information to the attention of her supervisors at OIP—Farid Zarif, the Director of the Contracts Processing and Monitoring Division ("CPMD"), and Mr. Sevan—and urged them to take action. No meaningful action was taken. Instead, in the face of multiple, documented cases of illicit activity, Mr. Sevan refused to disclose material evidence to the 661 Committee. Mr. Sevan maintained that there was no hard evidence that the kickback scheme existed. For their parts, Deputy Secretary-General Fréchette, S. Iqbal Riza, the former Chef de Cabinet, and Secretary-General Annan were each informed of the kickback issue and received some, but not all, of the documentation and information possessed by OIP regarding the scheme. There is no indication that Deputy Secretary-General Fréchette took any steps or issued any directives to ensure that the Iraqi regime's collection of illicit payments was properly investigated and brought to the attention of the Security Council and the 661 Committee. Secretary-General Annan told the Committee that he gave oral instructions to Mr. Sevan to be transparent with the 661 Committee. He did not, however, confirm that such transparency existed, particularly in connection with the kickback issue. Further, neither Deputy Secretary-General Fréchette nor the Secretary-General addressed the kickback scheme with Iraqi officials, and they made no mention of the scheme in the Secretary-General's 90 and 180-day reports to the Security Council. With little resistance from the Secretariat, the Iraqi regime's kickback scheme continued through the balance of the Programme and undermined the humanitarian effort.

Another scheme through which the Iraqi regime abused the Programme involved its imposition of surcharges on oil sales. Specifically, the Iraqi regime received approximately \$229 million in

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illegal payments in connection with its oil sales under the Programme. These payments were in clear violation of the sanctions regime and were well known to high-ranking OIP officials and members of the Secretariat. The surcharge issue surfaced in earnest in the fall of 2000. In the months that followed, there was a substantial amount of internal communication within the Secretariat, primarily between Mr. Sevan, Deputy Secretary-General Fréchette, Mr. Riza, and Secretary-General Annan. However, there were no proactive measures taken by the leadership of the Secretariat to eliminate the surcharge payments. Eventually, certain member states coordinated with two of OIP's oil overseers and initiated a retroactive pricing mechanism, which sought to curb the Iraqi regime's efforts to impose illicit surcharges. For its part, however, the Secretariat, other than the two oil overseers, did little to prevent the surcharge payments. In fact, Mr. Sevan consistently opposed the retroactive pricing mechanism.

Iraq's vast smuggling network posed a further threat to the Programme. In late 1999, Resolution 1284 lifted the ceiling on Iraq's oil exports. As a result, every barrel of oil that Iraq sold through its smuggling network was a barrel that could have generated revenues for use by the United Nations in its humanitarian relief effort. Further, by November 2000, Mr. Sevan, Deputy Secretary-General Fréchette, Mr. Riza, and Secretary-General Annan each knew that Iraq's smuggling efforts were ongoing and extensive. Each understood that Iraq's gains through its smuggling network were the humanitarian program's losses. Further, Saybolt and United Nations staff on the ground in Iraq provided OIP with detailed knowledge of the Iraqi regime's various smuggling operations. Again, however, the Secretariat took virtually no corrective steps, or steps to verify, and failed to divulge the full extent of its knowledge. Instead, the Secretariat viewed the issue as a concern only for the Security Council and regarded sanctions monitoring as the responsibility of the member states. Similarly, OIP failed to aggressively investigate the matter, confront Iraqi officials, or otherwise meaningfully respond to reports of smuggling. Instead, Deputy Secretary-General Fréchette and Mr. Sevan assumed that the 661 Committee knew of and would act on widespread reports of Iraq's illegal oil exports. Smuggling continued unabated until the termination of the Programme, diverting billions of dollars from the United Nations humanitarian objectives and into the hands of the Iraqi regime.

The remainder of this Chapter is divided into four parts. Part II explains the perceptions of senior officials regarding the Secretariat's responsibility for sanctions monitoring and reporting under Resolutions 661 and 986. Part III addresses the Secretariat's knowledge of and response to the Iraqi regime's kickback demands. Part IV explains the Secretariat's reaction to Iraqi regime's receipt of surcharges. Part V discusses the Secretariat's response to allegations of smuggling.

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II. THE ROLE OF THE SECRETARIAT IN SANCTIONS MONITORING AND REPORTING

Resolutions 661 and 986 mandated that the Secretary-General report to the Security Council regarding the implementation of the sanctions program and humanitarian program, respectively.¹⁷¹ Once the Programme was established by Resolution 986, the Secretariat had at least four different mechanisms for reporting information to the 661 Committee and/or the Security Council, including: (1) 90-day, 180-day, and special reports to the Security Council (there were more than forty such reports subsequent to Resolution 986); (2) formal 661 Committee meetings (there were more than 100 formal meetings subsequent to the enactment of Resolution 986); (3) informal 661 Committee meetings (there were more than sixty informal meetings subsequent to the enactment of Resolution 986); and (4) other briefings and/or statements by Secretary-General Annan or Mr. Sevan to the Security Council and 661 Committee.¹⁷²

In fact, senior members of the Secretariat—from both OIP and the 38th Floor—have acknowledged that the Secretariat had certain responsibilities in connection with sanctions violations during the Programme. During his interviews with the Committee, Secretary-General Annan emphasized the importance of transparency between the Secretariat and the 661 Committee in the administration of the Programme. Further, the Secretary-General acknowledged that sanctions violations constituted a threat to the Programme and that the Secretariat had an absolute obligation to raise such issues with the 661 Committee. He also stated unequivocally that it was his expectation that Mr. Sevan and OIP would report all information regarding sanctions violations to the 661 Committee. More particularly, Secretary-General Annan stated that the Secretariat's role was to “get the facts and go to the 661 Committee and report everything to the 661 Committee for measures to be taken[.]” Additionally, if OIP learned of incomplete evidence of sanctions violations, the Secretary-General expected Mr. Sevan's office to conduct an investigation to attempt to establish the facts before reporting to the 661 Committee or the Security Council. Secretary-General Annan indicated that he specifically instructed both Mr. Sevan and Deputy Secretary-General Fréchette to bring “whatever

¹⁷¹ S/RES/661, para. 10 (Aug. 6, 1990); S/RES/986, para. 11 (Apr. 14, 1995). Throughout the Programme, subsequent Security Council resolutions renewed the Secretary-General's obligation to report to the Security Council regarding implementation and other matters. See, e.g., S/RES/1111, para. 3 (June 4, 1997); S/RES/1143, paras. 4, 6 (Dec. 4, 1997); S/RES/1153, paras. 5, 10 (Feb. 20, 1998); S/RES/1210, para. 6 (Nov. 24, 1998); S/RES/1242, para. 6 (May 21, 1999); S/RES/1281, para. 5 (Dec. 10, 1999); S/RES/1284, paras. 28, 32 (Dec. 17, 1999); S/RES/1302, para. 5 (June 8, 2000); S/RES/1330, para. 5 (Dec. 5, 2000); S/RES/1360, para. 5 (July 3, 2001); S/RES/1409, paras. 7-8 (May 14, 2002).

¹⁷² OIP, “Security Council Reports—Related to the Oil-for-Food Programme,” <http://www.un.org/Depts/oip/background/reportsindex.html>. Volume III, Chapter 1 details the organization and responsibilities of the Secretariat and OIP.

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information we had at the time” regarding the sanctions violations to the attention of the 661 Committee.¹⁷³

Deputy Secretary-General Fréchette maintained that the Secretariat was not in the business of monitoring sanctions breaches. She admitted, however, that with respect to problems “directly related to the Oil-for-Food Programme and its implementation,” such as oil surcharges and kickbacks on Programme-related contracts, she expected OIP to report to the Security Council. Moreover, the Deputy Secretary-General expected Mr. Sevan to gather information and establish facts before disclosing information to the Security Council or 661 Committee. Deputy Secretary-General Fréchette acknowledged that when there was a pattern of sanctions violations, the Secretariat should have alerted the 661 Committee, who could determine whether the framework of the Programme needed to be adjusted.¹⁷⁴

The Secretary-General's Chef de Cabinet during the Programme, Mr. Riza, also acknowledged that OIP should have provided all available information, from both headquarters and the field, to the 661 Committee in order for it to carry out its sanctions enforcement function. Further, Mr. Riza recognized that OIP was in a position of superior knowledge and there was “absolutely” a need for transparency with the 661 Committee. In particular, Mr. Riza stated that when OIP learned of information regarding illicit payments to the Iraqi regime, that information should have been reported to the 661 Committee.¹⁷⁵

Likewise, interviews with senior OIP staff reflect an understanding that violations of the sanctions by the Government of Iraq should have been investigated and reported to the 661 Committee. Mr. Zarif informed the Committee that when allegations of sanctions violations arose OIP should have taken the following steps: (1) investigate and gather additional information; (2) attempt to verify the information with the company and/or permanent mission involved with the allegation; and (3) make a written report of the conduct to the Security Council and/or the 661 Committee detailing the information received, the steps taken by OIP, and the results of the investigation.¹⁷⁶

Mr. Sevan has refused repeatedly to submit to interviews with the Committee regarding the administration of the Programme by the Secretariat and his involvement as the Executive Director of the Programme.¹⁷⁷ In an August 7, 2005 letter to the Secretary-General, Mr. Sevan claimed that the Secretariat's “administration of the Programme was transparent.”¹⁷⁸ As set forth in detail

¹⁷³ Kofi Annan interviews (July 26-27, 2005).

¹⁷⁴ Louise Fréchette interviews (May 23, 25, and 31, 2005).

¹⁷⁵ S. Iqbal Riza interview (July 25, 2005).

¹⁷⁶ Farid Zarif interviews (July 6, 8, and 14, 2005); Felicity Johnston interviews (May 26 and June 10, 2005); J. Christer Elfverson interview (July 20, 2005).

¹⁷⁷ Mr. Sevan's failure to cooperate with the Committee was described previously in the Committee's Third Interim Report. “Third Interim Report,” pp. 7, 50.

¹⁷⁸ Benon Sevan letter to Kofi Annan (Aug. 7, 2005).

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below, a significant body of evidence demonstrates that Mr. Sevan did not administer the Programme in a transparent manner and did not report sanctions violations to the 661 Committee in a sufficient manner. However, in statements intended for public consumption, Mr. Sevan recognized the importance of keeping the Security Council and 661 Committee fully informed. Early in the Programme, Mr. Sevan gave a speech to the Middle East Institute where he described the Secretariat's role as "ensur[ing] that the Security Council is kept fully informed on all aspects which could influence its decisions."¹⁷⁹ Again, toward the end of the Programme, Mr. Sevan offered an explanation of his view of OIP's role and conduct in defense to accusations made in the media. Mr. Sevan wrote that:

In terms of alleged violations of the sanctions regime, the investigation of such alleged violations fall [*sic*] outside the purview of the Office of the Iraq Programme. However, *irregularities in the implementation of the programme, whenever occurred, have been promptly brought to the attention of the Sanctions Committee*. Far from 'winking' at 'gross violations', the *programme rigorously and automatically examines all credible reports of abuses* where there is sufficient detail to warrant investigation and whenever requested to do so by the Sanctions Committee.¹⁸⁰

In this defense, Mr. Sevan attempted to abdicate accountability with respect to sanctions violations; however, in the process he made a number of significant concessions of responsibility, including: (1) the Secretariat had a duty to bring "irregularities in the implementation of the programme" to the attention of the 661 Committee; (2) the Secretariat's duties included "rigorously and automatically examin[ing] all credible reports of abuses"; and (3) when the 661 Committee made requests for investigation, the Secretariat was supposed to comply with such requests. The overwhelming weight of the evidence contradicts Mr. Sevan's assertions that the "irregularities in the implementation of the programme" actually were brought to the attention of the 661 Committee and that OIP conducted rigorous investigations of all reports of abuses.

Given the above recognition of responsibility, the following questions are considered in the balance of this Chapter:

- Did OIP adequately investigate allegations of sanctions violations that were brought to its attention?

¹⁷⁹ Benon Sevan address to Middle East Institute, Washington, D.C. (Nov. 16, 1998).

¹⁸⁰ Benon Sevan note to S. Iqbal Riza (Sept. 26, 2002) (emphasis added). On September 26, 2002, an article critiquing the Programme appeared in *The Wall Street Journal*, asserting that: "Mr. Annan and his crew have winked at Iraq's gross violations of U.N. agreements, and not only weapons inspections. The sanctions on Iraqi oil sales were meant to stop Saddam from diverting revenues to his own uses. But Saddam has been getting around the sanctions via surcharge-kickback deals and smuggling[.]" Claudia Rosett, "The Oil-for-U.N. Jobs Program," *The Wall Street Journal*, Sept. 26, 2002, p. A16.

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- Were those allegations, and the investigation results, properly reported to the 661 Committee and Security Council?
- What efforts were made by the Secretariat's leadership to ensure that OIP was transparent with the 661 Committee and Security Council and that all material information was indeed being shared?
- What efforts were made by the Secretariat to address the subject of sanctions violations with senior Iraqi officials?

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III. KICKBACKS ON PROGRAMME CONTRACTS

The Secretariat administered the Programme and its responsibilities thereunder, with a distinct emphasis on providing humanitarian assistance to the Iraqi people, often at the expense of meaningfully responding to widespread sanctions violations committed by the former Iraqi regime. The Secretariat's inattention to sanctions violations is perhaps most evident in the context of the regime's receipt of kickbacks on Programme contracts. As set forth in Chapter 2 of Volume I, the Committee has determined that the kickback scheme generated at least \$1.6 billion of illicit revenue for Saddam Hussein's regime. This illicit revenue enriched the former regime at the expense of the Iraqi people. Moreover, once the Iraqi government began perpetrating the scheme, it continued unchecked until the removal of the Hussein regime. The chart below shows the emergence of the scheme and its continuation through the balance of the Programme.

This section explains the chronology of the Secretariat's receipt of substantial evidence concerning the Iraqi government's kickback scheme and the Secretariat's inadequate response to the significant threat that the scheme posed to the humanitarian and sanctions objectives of the Programme. As explained below, despite repeated complaints and notification to OIP, and awareness of the issue by Secretary-General Annan, Mr. Riza, Deputy Secretary-General Fréchette, and Mr. Sevan, the Secretariat failed to convey material evidence to the 661 Committee. There were varying degrees of awareness of the kickback scheme within the Secretariat. At the level of the Secretary-General, the Deputy Secretary-General, and the Chef de Cabinet it was apparent that the scheme existed. At the level of OIP, moreover, there was clear and detailed evidence confirming the existence and breadth of the kickback scheme. In either case and as explained below, the Secretariat consistently downplayed the issue and withheld information which could have impacted the discussions and decision-making within the 661 Committee.

A. EARLY WARNINGS

As set forth in Volume II, Chapter 3 above, there were several media articles referencing payments to Iraq in connection with Programme-related contracts in 1997-1999; however, the early warnings to the Secretariat during that period were not limited to media reports. More particularly, the Iraqi regime's use of side arrangements to generate illicit payments surfaced as an issue within OIP at least as early as December 1999, when United Nations records reveal that missions from various member states began forwarding reports of efforts by the Government of Iraq to receive payments in violation of the sanctions regime.

1. Transportation Fees (Australian and Canadian Wheat Boards)

On or about December 21, 1999, John Almstrom, then serving as the Chief of the Contracts Processing Section, received a query from the Canadian Permanent Mission regarding a contract between the Iraqi Ministry of Trade and the Canadian Wheat Board ("CWB"). The regime apparently was requiring CWB to deposit \$700,000 in a Jordanian bank account to cover the transportation costs in Iraq. Mr. Almstrom advised the Canadian mission that all payments for the procurement of goods by the Iraqi regime under the Programme must be made through the

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United Nations escrow account in New York. Further, Mr. Almstrom told the mission that if the contract were “to pass through the Canadian government and be submitted to OIP, [OIP] ... would therefore return it for amendment to payment terms.” Mr. Almstrom did not recall receiving any response or discussing the matter with Mr. Sevan, but Mr. Almstrom did ask his Chief Customs Expert, Felicity Johnston, to further investigate the matter.¹⁸¹

On January 13, 2000, Ms. Johnston sent an internal memorandum to update Mr. Almstrom on the situation, which indicated that she had spoken with the Canadian Mission to confirm that “money should not be paid to a Government of Iraq bank account in Jordan for transport costs of wheat within Iraq.” She was unable to ascertain the banking details from the mission because CWB was informed that such details would be provided only upon the signing of the contract.¹⁸²

The Canadian Mission also reported to Ms. Johnston that similar arrangements had been made by the Iraqi regime with the Australian Wheat Board (“AWB”) and various suppliers from Thailand. Ms. Johnston’s memorandum noted that if the transportation costs for CWB were comparable to a recent contract executed by AWB, the Iraqi regime would benefit by approximately \$350,000 from the \$700,000 payment. At roughly the same time, Ms. Johnston spoke with the Australian Permanent Mission on the issue of irregular payments to the Iraqi regime. Ms. Johnston asked the mission to inquire from AWB whether it had agreed to any financial arrangements with the Iraqi regime outside the United Nations escrow account. Ms. Johnston indicated that she elected not to follow up with the Thailand Mission because at that point no company from Thailand had submitted a wheat contract; the only Thailand contracts had been for rice and medical supplies.¹⁸³

When interviewed by the Committee, Ms. Johnston recalled that she had discussed this incident with Mr. Almstrom, but she was unaware whether he raised it with Mr. Sevan. Ms. Johnston confirmed that the Australian Mission informed her that AWB had “categorically denied” the circumstances set forth in the memorandum. Ms. Johnston noted that conduct would have been a clear violation of the relevant Security Council resolutions; however, to her knowledge, this matter was not brought to the attention of the 661 Committee. The Committee also interviewed the relevant official from the Australian Mission, who was referenced in the OIP correspondence. That official did not recall the issue of inland transportation being discussed with anyone from OIP or the United Nations.¹⁸⁴

On February 7, 2000, Mr. Almstrom notified his successor, Farid Zarif, about the information CWB provided regarding transportation fees. Specifically, he informed him that in addition to the contracts submitted to OIP, the Iraqi Ministry of Trade “may be requiring payments, into a

¹⁸¹ John Almstrom note to Benon Sevan (Jan. 4, 2000); John Almstrom interview (Aug. 2, 2005). In early 2000, Mr. Almstrom was assigned to serve as Deputy Humanitarian Coordinator in Iraq and was replaced as the Chief of Contracts Processing by Farid Zarif. John Almstrom interview (Aug. 2, 2005).

¹⁸² Felicity Johnston memorandum to John Almstrom (Jan. 13, 2000) (emphasis in original).

¹⁸³ Ibid.

¹⁸⁴ Felicity Johnston interview (May 26, 2005); Australia official #6 interview (Feb. 14, 2005).

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bank in Jordan, for transport fees from entry point to destination further in Iraq.” Mr. Almstrom pointed out that any hard currency payments, other than payments into the United Nations escrow account, violated the sanctions regime. Mr. Almstrom’s view at the time was that OIP “may have stumbled across a case of sanctions evasion.” Further, Mr. Almstrom informed Mr. Zarif that he had reviewed an AWB contract, which referred to, but did not include, a separate payment agreement. Mr. Almstrom indicated that Ms. Johnston was looking into the issue and reviewing contracts for foodstuffs, which were “standard and priority contracts, [and] tend[ed] to get processed quickly.”¹⁸⁵

Mr. Almstrom indicated that he did not know the outcome of the CWB incident, because he was transferred to Northern Iraq (where he served as UNOHCI’s Deputy Humanitarian Coordinator) and was no longer in close contact with CPMD. However, he stated that once Ms. Johnston completed the investigation, Mr. Zarif should have informed Mr. Sevan of the results of the inquiry and that information should have been relayed to the 661 Committee. As Mr. Almstrom noted, OIP frequently “went to 661 with less serious things.”¹⁸⁶

Mr. Zarif stated that he did not recall the CWB incident or the memorandum from Mr. Almstrom, but when shown the memorandum, he acknowledged that it described a clear case of a sanctions violation. Further, Mr. Zarif stated that if he had seen a pattern of this type of behavior by the Iraqi regime he would have: (1) prepared a circular to all relevant Missions, with a copy to the 661 Committee; (2) discussed the conduct during OIP’s semi-annual meetings with suppliers and Missions, (3) added a statement to the OIP website; and (4) alerted his colleagues within OIP. Mr. Zarif did not explain why he did not direct these actions to be taken.¹⁸⁷

2. Marquette Hellige

In January 2000, the Austrian Permanent Mission notified OIP that an Austrian company had been paying commissions equal to fifteen percent of the total contract value to two different “brokers,” in connection with Programme contracts. Specifically, on January 10, 2000, the Austrian Mission sent a fax to OIP requesting an examination of the business practices of Marquette Hellige Ges.m.b.H. (“Marquette”). The letter from the Austrian mission further requested “urgently needed official approval ... in order for the company to proceed with further business dealings.” The mission’s fax attached correspondence dated December 10, 1999 from Marquette suggesting the existence of side-arrangements and raising concerns about the “embargo provisions” which were in effect in Iraq. Specifically, Marquette disclosed that it had entered into two “service undertakings” in connection with the supply of medical products to the

¹⁸⁵ John Almstrom note to Farid Zarif (Feb. 7, 2000). Mr. Almstrom informed the Committee that this note was drafted in connection with the transition of responsibilities from him to Mr. Zarif. John Almstrom interview (Aug. 2, 2005).

¹⁸⁶ Ibid.

¹⁸⁷ Farid Zarif interviews (July 6, 8, and 14, 2005).

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Iraqi State Company for Marketing Drugs and Medical Appliances. According to Marquette, the commissions were payable upon receipt of the purchase price for the equipment supplied.¹⁸⁸

According to information provided to OIP, Marquette had an agreement with Issam Bureau ("Issam"), identified as its representative in Iraq, to install and service the products supplied to Iraq. In exchange for those services, Issam received a payment equal to fifteen percent of the net value of the orders. Two letters from Marquette to Issam were attached to Marquette's December 10th correspondence. First, a letter dated January 28, 1997 from Marquette to Issam authorized Issam to represent its interests regarding the delivery of Intensive-Care Units. Second, a letter dated February 17, 1999 from Marquette to Issam confirmed a fifteen percent commission on the Marquette contracts. The documentation forwarded to OIP also included a side-letter dated September 8, 1998, which indicated that Marquette was bound to pay a second company, Broomile Ltd., a commission of fifteen percent. The commission was purportedly in exchange for arranging contact with the Iraqi Ministry of Health and applied to four contracts with an approximate total value of USD \$11,525,828.32.¹⁸⁹

On January 25, 2000, Ms. Johnston acknowledged receipt of the letter from the Austrian Mission and expressed her concern that Marquette had contracted to pay commissions to companies based in Baghdad, outside of the sanctions framework. She inquired whether the Austrian Mission was aware, or would inquire of the supplier, whether a payment mechanism had been established to facilitate the payment. Once OIP received the information requested, she stated that she would discuss the matter with her "superiors" and provide a formal reply.¹⁹⁰

That same day, Ms. Johnston forwarded Mr. Almstrom copies of the above-referenced Marquette documents which revealed a pattern of potentially unlawful payments to the regime over a period of years. Ms. Johnston informed Mr. Almstrom that she had requested further information which she would forward upon receipt. Ms. Johnston explained that "[s]uch payments are almost certainly an infringement of resolution 986 and we may need to seek legal advice."¹⁹¹

The aforementioned documentation, which was forwarded to OIP in January 2000, evinced an on-going relationship between Marquette and Iraqi-sponsored entities resulting in illegal payments being made over a period of more than three years. Notwithstanding this written evidence of illicit payments, no information has been identified that would indicate that OIP informed the 661 Committee about the Marquette commission payments.

¹⁸⁸ Austria Mission fax to Lorraine Sievers (Jan. 10, 2000); Marquette Hellige letter to the Oil-for-Food Programme (Dec. 10, 1999).

¹⁸⁹ Marquette Hellige letter (Jan. 28, 1997); Marquette Hellige letter to Broomile Ltd. (Sept. 8, 1998); Marquette Hellige letter to Issam Bureau (Feb. 17, 1999).

¹⁹⁰ Felicity Johnston fax to Austria Mission (Jan. 25, 2000).

¹⁹¹ Felicity Johnston memorandum to John Almstrom (Jan. 25, 2000). The Committee has not located any additional correspondence regarding the Marquette incident.

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Ms. Johnston informed investigators that she first became concerned about illicit payments to the Iraqi regime in late 1999 with the CWB and Marquette incidents. The reports increased in frequency during 2000 and 2001. Further, Ms. Johnston told the Committee that she knew full well that payments to the Iraqi regime violated the sanctions regime and were a serious concern to her.¹⁹²

3. Growing Awareness by OIP Staff in 2000

When interviewed by the Committee, numerous OIP staff members confirmed that they began to hear increased rumors of kickbacks being imposed by the Iraqi regime on Programme-related contracts during the second half of 2000.¹⁹³

J. Christer Elfverson, Director of the Programme Management Division, recalled being contacted by a representative of a Swedish company, Scania CV AB ("Scania"), during the summer of 2000. Scania complained about a fifteen percent payment that the Iraqi regime was demanding on a contract. Mr. Elfverson stated that he informed Mr. Sevan about the kickback complaint from Scania and wanted to report it to the 661 Committee, but Mr. Sevan did not believe OIP should take any action in the absence of documented proof. Hence, Mr. Sevan directed Mr. Elfverson to refer the company to its permanent mission. Michael Soussan, an OIP Coordination Officer, and Alan Fellows, an OIP Senior Analyst, corroborated that Mr. Elfverson received information in July 2000 regarding the Iraqi regime's demands for kickbacks and insisted that the issue be referred to the 661 Committee or the Security Council.¹⁹⁴

Mr. Elfverson's recollection finds further support in an e-mail he sent to Wilhelm Breitenstein, a senior OIP official, on March 9, 2004. In that e-mail, Mr. Elfverson referenced the Scania incident as an example of requested kickbacks by the Iraqi regime that he had brought to Mr. Sevan's attention. More particularly, Mr. Elfverson wrote that he told Mr. Sevan that Scania had been demanded, but said it had refused, to pay a fifteen percent kickback and was asking for OIP's advice. According to Mr. Elfverson's e-mail, Mr. Sevan had responded that it was "none of [Mr. Elfverson's] f-ing business." Further, Mr. Elfverson indicated that both he and Mr.

¹⁹² Felicity Johnston interview (May 26, 2005). In her capacity as Chief Customs Expert, Ms. Johnston closely monitored evidence of illicit payments to the Government of Iraq. Her efforts to address the subject and the evidence that she gathered are discussed in detail below.

¹⁹³ Stephani Scheer interview (July 23, 2004); Darko Mocibob interview (Sept. 20, 2004); J. Christer Elfverson interview (Dec. 4, 2004); Frances Kinnon interview (Dec. 15, 2004); Alan Fellows interview (Dec. 18, 2004); Michael Soussan interview (Nov. 19, 2004); Farid Zarif interviews (July 6, 8, and 14, 2005); Felicity Johnston interview (May 26, 2005).

¹⁹⁴ J. Christer Elfverson interview (Dec. 4, 2004); Michael Soussan interview (Nov. 19, 2004); Alan Fellows interview (Dec. 18, 2004). Mr. Fellows stated that he also received a call from a businessman in July 2000 "squealing about money." Ibid.

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Soussan believed Mr. Sevan's approach to be "tjanstefel"—a Swedish term meaning misconduct in service.¹⁹⁵

Other OIP staff also recalled learning of the kickback demands in 2000. Mr. Mocibob estimated that six suppliers had called OIP by the end of 2000 to complain that Iraq was requiring suppliers to pay kickbacks of approximately ten percent to contract with Iraq. Mr. Mocibob was told that the complaints were being discussed by Mr. Sevan and the senior management. Mr. Soussan added that it was "understood within OIP that companies were forced to pay kickbacks to the Iraqi regime, but that Mr. Sevan did not believe OIP had any authority to address the matter." Frances Kinnon, an OIP Programme Officer, commented that "[s]ome things in the UN are just this way."¹⁹⁶

Mr. Elfverson stated that Mr. Sevan's line was always that his mandate was to get food and medication to the Iraqi people and it was not his job to report about the kickbacks, which he saw as part of the Iraqi culture. According to Ms. Scheer, OIP knew that the Iraqi regime was demanding suppliers to pay ten percent kickbacks in connection with Programme-related contracts. However, when confronted with the issue, Mr. Sevan maintained that there was insufficient evidence and no need for OIP to investigate. Further, Ms. Scheer indicated that Mr. Sevan did not view it as OIP's province to stop the imposition of kickbacks. Ms. Scheer reported that she and Mr. Sevan had a number of arguments over whether to report the allegations of kickbacks on contracts to the 661 Committee.¹⁹⁷

B. AN EMERGING PATTERN OF KICKBACK PAYMENTS

On August 3, 2000, Taha Yassin Ramadan, the Vice President of the former Iraqi regime, issued a directive requesting each of the ministries to derive additional revenues on Programme-related contracts. Dubbed a statement of the will of the Supreme Command Council, Vice President Ramadan's letter provided that: (1) all contracts should include a provision referring to after-sales services or other appropriate language; (2) the percentage of the payment should be two to five percent for food and medicine and five to ten percent for all other products; (3) the Iraqi Ministry of Transportation and Communication would review the issues of transportation fees and the port fees with the objective of increasing them by a percentage not to exceed eighty percent of the fees adopted in neighboring ports; (4) all fees realized pursuant to the letter would be transferred to the Iraqi regime's general accounts; (5) all amounts owed pursuant to the after-sales services would be paid either in cash inside Iraq or to the bank accounts specified by the Iraqi side; and (6) the letter would apply to all contracts going forward. Vice President Ramadan further requested

¹⁹⁵ J. Christer Elfverson e-mail to Wilhelm Breitenstein (Mar. 9, 2004); J. Christer Elfverson interview (July 20, 2005); Michael Soussan interview (Nov. 19, 2004).

¹⁹⁶ Darko Mocibob interview (Sept. 20, 2004); Michael Soussan interview (Nov. 19, 2004); Frances Kinnon interview (Dec. 15, 2004).

¹⁹⁷ J. Christer Elfverson interview (July 20, 2005); Stephani Scheer interviews (July 23, Sept. 15, and Nov. 22, 2004).

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confirmation “of the execution of the above-mentioned process . . . under the supervision of the delegated Minister.”¹⁹⁸

Consistent with Vice President Ramadan’s August 2000 directive, in late 2000 and throughout 2001, OIP received numerous complaints suggesting a pattern of kickback payments being demanded by the Iraqi regime. The pattern was evident to OIP officials, some of whom demanded that Mr. Sevan take action. Mr. Sevan, however, maintained that OIP could do nothing and that evidence of the scheme was inadequate to warrant a response.

1. Note from J. Christer Elfverson to Benon Sevan—December 2000

On December 5, 2000, Mr. Elfverson wrote a note to Mr. Sevan, marked urgent and strictly confidential, regarding reports of unauthorized commissions on humanitarian contracts. Mr. Elfverson indicated that in the past twenty-four hours, he had been approached by one government and two companies who were in the process of negotiating contracts with the Iraqi regime. The government and companies provided detailed information “on the existence and scale of ‘back-handers’ now routinely being demanded by Iraqi ministries.” The companies notified Mr. Elfverson that contracts previously included a hidden provision of two to three percent of the value of the contract to be paid outside of the United Nations escrow account. However, the Iraqi ministries were now demanding payments of ten to twenty percent into an account nominated by the regime.¹⁹⁹

One company representative offered Mr. Elfverson a detailed description of the negotiation process relative to the Iraqi regime’s kickback demands. Company representatives were shown a side-letter, which guaranteed the kickback payment. The representatives were then escorted into a room with a senior Iraqi official. The Iraqi official informed the company that if it did not sign the side-letter (and make the requisite payments), the regime would choose the next bidder in line. Another company reported that if it either refused to sign the letter or publicized the demand, the regime would refuse to do further business with the company under the Programme and permanently blacklist the company from doing business in Iraq.²⁰⁰

Mr. Elfverson informed the Committee that one of the companies that contacted him in early December was Scania (again). He could not recall the name of the other company, but believed it was an Austrian company. Mr. Elfverson stated that the mission contact was from the Austrian Permanent Mission. Elfverson stated that Scania informed him that it contacted OIP, rather than its Permanent Mission, because it was concerned about making admissions of illegalities. Further, Scania wanted to continue doing business in Iraq, but was concerned about being blacklisted by the Iraqi regime if it reported the kickback demand to the Swedish government.

¹⁹⁸ Taha Yassin Ramadan memorandum to Iraq ministries (Aug. 3, 2000).

¹⁹⁹ J. Christer Elfverson note to Benon Sevan (Dec. 5, 2000).

²⁰⁰ Ibid.

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Mr. Elfverson understood that Scania had been in contact with other suppliers that corroborated the existence of the kickback scheme.²⁰¹

Mr. Elfverson wrote that “OIP ha[d] a clear mandate to bring any irregularity to the immediate attention of the [661 Committee]” and recommended that Mr. Sevan raise the kickback issue in a letter to the 661 Committee. Further, Mr. Elfverson advised that the kickback demands violated “both the letter and spirit of resolution 986 . . . which permit[ed] Iraq no access to the use of funds except under UN control[.]” Mr. Elfverson also suggested that the issue “be brought to the attention of the Legal Counsel and the Deputy Secretary-General.” He recommended that “[p]rompt action by OIP on this matter [wa]s highly advisable.” Mr. Elfverson presciently recognized that questions would be raised about the Secretariat’s management of the Programme, particularly if the “practices . . . [went] *unreported, unchallenged and unchecked*” by OIP and then surfaced through other sources.²⁰²

As set forth throughout Part III of this Chapter, the kickback scheme imposed by the Iraqi regime largely went unchallenged and unchecked by the Secretariat and 661 Committee. The Committee has not found any evidence to suggest that Mr. Elfverson’s note was forwarded to the 661 Committee, Deputy Secretary-General Fréchette, or OLA. Mr. Elfverson stated that he had general discussions with certain members of the 661 Committee regarding the kickback issue and some of the information from his December 5th memorandum.²⁰³

During her interview, Deputy Secretary-General Fréchette was shown a copy of Mr. Elfverson’s note to Mr. Sevan. She stated that she did not receive a copy and did not discuss the matter with Mr. Sevan. She stated that if the contents of the note had been reported to the Security Council, the proper action would have been taken and it would not have been necessary for Mr. Sevan to discuss it with her. Deputy Secretary-General Fréchette conceded that she did not know whether the information from Mr. Elfverson’s note actually was reported to the 661 Committee or Security Council.²⁰⁴

On December 11, 2000, Mr. Sevan responded to Mr. Elfverson’s December 5th Note and referenced several discussions regarding the unauthorized commissions. Mr. Sevan wrote that “whenever we receive information on such matters the suppliers concerned should be advised that they should bring the matter to the attention of their governments who may decide to write to the Security Council Committee established by resolution 661 (1990), through their respective permanent or observer missions.” Mr. Sevan directed that OIP could not act on such “sensitive

²⁰¹ J. Christer Elfverson interview (July 20, 2005).

²⁰² J. Christer Elfverson note to Benon Sevan (Dec. 5, 2000) (emphasis added).

²⁰³ J. Christer Elfverson interview (July 20, 2005).

²⁰⁴ Louise Fréchette interview (May 25, 2005).

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matters” on the basis of telephone conversations alone. Mr. Sevan added that OIP did not deal with companies directly, but with their respective permanent missions.²⁰⁵

Mr. Sevan made several statements in his December 11th note, which contradict OIP’s regular practices. First, with respect to the comment that OIP could not act on informal information, the oil overseers and OIP routinely gathered and relied upon informal sources of information—conversations with oil purchasers, industry publications and media articles—in connection with monitoring and reporting oil surcharges.²⁰⁶ There was no requirement that OIP obtain written confirmation from the Permanent Missions before acting. Second, Mr. Sevan’s suggestion that OIP did not deal with companies directly is misleading. OIP staff (on both the oil and Programme-contracts sections) routinely communicated with suppliers of goods on Programme-related contracts over the telephone, and on occasion in person.²⁰⁷

When shown the December 5th and 11th correspondence between Mr. Elfverson and Mr. Sevan, Ms. Johnston told the Committee that she recalled Mr. Elfverson’s pointed note to Mr. Sevan. She recalled further that Mr. Sevan took no immediate action or investigative steps, though, at the time, she agreed with Mr. Sevan that the available evidence was unclear as to the scope of the problem. When questioned, Ms. Johnston acknowledged that further investigation could have clarified the scope of the problem. Likewise, Ms. Scheer recalled internal discussions within OIP regarding the kickback issue, but indicated that, to her knowledge, no action was taken by OIP in December 2000 to investigate the matter or inform the 661 Committee.²⁰⁸

Mr. Zarif recalled Mr. Elfverson’s note, but was unaware of whether any action was taken. He stated that the proper action would have been for OIP to conduct an investigation to gather additional information, which would include correspondence with the Permanent Missions and suppliers involved. Once the investigation had been completed, Mr. Zarif stated that the information should have been reported to the 661 Committee pursuant to a letter to the Chairman of the 661 Committee. Mr. Zarif stated his belief that Mr. Sevan’s December 11th directive “was not an engaged response” and was definitely inadequate.²⁰⁹

²⁰⁵ Benon Sevan note to J. Christer Elfverson (Dec. 11, 2000).

²⁰⁶ See, e.g., Benon Sevan note to Jayanta Dhanapala (Feb. 14, 2001) (briefing note for the Secretary-General regarding surcharges, relying on media reports and informal (oral) information from oil purchasers); Benon Sevan note to S. Iqbal Riza (Mar. 7, 2001) (informing that OIP’s “direct contacts with traders and end-users in the oil industry” confirm the media reports of surcharges). The Secretariat’s response to evidence of oil surcharges is described in Part IV of this Chapter.

²⁰⁷ See, e.g., Felicity Johnston interview (May 26, 2005); Farid Zarif interviews (July 6, 8, and 14, 2005); Carl de Cruze interview (Aug. 19, 2005). For example, OIP officials met directly, without a mission representative being present, with a representative from Woodhouse International L.L.C. regarding kickback demands by the Iraqi regime. A.V. Phaff note-to-file (Apr. 25, 2001).

²⁰⁸ Felicity Johnston interview (May 26, 2005); Stephani Scheer interview (Apr. 25, 2005).

²⁰⁹ Farid Zarif interviews (July 6, 8, and 14, 2005).

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On December 13, 2000, the issue of kickbacks on Programme contracts was discussed during a formal meeting of the 661 Committee for the first time. The United Kingdom stated that it had been informed that Iraq was requiring businesses to pay an “import tax” equal to three percent of the value of the contract as a “precondition to granting . . . the contract.” The United Kingdom explicitly asked OIP whether this was true. Ms. Scheer responded that “[w]ith regard to the question of the imposition of a 3 per cent import tax, she had no knowledge of such a move.” Ms. Scheer did endeavor to inquire about the “tax” with OIP’s officials in Baghdad and to provide further information to the 661 Committee.²¹⁰

Ms. Scheer’s response to a direct question from a member of the 661 Committee is troubling given: (1) the contemporaneous memoranda between Mr. Elfverson and Mr. Sevan; and (2) the fact that the kickback issue was discussed at an OIP management meeting held only days earlier. Ms. Scheer was carbon-copied on Mr. Sevan’s December 11th memorandum and when interviewed by the Committee she confirmed that she recalled that she also read Mr. Elfverson’s December 5th memorandum, which she described as “grandstanding.” Additionally, while Ms. Scheer did not remember the specifics of the management meeting discussion regarding Mr. Elfverson’s memorandum (referred to in Mr. Sevan’s December 11th note), she confirmed that she attended the management meetings, which were held at her urging. When questioned about her response at the 661 Committee meeting, Ms. Scheer stated that her reply “was consistent with the ‘party line’ of OIP at that time.” More particularly, Ms. Scheer stated that OIP staff members were instructed to deflect questions from the 661 Committee regarding sanctions violations, and her response was consistent with that approach.²¹¹

2. 661 Committee’s Requests for Information—February and March 2001

Throughout the first half of 2001, the 661 Committee considered the issue of illicit payments on Programme-related contracts and repeatedly sought information (formal or informal) from OIP.

During an informal meeting of the 661 Committee held on February 1, 2001, Mr. Zarif was questioned by the United States about what information OIP had regarding the allegations that Iraq was demanding a ten percent commission in connection with the award of humanitarian contracts. Mr. Zarif responded that “OIP had received no formal complaints from any permanent or observer mission in that regard.” When interviewed by the Committee, Mr. Zarif

²¹⁰ Provisional record of 661 Committee meeting, S/AC.25/SR.209, pp. 5-6 (Dec. 13, 2000); Summary of the 209th meeting, para. 8 (Dec. 13, 2000).

²¹¹ Benon Sevan note to J. Christer Elfverson (Dec. 11, 2000) (copied to Tun Myat, Farid Zarif, Stephani Scheer, and Felicity Johnston); J. Christer Elfverson note to Benon Sevan (Dec. 5, 2000) (copied to Farid Zarif and Felicity Johnston); Stephani Scheer interviews (Apr. 25 and July 15, 2005).

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acknowledged his comment, but stated that he also mentioned to the 661 Committee that OIP had received informal complaints—such information was not included in the meeting notes.²¹²

On February 12, 2001, Mr. Mocibob notified Mr. Sevan, Mr. Zarif, and Ms. Scheer, among others, that two contracts had been placed on hold by a member of the 661 Committee. Mr. Mocibob stated that the contracts, for oil spare parts, were held because of “(allegedly) high service-related component[s]” pending an explanation as to why the service portion of the contracts were ten percent and twenty-five percent, respectively, of the total value. With respect to one of the contracts, the mission made a connection between the hold and the media reports about the ten percent kickback payments. Mr. Mocibob noted that these were the first and only two contracts put on hold for this reason, but that it “may be an emerging problem.”²¹³

The following day, the 661 Committee held another informal meeting where OIP was asked again about ten percent commissions on Programme-related contracts. Members of the 661 Committee made it clear to OIP officials that they wanted to be kept abreast of information and developments concerning kickback allegations. Specifically, the representative from the United Kingdom requested that OIP prepare a paper “providing *any information* it might have regarding allegations that Iraq was asking potential suppliers to pay a 10 per cent commission prior to being awarded contracts under the programme.” According to OIP’s own meeting notes, there was no objection to the United Kingdom’s request by either the member states or the United Nations officials present at the meeting. To the contrary, Ms. Scheer agreed that “OIP would look into providing what very little information existed on the ‘commission question.’”²¹⁴

Mr. Zarif conceded that based upon the information possessed by OIP in early 2001, Ms. Scheer’s response to the 661 Committee was both “inadequate and evasive.” However, he added that her response was consistent with the “company line” on the kickback issue, which he and others were also instructed to follow.²¹⁵

Following the informal meetings in February 2001, the 661 Committee met formally on March 1, 2001 to discuss, among other matters, the kickbacks, specifically OIP’s failure to prepare the requested paper. The United Kingdom asked for an update on the progress of the report previously requested from OIP. Mr. Zarif reiterated his earlier position, articulated during the February 1st meeting, that OIP had not received any “formal, official reports of such commissions.” The United Kingdom expressed its disappointment at OIP’s failure to produce the written report summarizing its informal contacts as the oil overseers had done in connection with

²¹² OIP notes of informal 661 Committee meeting, pp. 1-2 (Feb. 1, 2001); Farid Zarif interviews (July 6, 8, and 14, 2005).

²¹³ Darko Mocibob e-mail to OIP officials (Feb. 12, 2001). The contracts identified were COMM nos. 730859 and 830023. Ibid.

²¹⁴ OIP notes of informal 661 Committee meeting, p. 2 (Feb. 13, 2001).

²¹⁵ Farid Zarif interviews (July 6, 8, and 14, 2005).

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the surcharge issue. Mr. Zarif admitted to the Committee that he gave the “company line” answer on the kickback issue at the March 1st meeting.²¹⁶

Having reviewed the United Nations records concerning the Programme, the Committee is unaware of any document suggesting that OIP prepared the written report on the kickback scheme as requested during the 661 Committee meetings. When interviewed by the Committee, neither Ms. Scheer nor Mr. Zarif had any recollection of OIP preparing a report for the 661 Committee on kickbacks. Nor was Ms. Scheer’s recollection refreshed when the Committee showed her a summary of the February 13, 2001 informal meeting. Ms. Johnston explained that the nature of the relationship between OIP and the 661 Committee was such that OIP should have prepared the paper if requested by the 661 Committee. However, she also did not have any knowledge as to whether that report actually was prepared.²¹⁷

This series of 661 Committee meetings, formal and informal, was highly significant for a number of reasons with respect to OIP. First, the meetings (December 13, 2000, February 1, 2001, February 13, 2001, and March 1, 2001) put OIP on undeniable notice that members of the 661 Committee were seized of the kickback issue and wanted OIP to provide all available information on the subject to the 661 Committee. Second, the meetings provided OIP with numerous opportunities to explain the growing quantity of information that the Secretariat had received up to that point in time. As explained throughout this Chapter, as of March 2001, OIP had received information from several different sources, including companies and missions, regarding the Iraqi regime’s efforts to charge illicit commissions on Programme contracts.

Third, and most troubling, the comments made by the OIP representatives at these 661 Committee meetings reflect a conscious decision to limit the amount of knowledge shared with the 661 Committee—despite the specific requests. As set forth above, Ms. Scheer did not convey information that had developed only days earlier at the December 13th meeting. Nor did she provide information when prompted to do so at the February 13th meeting. Likewise, in his February 1st and March 1st statements, Mr. Zarif was careful to follow the “company line” and minimize the information imparted to the 661 Committee, despite repeated requests for OIP’s information. Nor did anyone from OIP inform the 661 Committee of the steps—tightening review process, pricing study, updating the Compendium—being taken by the customs experts as a result of their concerns about the payment of kickbacks to the Iraqi regime.²¹⁸

²¹⁶ Provisional record of 661 Committee meeting, S/AC.25/SR.214, p. 8 (Mar. 1, 2001); Farid Zarif interviews (July 6, 8, and 14, 2005). After Mr. Zarif’s statement, discussion ensued among the member states as to exactly what OIP had been asked to prepare, and the issue was concluded with a statement by Russia that OIP “should determine how realistic the possibilities were that it could produce such a report.” Provisional record of 661 Committee meeting, S/AC.25/SR.214, p. 9 (Mar. 1, 2001).

²¹⁷ Stephani Scheer interview (Apr. 25, 2005); Farid Zarif interviews (July 6, 8, and 14, 2005); Felicity Johnston interview (May 26, 2005).

²¹⁸ Additional discussion of the steps is set forth below in Section 3(d) of Part III of this Chapter.

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3. Secretariat's Lost Opportunities—February and March 2001

Contemporaneously with the 661 Committee meetings described above, the Secretariat, specifically the Secretary-General, had several opportunities to address the issue of kickbacks with the Government of Iraq or the Security Council: (i) a meeting with the Iraqi Foreign Minister on February 26-27, 2001; (ii) a March 2, 2001 90-day report to the Security Council; and (iii) reaction to a *New York Times* article dated March 7, 2001.

a. Meeting with Iraqi Foreign Minister—February 26-27, 2001

The Secretary-General held a series of meetings with Mohammed Said Al-Sahaf, the Foreign Minister of Iraq, on February 26 and 27, 2001. The purpose of the meetings was to discuss Iraqi concerns, including the future of the Programme. In advance of those meetings, Mr. Sevan was requested by Under-Secretary-General Jayanta Dhanapala to prepare briefing notes for the Secretary-General on current issues with Iraq and the Oil-for-Food Programme. On February 14, 2001, Mr. Sevan sent a reply note to Mr. Dhanapala, with a copy to Deputy Secretary-General Fréchette. Attached to the note were several briefing papers for Secretary-General Annan, including one entitled “Recent Iraqi proposals in the financial and related areas.” One of the headings of the briefing paper was “10 per cent commission on contracts.”²¹⁹ The section on the “commissions” reads as follows:

It is also alleged that Iraq is requesting suppliers to pay a 10 per cent commission prior to being awarded contracts under the humanitarian programme. The Secretariat has no formal/official information on this, though some companies have called the Office of the Iraq Programme . . . to complain about it. When requested to provide proof, they have refused to do so.²²⁰

The Committee has reviewed a subsequent version of the background briefing notes, which included a set of talking points for Secretary-General Annan. These talking points suggested that Secretary-General Annan “[i]nquire about a 10 percent commission that Iraq [was] allegedly requesting suppliers to pay before being awarded contracts under the humanitarian programme.”²²¹

Additionally, the notes and summaries from the meetings between Secretary-General Annan and the Iraqi Foreign Minister on February 26th and 27th 2001, which have been reviewed, do not contain any reference to a discussion of kickbacks in connection with the humanitarian contracts. Furthermore, the day after the meetings, Secretary-General Annan made a statement to the Security Council, briefing them on the meetings with Iraq. Again, there was no reference in his

²¹⁹ Benon Sevan note to Jayanta Dhanapala (Feb. 14, 2001).

²²⁰ Ibid.

²²¹ Briefing notes for Kofi Annan's meeting with the Iraqi delegation (undated) (“Background briefing notes/talking points; 26-27 February 2001”).

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statement to the Iraqi regime's alleged kickback scheme or a discussion of the matter with the Iraqi officials.²²²

When interviewed by the Committee, Secretary-General Annan maintained that those meetings were divided into "political" and "technical" discussions. He led the "political" discussions, and Mr. Sevan led the "technical" discussions. The Secretary-General stated that the kickback issue was categorized as "technical" and was among the issues that were supposed to be addressed by Mr. Sevan. Secretary-General Annan's expectation was that Mr. Sevan would have raised the issue, but when asked if he was aware of whether the kickbacks actually were addressed, he stated that he was unsure.²²³

Following the meetings between Secretary-General Annan and Foreign Minister Al-Sahaf, Mr. Sevan met with Ambassador Saeed Hasan Al-Mosawi, and Dr. Mohammed A. Al-Douri, the Iraqi Permanent Representative. Mr. Sevan prepared a note-to-file summarizing the discussions at that meeting, which was copied to Deputy Secretary-General Fréchette, Mr. Riza, Mr. Myat, Mr. Elfverson, Mr. Zarif and Ms. Scheer. Mr. Sevan's summary indicates that the meeting was held to follow-up on discussions between Secretary-General Annan and the Foreign Minister Al-Sahaf. There is no mention in the note that the subject of kickbacks was discussed at either the Secretary-General's meetings or during Mr. Sevan's meeting with Iraqi officials on February 28, 2001.²²⁴

b. Secretary-General's 90-day report to the Security Council—March 2, 2001

Several days after the meetings between Secretary-General Annan and the Iraqi officials, OIP and the Secretariat had another opportunity to disclose the increasing evidence of the Iraqi regime's kickback scheme. On March 2, 2001, the Secretary-General issued the Phase IX, 90-day report to the Security Council. As set forth above, the purpose of the 90 and 180-day reports was for the Secretariat to report to the Security Council regarding the implementation of the Programme. Despite increasing reports of illicit payments to the Iraqi regime and the fact that certain members of the 661 Committee were interested in "any information" concerning kickbacks, the Secretary-General's report is devoid of any reference to the sanctions-busting payments to the Iraqi regime. When interviewed by the Committee, Secretary-General Annan stated that he did not know why information regarding the kickbacks was not included in the 90-day report.²²⁵

²²² Notes of Kofi Annan's meetings with the Iraqi delegation (Feb. 26-27, 2001); Kofi Annan statement to the Security Council (Feb. 28, 2001).

²²³ Kofi Annan interview (July 26, 2005).

²²⁴ Benon Sevan note to Louise Fréchette (Mar. 3, 2001). As of February 2001, Ambassador Hasan was no longer the Iraqi Permanent Representative, but was the Head of the Department of International Organizations and Conferences, Ministry of Foreign Affairs. Ibid.

²²⁵ "Report of the Secretary-General Pursuant to Paragraph 5 of Resolution 1330 (2000)," S/2001/186 (Mar. 2, 2001); S/RES/986 (Apr. 14, 1995); S/RES/1360 (Dec. 5, 2000); Kofi Annan interview (July 26, 2005).

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c. March 7, 2001 *New York Times* Article and the Secretariat's Response

On March 7, 2001, *The New York Times* published an article entitled "Iraq is Running Payoff Racket, U.N. Aides Say." The article, which attributed its information to "diplomats and United Nations officials," reported that the Iraqi regime had begun demanding kickbacks and illegal commissions on contracts for food, medicine, and other humanitarian goods imported under the Programme. The article provided a detailed description of the various means and methods employed by the Iraqi regime to perpetrate the kickback scheme, including the addition of supplemental charges in side letters, inflated/deflated contract prices, and other "bogus additional charges" such as transportation costs. The revenues garnered from the various schemes were deposited into foreign bank accounts controlled by the Iraqi regime. Further, the article reported that it was widely assumed by United Nations officials and diplomats that "Iraq [was] intent on making under-the-table payments a prerequisite for obtaining contracts."²²⁶

The same day that the article was published, Mr. Sevan prepared a written advisory on the matter for Mr. Riza, with copies circulated to Deputy Secretary-General Fréchette and Fred Eckhard, the Spokesman for the Secretary-General. Additionally, Secretary-General Annan's appointment calendar and Mr. Sevan's electronic organizer reveal that the two met on the day that the article was published, though the records do not indicate the substance of their meeting.²²⁷

In his advisory regarding the *New York Times* article, Mr. Sevan explained that there were "widespread reports concerning 'kickbacks' by contractors who have been providing humanitarian supplies to Iraq." Mr. Sevan acknowledged that OIP had "received a few phone calls from some contractors complaining about the practice" and conceded that it had been told that Iraq was asking contractors to sign side letters confirming the "kickbacks." Yet, when asked by the 661 Committee to comment or report on the allegations of kickbacks, Mr. Sevan stated that OIP had informed the 661 Committee only that it did not have any "hard proof to corroborate the allegations." Mr. Sevan did not mention the requests by the United Kingdom, at the 661 Committee meetings held on December 13, 2000, February 1 and 13, 2001, and March 1, 2001, for OIP to prepare a paper detailing any information regarding kickbacks. Nor did Mr. Sevan state whether he or OIP had taken any affirmative action to determine the veracity of the reports received by OIP.²²⁸

During his interview, Mr. Zarif indicated that, in light of what OIP actually knew, Mr. Sevan's comments to both the 38th Floor and 661 Committee consisted of an "expanded version of the company response." Mr. Zarif also noted that Mr. Sevan's description of his response to the 661

²²⁶ Barbara Crossette, "Iraq is Running Payoff Racket, U.N. Aides Say," *New York Times*, Mar. 7, 2001, p. A1.

²²⁷ Benon Sevan note to S. Iqbal Riza (Mar. 7, 2001); Kofi Annan appointment calendar (Mar. 7, 2001); Benon Sevan electronic calendar (Mar. 7, 2001) (recovered from Mr. Sevan's office computer at the United Nations).

²²⁸ Benon Sevan note to S. Iqbal Riza (Mar. 7, 2001).

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Committee was also inadequate and omitted the fact that by March 2001, OIP was aware of the “side letter issue.”²²⁹

The Committee has located a copy of Mr. Sevan’s March 7th note to Mr. Riza, which includes handwritten comments from both Secretary-General Annan and Mr. Riza. Mr. Riza made two comments on the document before forwarding it to Secretary-General Annan. First, he noted that the March 2, 2001 90-day report referenced in Mr. Sevan’s Note was “cleared by DySG,” referring to Deputy Secretary-General Fréchette. Second, Mr. Riza clarified that the “widespread reports concerning ‘kickbacks’” were “not referred to in report—only in press.” Secretary-General Annan wrote his distinct initials in the bottom right-hand corner of the document, signifying that he received and reviewed it. Further, Secretary-General Annan wrote that in the “future [he] . . . would like to be forewarned and given a gist or key elements in the reports.”²³⁰

²²⁹ Farid Zarif interviews (July 6, 8, and 14, 2005).

²³⁰ Benon Sevan note to S. Iqbal Riza (Mar. 7, 2001) (including handwritten comments by Secretary-General Annan and Mr. Riza).

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NOTE TO MR. RIZA

Today's article in the New York Times

Further to our telephone conversation, I should like to state that there is nothing new about the allegations reported in the New York Times. Such reports have been widely published in the international press during the past months.

In paragraph 11 of the report of the Secretary-General (S/2001/186) which was issued yesterday, there is a reference to the 661 Committee's concern regarding widespread reports of additional charges imposed on buyers of Iraqi oil. Although not mentioned in the report, the surcharge is reportedly up to 50 cents per barrel. With that concern in mind, on 15 December 2000, the Committee directed the UN oil overseers to advise the buyers of Iraqi crude oil that the Committee:

- (1) had not approved a surcharge of any kind on Iraqi oil;
- (2) that payments for purchasing Iraqi crude oil could not be made to a non-United Nations account; and,
- (3) that buyers of Iraqi oil should not pay any kind of surcharge to Iraq.

The oil overseers - who are authorized to maintain direct contacts with purchasers of oil from Iraq - had informed the Committee, in writing, that "direct contacts with traders and end-users in the oil industry confirm in broad terms what has been written in the professional press on this matter." They also stated, however, that when they had asked Iraq's State Oil Marketing Organization, the latter had "categorically denied the allegations" concerning the surcharge.

Although there are widespread reports concerning "kickbacks" by contractors who have been providing humanitarian supplies to Iraq and indeed we have received a few phone calls from some contractors complaining about the practice, we have no hard proof to corroborate the reports. Some contractors have told us that they were being asked by Iraq to sign a side letter regarding the "kickbacks".

*Not response
to our system
- only to
press*

We do not deal directly with the contractors and those who have called us have been told to get in touch with their respective permanent missions. As you well know, all applications for contracts are submitted to the Office of the Iraq Programme only through the permanent missions.

21-04018

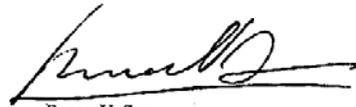
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When asked by the Committee to comment or report on the above allegations, we have informed the Committee that this Office has not had proof to corroborate the allegations made and that it would be up to the permanent missions concerned to bring to the attention of the Committee any complaints coming from contractors.

At the same time, however, I wish to state that we can neither deny nor confirm the veracity of the reports.



Benon V. Sevan
7 March 2001

cc. The Deputy Secretary-General
Mr. Eckhard

Figure: Benon Sevan note to S. Iqbal Riza (Mar. 7, 2001) (including handwritten comments by Secretary-General Annan and Mr. Riza).

When interviewed, Mr. Riza and Secretary-General Annan confirmed their own and each other's handwriting on the document. The Secretary-General could not explain why the kickback issue was not addressed, but acknowledged that Mr. Sevan could have been more accurate and diligent in his reporting to the 661 Committee. Similarly, Mr. Riza indicated that the Secretariat should have been transmitting information—even if uncorroborated—regarding the kickbacks to the 661 Committee, but emphasized that Mr. Sevan was running the Programme and had to make those judgments. Deputy Secretary-General Fréchette acknowledged that she had received a copy of Mr. Sevan's advisory, but had no specific recollection of the article or any discussions on the subject with Mr. Sevan, Mr. Riza, or Secretary-General Annan.²³¹

Three days after the communications between Mr. Sevan and the 38th Floor regarding the March 7th article, Mr. Sevan issued Mr. Zarif a directive regarding the review process for Programme contracts, which was copied to Deputy Secretary-General Fréchette and Mr. Riza. Mr. Sevan noted that given the "current developments and media reports" regarding kickbacks on humanitarian contracts, OIP needed to review the criteria being employed by the customs experts

²³¹ S. Iqbal Riza interview (July 7, 2005); Kofi Annan interview (July 26, 2005); Louise Fréchette interview (May 31, 2005).

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when reviewing contract applications. Mr. Sevan emphasized that OIP needed to tighten its procedures to ensure that the prices were appropriate.²³²

d. Changes to Procedures of Contract Review

While the Secretariat did not take advantage of certain opportunities during the spring of 2001 to raise the emerging kickback problem with the Security Council or 661 Committee, OIP, in particular the Customs Section, undertook a series of internal measures to address kickbacks on Programme contracts, including, (1) tightening the standards for contract review;²³³ (2) conducting a limited pricing study;²³⁴ and (3) updating the Compendium of Customs Procedures (the "Compendium").²³⁵ The language added to the Compendium in early 2001 reflected OIP's knowledge of the kickbacks and recognition of the means of imposition:

High prices, in particular, should be queried as it is believed that *many suppliers pay illegal commissions or 'kick-backs' to the Government of Iraq and that suppliers cover these expenses by artificially inflating the value of goods for which they receive payment from the escrow account.* If the value of the goods appears artificially high or low, transfer the application to non-compliant status and request a written explanation from the supplier, via the submitting Mission. Upon receipt of a response, ensure the correspondence is copied to the Committee and that the customs report reflects the reviewing experts [*sic*] concerns and the supplier's response.²³⁶

Additionally, after Ms. Johnston recognized the growing volume of reports of payments to the Iraqi regime, which she viewed as a threat to the Programme and the sanctions regime within which it functioned, she created a file to track these cases (the "Irregularities File"). Ms. Johnston's immediate supervisor, Mr. Zarif, confirmed the existence of the Irregularities file, which he relied on Ms. Johnston to maintain. The Committee has reviewed the Irregularities File,

²³² Benon Sevan note to Farid Zarif (Mar. 10, 2001). Mr. Zarif replied to Mr. Sevan on March 15, 2001. Mr. Zarif's note indicated that CPMD was planning a mission to Iraq and would be discussing non-compliant contract issues with the Iraqi authorities. Farid Zarif note to Benon Sevan (Mar. 15, 2001). The nature of Mr. Zarif's response and the general issue concerning the ability of OIP's customs experts to meaningfully review contract pricing is discussed above in Volume III, Chapter 2.

²³³ Felicity Johnston interview (May 26, 2005); Darko Mocibob interview (Sept. 20, 2004); Farid Zarif interviews (July 6, 8, and 14, 2005); Benon Sevan note to Farid Zarif (Mar. 10, 2001); Farid Zarif note to Benon Sevan (Mar. 15, 2001).

²³⁴ Carl de Cruze e-mail to Palani Raj (Mar. 22, 2001); Felicity Johnston e-mail to Farid Zarif and Darko Mocibob (Mar. 22, 2001). A more detailed review of these measures is set forth above in Chapter 2 of this Volume.

²³⁵ OIP Customs Compendium (undated); Felicity Johnston interviews (May 26 and June 10, 2005); Darko Mocibob interview (Aug. 16, 2005). The Compendium, which was drafted and updated by Ms. Johnston, was designed to guide customs experts in their review of Programme-related contracts. *Ibid.*

²³⁶ OIP Customs Compendium (undated) (emphasis added); Darko Mocibob e-mail to multiple recipients (Apr. 29, 2004).

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the contents of which include a spreadsheet created to track the irregularities (the “Irregularities Spreadsheet”), notes to the file, correspondence from mission representatives, and actual side agreements revealing the existence of the kickback scheme.²³⁷ A number of the incidents included in the Irregularities File were detailed in the Ms. Johnston’s October 22, 2001 note-to-file, which is discussed below.

4. Further Contact with the 661 Committee—March and April 2001

The 661 Committee continued to discuss the kickback issue in March and April 2001 without meaningful contribution from OIP. For example, Mr. Zarif was present at the March 16, 2001 661 Committee meeting, during which there was a discussion of the allegations that Iraq was demanding commission payments for Programme contracts. However, the meeting notes do not reflect any contribution by Mr. Zarif to inform the 661 Committee of OIP’s knowledge, including the information discussed within the Secretariat, and between himself and Mr. Sevan during the concurrent period.²³⁸

On April 9, 2001, the United Kingdom Mission notified OIP, by a letter to Mr. Elfverson, of a number of Programme-related contracts that contained unusual payment and service clauses, which might mask kickback payments to the Iraqi regime. The letter included a two-page attachment that enumerated fifteen contracts with questionable payment provisions. The United Kingdom explained that it previously had raised this issue at a 661 Committee meeting and that “OIP ha[d] yet to come back to the Iraq Sanctions Committee with details of [Programme] . . . contract manipulation sourced from ‘informal’ contacts with companies.” Further, the United Kingdom asked OIP to take note of the highlighted contracts and requested that it “insist that Iraq put an end to this practice.” Finally, the letter expressed surprise that OIP had allowed the contracts to be circulated when they gave “Iraq the opportunity to obtain uncontrolled revenue.”²³⁹

²³⁷ Felicity Johnston interviews (May 26 and June 10, 2005); Farid Zarif interviews (July 6, 8, and 14, 2005); OIP, “Irregularities File” (undated); OIP, “Irregularities Spreadsheet” (undated). The Committee has located multiple versions of the Irregularities Spreadsheet during the course of its document review. The version cited here was shown to Ms. Johnston, who confirmed that she produced the document; however, she indicated that the handwriting on the particular version was not hers. Felicity Johnston interview (June 10, 2005).

²³⁸ OIP notes of informal 661 Committee meeting (Mar. 16, 2001).

²³⁹ United Kingdom Mission letter to J. Christer Elfverson (Apr. 9, 2001). Both Mr. Elfverson and a United Kingdom official have confirmed that the letter was sent to Mr. Elfverson’s attention as the Officer-in-Charge of OIP. J. Christer Elfverson interview (July 20, 2005); United Kingdom official #7 interview (July 14, 2005). Further, Mr. Sevan’s travel records confirm that he was traveling on the date the letter was issued. Benon Sevan travel records (Apr. 26, 2001). As noted in Volume II, Chapter 3, fourteen of the fifteen contracts identified in the United Kingdom’s letter were approved, and eleven were fulfilled, resulting in payments from the escrow account. Further, the Committee has obtained evidence from the Iraqi ministries that Iraq levied kickbacks on ten of the eleven fulfilled contracts and collected kickbacks on at least seven of these.

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Ms. Johnston sent an April 27, 2001 e-mail to Mr. Zarif attaching a draft response to the April 9th letter, which addressed each of the fifteen contracts cited by the United Kingdom. The e-mail expressed frustration at “a growing trend whereby US/UK are trying to pressurise us not to circulate applications with dubious contractual arrangements—thereby abdicating their own responsibilities as they wish to keep the holds statistics low.” The Committee has not located an executed version of the letter. Rather, the Committee has located a “Note to Mr. Zarif” dated May 1, 2001 from Ms. Johnston and Adrianus Phaff, the Coordinator of the Oil Group of Experts, which incorporates the substance of the draft letter. When interviewed, Mr. Zarif did not recall why the information was submitted as a note to him instead of a letter to the United Kingdom.²⁴⁰

The April 9th letter represented another request from the United Kingdom for OIP to share all of the information it had regarding kickbacks—even if the information was informal. Approximately four months had passed since the original request was made during the December 13, 2000 661 Committee meeting, but OIP had not provided its information to the 661 Committee on the subject of kickbacks.

In late April, Georges Nasr, an OIP Programme Officer, sent a note to Mr. Sevan, briefing him on a number of outstanding issues that were under discussion by the 661 Committee that concerned OIP. First, there was a discussion of “port charges.” Mr. Nasr noted that, at the end of the April 11, 2001 661 Committee meeting, OIP was requested to provide information about the various levels of port charges being levied in the Persian Gulf region for comparison purposes. Although more than two weeks had passed since the meeting, there was no mention in the note that OIP had taken any action in accordance with the 661 Committee’s directive. Mr. Nasr offered that the issue would most probably resume at the next meeting. Second, Mr. Nasr indicated that the issue of “alleged commissions on ‘oil-for-food’ contracts” was briefly discussed at the April 11th meeting. However, there had not been any progress on the kickback issue at that meeting, other than an agreement to resume discussions. Several delegations indicated that they had not received instructions from their capitals.²⁴¹

C. THE “JOHNSTON NOTE”

Throughout 2001, OIP received a steady stream of evidence that the Iraqi regime was engaged in an extensive kickback scheme on Programme-related contracts. By the fall of 2001, Ms. Johnston, was convinced that: (1) the Iraqi regime was receiving illicit payments on Programme contracts; (2) the practice was widespread; and (3) the kickback payments were occurring “left, right and center.” Ms. Johnston was not secretive about the evidence that she gathered or her position of what to do with that evidence. Instead, she habitually forwarded the information to

²⁴⁰ Felicity Johnston e-mail to Farid Zarif (Apr. 27, 2001); Felicity Johnston and Adrianus Phaff note to Farid Zarif (May 1, 2001); Farid Zarif interviews (July 6, 8, and 14, 2005). As noted in Chapter 3 of Volume II, a United Kingdom official interviewed stated that OIP never responded formally to the letter of April 9. United Kingdom official #7 interview (July 14, 2005).

²⁴¹ Georges Nasr note to Benon Sevan (Apr. 27, 2001); OIP notes of informal 661 Committee meeting (Apr. 11, 2001).

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her direct supervisor, Mr. Zarif, frequently with a note or memorandum, and discussed the incidents with Mr. Sevan as well. Mr. Zarif confirmed that Ms. Johnston became increasingly concerned about the scope of the kickback scheme throughout 2001 as the reports flowed into to OIP. He also confirmed that she diligently brought these reports to his attention and advocated for disclosure to the 661 Committee.²⁴²

The mounting evidence of kickback payments culminated on October 22, 2001, when Ms. Johnston prepared a "Note for the File" entitled "Potential Illicit Payments to the Government of Iraq" (the "Johnston Note"). The Johnston Note summarized a number of the incidents of kickbacks that had been discovered by or reported to OIP as of October 2001. Several of the incidents described involved actual documentation of the illicit side agreements with the regime.²⁴³

According to Ms. Johnston, her purpose in drafting the Johnston Note was to summarize the compelling evidence that the scheme existed and present the information to Mr. Zarif and Mr. Sevan to encourage action by the Secretariat. Ms. Johnston advocated for OIP's detailed information, contained within the Johnston Note, to be disclosed to the 661 Committee. More specifically, Ms. Johnston asked Mr. Zarif to review the matter with Mr. Sevan and to urge him to forward the information to the 661 Committee. Mr. Zarif subsequently reported back to Ms. Johnston and told her that Mr. Sevan still refused to present the information to the 661 Committee. The Committee has not found any evidence that the Johnston Note, or the compilation of information contained therein, was ever provided to the 661 Committee.²⁴⁴

Mr. Zarif recalled the Johnston Note when the document was shown to him by the Committee. He stated that although the note was entitled "Note to File," Ms. Johnston had prepared it for his attention. Mr. Zarif maintained that he "never kept Benon Sevan in the dark" and Mr. Sevan definitely received a copy of the Johnston Note. The Committee has located two e-mails from Mr. Zarif to Mr. Sevan, dated October 20 and 22, 2001, respectively, which corroborate that Mr. Sevan received a preliminary, and then final version of the Johnston Note. Moreover, Mr. Zarif stated that he discussed the contents of the note with Mr. Sevan and "pressed him to take action

²⁴² Felicity Johnston interview (May 26, 2005); Farid Zarif interviews (July 6, 8, and 14, 2005).

²⁴³ Felicity Johnston note-to-file (Oct. 22, 2001). It appears that Ms. Johnston's note went through different revisions and versions, but the final version was dated October 22, 2001. An October 20, 2001 e-mail from Mr. Zarif to Mr. Sevan, which attached a draft letter to the Iraqi Permanent Representative, contained a reference to Ms. Johnston's note of "12 October" regarding illicit payments. Two days later, Mr. Zarif sent Mr. Sevan a second e-mail attaching a "revised and updated version" of the note. Farid Zarif e-mail to Benon Sevan (Oct. 20, 2001); Farid Zarif e-mail to Benon Sevan (Oct. 22, 2001).

²⁴⁴ Felicity Johnston interview (May 26, 2005). As described below, in three of the cases detailed in the Johnston Note, the individual OIP customs reports contained some reference to the kickback concerns of the customs experts.

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on the kickbacks,” but that Mr. Sevan did not view the issue with “the same degree of urgency.”²⁴⁵

When interviewed by the Committee, Mr. Elfverson, who was supposed to function as Mr. Sevan’s second-in-command, stated that he had never seen the Johnston Note and was surprised at the level of detail—including bank accounts, contract numbers, company names, payment amounts. Mr. Elfverson stated that the level of specificity in the Johnston Note significantly exceeded anything he discussed with members of the 661 Committee and that it was his impression that even the “P-5” were not aware of this type of information.²⁴⁶

The Johnston Note reviewed a variety of examples and sources of information developed by the customs experts throughout 2001. Set forth below is a discussion of the most critical matters referenced in the Johnston Note, focusing on evidence about which OIP was aware, internal OIP discussions of the incidents in her note, and the recollections of the OIP officials involved with the matters referenced in the note.²⁴⁷

1. Neptune Exports Limited

One of the earlier incidents detailed in the Johnston Note occurred in January 2001 and involved Neptune Exports Limited (“Neptune”), an Indian company, supplying tea to Iraq. Subsequent to the execution of the contract, on or about January 7, 2001, Neptune was informed by the Iraqi State Company for Food Stuff Trading that there was a delivery shortage of approximately 1220 kilograms of tea. In lieu of additional tea, the Iraqi entity directed Neptune to pay the equivalent value of tea into a bank account at Rafidain Bank in Amman, Jordan. The Indian Permanent Mission advised OIP of the request and provided OIP with the specific bank account number at Rafidain Bank.²⁴⁸

²⁴⁵ Farid Zarif interviews (July 6, 8, and 14, 2005); Farid Zarif e-mail to Benon Sevan (Oct. 20, 2001); Farid Zarif e-mail to Benon Sevan (Oct. 22, 2001).

²⁴⁶ J. Christer Elfverson interview (July 20, 2005). Mr. Elfverson indicated that OIP had an official procedure whereby all senior managers were supposed to be copied on all important documents (such as the Johnston Note). However, this procedure was not followed, and this note was “evidence of the watertight divisions within OIP.” This was “how Mr. Sevan wanted it.” Ibid.

²⁴⁷ The Johnston Note includes references to a number of specific companies. The Committee mentions these companies in order to provide context to the discussion of the Secretariat’s knowledge of and responses to the kickback issue. A fuller discussion of the companies that conducted business under the Programme will be the subject of a subsequent report to be issued by the Committee. Independent Inquiry Committee press release (Aug. 8, 2005).

²⁴⁸ Felicity Johnston note-to-file (Oct. 22, 2001); State Company for Food Stuff Trading fax to Neptune Exports Ltd. (Jan. 7, 2001). This incident was in connection with COMM no. 700165, which was a contract for black tea. The contract was approved on or about March 20, 2000, and the tea (short of the contracted amount) was delivered thereafter. Subsequently, Neptune provided an additional quantity of tea to satisfy the difference. Ibid.; OIP customs report, S/AC.25/2000/986/COMM.700165/Cor. 1/Ext. 1 (July 17, 2001); “Notification or Request to Ship Goods to Iraq,” COMM no. 700165 (July 17, 2001).

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Ms. Johnston indicated that she was concerned about the Neptune incident because of the reference to a Government of Iraq controlled bank account at Rafidain Bank, which was a violation of Resolution 661. According to Ms. Johnston, she argued that this incident (as well as the Belhasa incident discussed below) should have been brought to the attention of the 661 Committee. However, her supervisors at OIP, namely Mr. Zarif and Mr. Sevan, disagreed and declined to inform the 661 Committee. When asked about the Neptune incident, Mr. Zarif stated that he had no recollection of it.²⁴⁹

Ms. Johnston's statement that she wanted to raise the Neptune issue with the 661 Committee, but was rebuffed is corroborated by contemporaneous documentation located by the Committee. Specifically, on January 29, 2001, Mr. Sevan sent a letter to the Iraq Permanent Mission, stating that the payment from Neptune must be made by delivering additional quantities of tea or reimbursing the United Nations escrow account. Multiple copies of that letter have been located; however, the version contained within the Irregularities File maintained by Ms. Johnston includes a handwritten note that states: "Discussed case . . . with FZ. My view that it should be brought to attention of Committee. His view to the GOI. [signed]."²⁵⁰

Mr. Zarif was shown a copy of the document from the Irregularities File with the handwritten notation and he confirmed that it was Ms. Johnston's handwriting. While Mr. Zarif did not specifically recall the conversation with Ms. Johnston, he did not dispute that such meeting occurred.²⁵¹ The Neptune incident is an early example (January 2001) of OIP's Chief Customs Expert advocating for information to be brought to the 661 Committee, but Mr. Sevan and Mr. Zarif instead electing to raise the issue with the Iraqi regime.

2. Woodhouse International L.L.C.

The most prominently featured company in the Johnston Note was Woodhouse International L.L.C., ("Woodhouse"), a United Arab Emirates ("UAE") company, which had five questionable contracts.²⁵² On February 25, 2001, Woodhouse wrote to the UAE Ministry of Foreign Affairs

²⁴⁹ Felicity Johnston interview (June 10, 2005); Farid Zarif interviews (July 6, 8, and 14, 2005).

²⁵⁰ Felicity Johnston interview (June 10, 2005); Benon Sevan letter to Iraq Mission (Jan. 29, 2001). The cataloging information on the United Nations' files confirms that this document was scanned from the "Records of the Chief Customs Expert."

²⁵¹ Farid Zarif interviews (July 6, 8, and 14, 2005). There are two sets of handwriting on the subject document, and Mr. Zarif confirmed that the other set, in the top right-hand corner, was his own handwriting. Ibid.; Benon Sevan letter to Iraq Mission (Jan. 29, 2001).

²⁵² Felicity Johnston note-to-file (Oct. 22, 2001) (referencing COMM nos. 830122, 830123, 830227, 830338, and 830483). Of the five contracts, three were approved and funded—830122, 830123, and 830227. TaR, COMM nos. 830122, 830123, 830227, 830338, and 830483. The third approved contract—830227—was only funded after the war when the CPA required removal of all "after sales service fees." The other two contracts—830338 and 830483—were declared GRL non-compliant and null/void, respectively and were not approved. Ibid. Only one of the customs reports for Woodhouse contracts included a note about a potential payment to Iraq, COMM no. 830483; however, it does not appear that that

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regarding a number of its Programme-related contracts for oil spare parts. Woodhouse noted that in connection with each contract, its customer, the Iraqi Ministry of Oil, had instructed the company to include an extra ten percent in the contract price over and above the original tender value. Woodhouse emphasized that it was requesting “the UN to advise their *exact position* so that we may finalize this matter according to the laws binding these contracts between the UN & Iraq.”²⁵³

On April 25, 2001, two OIP staff members, Adrianus Phaff and Palani Raj, met with an official from Woodhouse. During the meeting, Woodhouse expressed surprise that COMM no. 830122 had been approved by OIP because it contained a ten percent commission to be paid to the Iraqi purchaser. Pursuant to Resolution 1284, COMM no. 830122 was approved by Mr. Sevan on April 5, 2001. Woodhouse informed OIP that suppliers were being forced to sign “side agreements” requiring the increase of the original contract price by ten percent with that difference to be paid to the Iraqi regime. Woodhouse admitted that it had entered such an arrangement in connection with COMM nos. 830122, 830123, and “three other applications that were in the process of submission.” The OIP staff members were informed that the kickback scheme was extensive and that Woodhouse’s understanding was that “*all Phase [VIII] and IX* oil spares applications required this kind of side agreement.” Finally, Woodhouse requested that the incident be “handled with extreme care as [it] did not want to jeopardize [its] business relations with the Iraqi customers.”²⁵⁴

report was circulated to the 661 Committee. A copy of the report located by the Committee includes a note that the application was not to be circulated until Mr. Zarif reviewed it. The application subsequently became null and void. OIP customs report, S/AC.25/2001/986/COMM.830483 (Oct. 19, 2001).

²⁵³ Woodhouse International L.L.C. letter to the UAE Ministry of Foreign Affairs (Feb. 25, 2001).

²⁵⁴ A.V. Phaff confidential note-to-file (Apr. 25, 2001) (emphasis added); Benon Sevan letter to UAE Mission (Apr. 5, 2001). OIP was informed that initially the ten percent was included as a line item entitled “service charge,” but then was spread evenly over the other line items. Woodhouse followed up with the UAE Mission, which faxed a copy of the February 25th letter, which corroborated Woodhouse’s position. Woodhouse also endeavored to provide an actual copy of one of the side agreements it signed—which was later provided (see copy below). A.V. Phaff confidential note-to-file (Apr. 25, 2001). The customs report for COMM no. 830122 did not include any reference to a ten percent payment. OIP customs report, S/AC.25/2001/986/COMM.830122 (Apr. 5, 2001).

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REFF.
DATE 07-04-2001
SUBJECT / CONFIRMATION
CONTRACT SGC-8-54

WE HEREBY UNDER SIGNED
WOODHOUSE INTERNATIONAL (L.L.C.), DUBAI- U.A.E.
CONFIRM THAT WE WILL PAY CASH OR DEPOSIT IN
IRAQI MINISTRY OF OIL ACCOUNT AT RAFIDAIN
BANK / AMMAN BRANCH ,AN AMOUNT OF DUTCH
MARKS CURRENCY EQUAL TO EURO 45123.00 (FORTY
FIVE THOUSANDS ONE HUNDRED TWENTY THREE
ONLY) , AT THE PERIOD BETWEEN SHIPMENT DATE
AND WEEK BEFORE MATERIAL RECEIVING TO IRAQ .
WE WILL SUBMIT CORRESPONDENCE BOND WITH
A/M AMOUNT WITH ONE MONTH OF BNP L/C
OPENING COVER ANY DISCREPANCY IN RECEIVED
MATERIALS .


WOODHOUSE INTERNATIONAL (L.L.C.)
P.O.BOX 23724 -DUBAI- U.A.E.
M. M. Mousawi

Figure: Woodhouse side letter (Apr. 7, 2001).

That same day, Mr. Zarif sent a note to Mr. Sevan, attaching Mr. Phaff's summary of the meeting with Woodhouse and recommending a number of specific proposals to Mr. Sevan in light of the information learned by OIP, including: (1) that OIP inform the Permanent Missions of Iraq and the UAE that COMM no. 830122 (which Mr. Sevan had already approved) was non-compliant and no longer eligible for payment; and (2) the "issue of concerns over the alleged commissions should become the subject of a separate letter to the Permanent Mission of Iraq, with a copy to the Chairman of the [661 Committee]." Mr. Zarif expressed his desire to discuss these measures "as well as the preventative and control measures [OIP] may need to put in place on the issue of unauthorized financial transactions." A copy of Mr. Zarif's April 25th note obtained by the Committee includes a handwritten note in the top left-hand corner, which states "Mr. Zarif— thanks" and is initialed by Mr. Sevan.²⁵⁵

During the months following the April 25th meeting, OIP and Woodhouse continued to correspond regarding the Iraqi regime's kickback demands. On May 6, 2001, Woodhouse wrote to request a "general letter" outlining the United Nations' position on payments to Iraq so that the

²⁵⁵ Farid Zarif note to Benon Sevan (Apr. 25, 2001). In addition to the two proposals set forth above, Mr. Zarif advised Mr. Sevan that: (1) the OIP website should include a "flash-point warning" that side agreements providing for payments to accounts other than the United Nations escrow account are prohibited; (2) OIP approval letters should include a clause instructing suppliers that any post-contract payments should only be made to the United Nations escrow account; and (3) customs experts should further tighten the review of contract prices with the commodity pricing reference source. Ibid.

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position could be forwarded to Iraqi officials. Woodhouse reminded OIP that one of its contracts had already been approved (by Mr. Sevan) despite the fact that it contained the same type of post-award discount.²⁵⁶

On September 8, 2001, Woodhouse wrote another letter to OIP to inform that “the *Iraq authorities are insisting in a number of cases for this extra 10% to be added to the contract value.*” At the same time, suppliers were being told by OIP that payments could only be made to the United Nations escrow account. Woodhouse argued that “[i]t is not up to us to decide how to handle the legalities of the matter [and] we rely on the UN for guidance.” On November 6, 2001—after the Johnston Note was circulated—OIP informed Woodhouse that “[w]hile the difficult position of suppliers is totally understandable, the relevant resolutions of the Security Council require all concerned to fully adhere to the provisions of the programme[.]”²⁵⁷

When interviewed, Mr. de Cruze confirmed the meeting and correspondence between OIP and Woodhouse, which he described as one of many cases where such irregularities were brought to OIP’s attention. Likewise, Mr. Zarif recalled Woodhouse approaching OIP with information regarding kickbacks and confirmed that Woodhouse informed OIP that the Iraqi regime was “*systematically demanding kickbacks*” and that if suppliers did not make the illicit payments, they would not get contracts. Mr. Zarif recalled that the kickback requirement was described as a “gesture of goodwill” to return ten percent of the value of the contract to a specific Iraqi-held bank account.²⁵⁸

3. Ingersoll-Rand World Trade Ltd.

Ingersoll-Rand World Trade Ltd. (“Ingersoll-Rand”) executed two contracts with the Baghdad Mayoralty for rollers, paving equipment and spare parts.²⁵⁹ On March 13, 2001, a representative

²⁵⁶ A.V. Phaff fax to Woodhouse International L.L.C. (May 1, 2001); Woodhouse International L.L.C. letter to OIP (May 6, 2001); Carl de Cruze fax to Woodhouse International L.L.C. (Sept. 5, 2001); Woodhouse International L.L.C. letter to OIP (Sept. 8, 2001); Carl de Cruze fax to Woodhouse International L.L.C. (Nov. 6, 2001); Woodhouse International L.L.C. letter to OIP (Jan. 23, 2002).

²⁵⁷ Woodhouse International L.L.C. letter to OIP (Sept. 8, 2001) (emphasis added); Carl de Cruze fax to Woodhouse International L.L.C. (Nov. 6, 2001).

²⁵⁸ Carl de Cruze interview (Aug. 19, 2005); Farid Zarif interviews (May 11 and July 6, 8, and 14, 2005) (emphasis added).

²⁵⁹ TaR, COMM nos. 702647, 702648. It should be noted that COMM nos. 702647 and 702648 both became null and void and were not funded. Ingersoll-Rand World Trade Ltd. and Ingersoll-Rand S.A. are Swiss affiliates of Ingersoll-Rand Co., which is incorporated in Bermuda and operates out of Montvale, New Jersey. Ingersoll-Rand World Trade Ltd., corporate registry, Fribourg, Switzerland (Aug. 24, 2005); Ingersoll-Rand S.A., corporate registry, Fribourg, Switzerland (Aug. 24, 2005). On March 16, 2005, Ingersoll-Rand Co. announced that the United States Securities and Exchange Commission (“SEC”) had requested information about transactions related to the Programme and that it was in the process of investigation in order to respond to the SEC’s inquiry. “SEC looking into Ingersoll deals in Iraq,” *Bloomberg News*, Mar. 17, 2005.

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of Ingersoll-Rand sent a letter to the Swiss State Secretariat for Economic Affairs indicating that the contract “[t]otal [v]alue includes 10% working capital to be given as rebate to Baghdad Mayoralty.” After OIP received the contract documents, Luis Esteban Yrazu, an OIP Customs expert, sent a fax to the Swiss Permanent Mission requesting additional information in connection with the Ingersoll-Rand contracts. Mr. Esteban informed the Swiss Permanent Mission that no payment should be made to the Iraqi government without United Nations approval in accordance with the sanctions regime. Six days later, Ingersoll-Rand sent a letter to OIP regarding the second contract and referencing correspondence from OIP to the Swiss mission. The letter from Ingersoll-Rand confirmed that the agreement with the Baghdad Mayoralty included a ten percent cash payment, which the company was told would be used as working capital.²⁶⁰

The Johnston Note featured the Ingersoll-Rand incident and explained that in March 2001 the Swiss Mission forwarded to OIP the *actual side agreements* requiring the payment of the ten percent fee, i.e., the kickbacks. Ms. Johnston remembered the Ingersoll-Rand contracts and specifically recalled discussing the contracts with Mr. Zarif because it was “clear something was amiss.” A version of the March 13th Ingersoll-Rand letter includes a note from Ms. Johnston to Mr. Zarif, which referenced the attached contract and asked for his further review. She reiterated that by April 2001, she was very concerned about kickbacks payments and she discussed the issue with Mr. Zarif, who agreed that the issue was a problem and asked to be kept informed. Ms. Johnston understood that Mr. Zarif discussed the issue with Mr. Sevan, but, to her knowledge, no action was taken and the concerns were not forwarded to the 661 Committee. Mr. Zarif stated that he could not recall the Ingersoll-Rand incident.²⁶¹

4. Hajlaoui and Partners

On April 3, 2001, a Belgian-based company, Hajlaoui and Partners (“Hajlaoui”), executed a contract with the Economics and Finance Department of the Ministry of Oil for the supply of tractors.²⁶² Eight days later, on April 11, 2001, Hajlaoui’s manager signed a letter which confirmed an agreement to pay ten percent of the contract value (€30,827) to the Oil Products Distribution Company, Daura, Baghdad for “installation, technical supervision and the service after sales.” On June 15, 2001, the Belgian Permanent Mission submitted a request to OIP from

²⁶⁰ Ingersoll-Rand World Trade Ltd. letter to Government of Switzerland (Mar. 13, 2001); Luis Esteban Yrazu fax to Switzerland Mission (Apr. 6, 2001); Ingersoll-Rand World Trade Ltd. letter to Viktor Morozov (Apr. 12, 2001).

²⁶¹ Felicity Johnston note-to-file (Oct. 22, 2001); Felicity Johnston interview (May 26, 2005); Ingersoll-Rand World Trade Ltd. letter to Government of Switzerland (Mar. 13, 2001); Farid Zarif interviews (July 6, 8, and 14, 2005).

²⁶² The Hajlaoui contract was designated COMM no. 830474 and was approved and funded. TaR, COMM no. 830474.

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Hajlaoui to ship the goods to Iraq. Attached to the application for contract approval was the April 11th side letter, setting forth the terms of the kickback arrangement.²⁶³

Hajlaoui & Partners sprl
INDUSTRIAL ASSEMBLER
de Rwoh 13
0 Bruxelles BELGIUM
tel: 3288420001 - fax: 3288420002

3040

Oil Products Distribution Company
Daura
Baghdad

Subject : Contract SADOP 08/26

Our ref. : e.b. 007.00
Your ref. : BI2/170/2000

Brussels 11/04 01

Sir
Many thanks for the trust you reckon to us by giving us the above mentioned contract We Hajlaoui & Partners , confirm you our agreement on the pay back arrangement of 10% of the total amount of our final offer in relation with our equipment (it is understood that the repayment of **30827** Euro will take the place of the "installation, technical supervision and the service after sales").
This transfer will be secured at the reception of the payment of the letter of credit of the above mentioned contract

Best regards

Hajlaoui Rabah
Manager



Figure: Hajlaoui Rabah letter to Oil Products Distribution Company (Apr. 11, 2001).

Between September and November 2001, there was a series of correspondence between OIP and Hajlaoui regarding the side letter and “pay back arrangement.” On September 5, 2001, OIP wrote Hajlaoui representatives and the Belgian mission, informing that the contract could not be processed because the customs experts were unable to determine compliance with the United Nations requirements. OIP requested additional information regarding the unilateral agreement to pay ten percent of the contract value to the Iraqi operating company. Further, OIP required Hajlaoui to confirm its understanding that all payments to the Iraqi regime must be remitted to the United Nations escrow account and that failure to do so violated the relevant Security Council resolutions. Hajlaoui responded on September 19, 2001 by denying that the side letter was

²⁶³ Hajlaoui and Partners letter to Oil Products Distribution Company (Apr. 11, 2001); Belgium Mission letter to OIP (June 15, 2001); Felicity Johnston note-to-file (Oct. 22, 2001).

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executed, confirming that all payments were to be made into the United Nations escrow account, and noting that a failure to do so was a violation of Security Council resolutions.²⁶⁴

After receiving additional correspondence from OIP, Hajlaoui supplemented its response on November 1, 2001. This time it suggested that the agreement for the ten percent payment may have been a “fake message” created in Iraq. Hajlaoui instructed OIP to consider the side agreement null and void and noted that “the after sale service” was cancelled and the contract price reduced. An Iraqi official familiar with the incident confirmed that the Hajlaoui side agreement was authentic and was sent to OIP by accident.²⁶⁵

OIP prepared a customs report for the Hajlaoui contract on December 18, 2001 for submission to the 661 Committee, which commented that the initial Hajlaoui contract application included a unilateral agreement to pay the Iraqi authorities 30,827 euros. The report noted that OIP was “not able to approve the application, and it [wa]s circulated to the [661] Committee for their consideration.” After a three month delay, on March 11, 2002, the 661 Committee approved the contract and the Belgian mission was notified accordingly.²⁶⁶

When shown the Hajlaoui correspondence, Mr. de Cruze stated that he did not recall the particular incident. However, he indicated that many irregularities were identified in connection with oil spare parts contracts. Further, he noted, without specific reference to Hajlaoui, that the responses from some companies to OIP's inquiries were “blatant lies.”²⁶⁷

5. Marubeni Heavy Machinery Trading Company

On July 20, 2001, Ms. Johnston prepared a note entitled “Funds Obtained by the Government of Iraq Outside the Oil for Food Programme” and placed it in the Irregularities File. The July 20th note stated that the Iraqi regime “continue[d] to extract funds from suppliers . . . by refusing to sign contracts unless a commission of between 10% to 15% [was] paid.” Ms. Johnston explained that such contracts “contravene[d] paragraph 4 of Security Council resolution 661 (1990).”²⁶⁸

The July 20th note stated that the Japanese Permanent Mission had informed OIP that Marubeni Heavy Machinery Trading Company (“Marubeni”) had been requested to pay a fee, equal to ten percent of the total subcontract value, into a bank account designated by an Iraqi company, Upper

²⁶⁴ Carl de Cruze fax to Hajlaoui and Partners (Sept. 5, 2001); Hajlaoui and Partners letter to Carl de Cruze (Sept. 19, 2001); Carl de Cruze fax to Hajlaoui and Partners (Oct. 16, 2001); Hajlaoui and Partners letter to Carl de Cruze (Nov. 1, 2001).

²⁶⁵ Carl de Cruze fax to Hajlaoui and Partners (Oct. 16, 2001); Hajlaoui and Partners letter to Carl de Cruze (Nov. 1, 2001); Iraq official interview.

²⁶⁶ OIP customs report, S/AC.25/2001/986/COMM.830474 (Dec. 18, 2001); 661 Committee Chairman letter to Belgium Mission (Mar. 11, 2002).

²⁶⁷ Carl de Cruze interview (Aug. 19, 2005).

²⁶⁸ Felicity Johnston note-to-file (July 20, 2001).

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Gulf Agencies (“UGA”). OIP was told that UGA was playing a brokerage role in sub-contracting arrangements and was charging a ten percent brokerage fee for its services, which fee was to be paid into a Citibank account in Amman, Jordan and constituted “a commission paid directly to the Government of Iraq.” OIP advised the Japanese Mission to raise the matter with the 661 Committee by a letter from the Japanese Ambassador or by a letter to Mr. Sevan requesting that he raise the issue with the 661 Committee.²⁶⁹

Ms. Johnston recalled that she definitely forwarded a copy of the July 20th note to Mr. Zarif and understood that he discussed the matter with Mr. Sevan. Further, she stated that her statement that the Iraqi regime *continued* to extract commissions of ten to fifteen percent from suppliers was based on information from missions and that by this point she was certain about the existence of the Iraqi regime’s kickback scheme. While Ms. Johnston was concerned about the problem, she continued to follow Mr. Sevan’s instructions, and advised companies and missions to raise the kickback issue with the 661 Committee. Ms. Johnston realized that reliance on companies and their respective missions did not guarantee that the 661 Committee would be informed of the kickback problem.²⁷⁰

Mr. Zarif also drafted a memorandum to Mr. Sevan regarding the Marubeni incident, which notified Mr. Sevan that OIP had received requests from “a number of suppliers, their respective governments, or legal representatives to clarify whether such post award payments are in conformity with [Resolutions 661 and 986].” Mr. Zarif reminded Mr. Sevan that OIP had “received copies of some unilateral undertakings signed by the suppliers, committing themselves unilaterally to pay a certain percentage of the contract’s value to the Iraqi authorities.”²⁷¹

In addition to the two notes from OIP senior staff, Mr. Sevan forwarded a copy of the July 17th letter from the Japanese Mission and the service agreement to OLA for guidance. Mr. Sevan asked “whether the subcontracting arrangements mentioned . . . constitute[d] a breach of Security Council resolutions regarding the situation between Iraq and Kuwait,” but did not request advice

²⁶⁹ Ibid. UGA was known to OIP to be a company operating on behalf of SOMO. Marubeni, also known as Marubeni Protechs Corporation, had subcontracted to supply goods on behalf of a French Company known as Tekmatex Europe S.A. (“Tekmatex”). In order to secure the subcontract, Marubeni entered a service agreement with UGA that “facilitated the negotiating process and logistical matters.” Under the service agreement, Marubeni was obligated to deposit a fee, equal to ten percent of the total subcontract value, into the referenced UGA bank account. Tekmatex executed one contract with Iraq in the amount of \$670,751. In connection with the contract, Tekmatex introduced Marubeni to UGA. Ibid; Japan Mission letter to Benon Sevan (July 17, 2001).

²⁷⁰ Felicity Johnston interview (May 26, 2005). Ms. Johnston noted that the matter had been raised confidentially by the Japanese Mission and should be brought to the attention of the 661 Committee by the Japanese Mission, or by OIP upon a request by the Japanese Mission. Felicity Johnston note-to-file (July 20, 2001).

²⁷¹ Farid Zarif note to Benon Sevan (Sept. 4, 2001). Mr. Zarif also referenced recent media allegations regarding the demand for payment of commissions by the Iraqi regime in amounts of ten to fifteen percent, payable in cash or into foreign bank accounts. Ibid.

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on the larger issue of post award payments. It does not appear that he included a copy of Ms. Johnston's note. OLA responded on September 21, 2001, advising that while the 661 Committee did not normally need to approve subcontracts, the Marubeni case was different because the subcontract involved the payment of a fee in connection with a "service agreement" to an Iraqi company outside the United Nations escrow account. OLA stated that absent explicit approval by the 661 Committee the "service agreement" would violate the sanctions regime. OLA recommended to Mr. Sevan that the "*situation be brought to the attention of the 661 Committee as soon as possible.*"²⁷²

On September 29, 2001, Mr. Sevan forwarded OLA's advisory to Mr. de Cruze and requested that he prepare a draft letter to the Permanent Representative of Japan. Subsequently, Mr. Sevan sent a letter to the Japanese Ambassador informing him that, according to OLA, the subcontract should have been submitted to the 661 Committee for approval. Mr. Sevan's letter did not address the legality, or lack thereof, of the ten percent commission. After receiving OLA's opinion, Mr. Sevan also requested that Mr. de Cruze determine whether the 661 Committee had been informed of the contract in question. Mr. de Cruze recalled preparing the letter to the Japanese Mission, but did not recall any interaction with the 661 Committee on this matter. Investigators have not located any evidence that would indicate that Mr. Sevan complied with OLA's advice that the "situation be brought to the attention of the 661 Committee as soon as possible."²⁷³

6. Belhasa Motors Co. L.L.C.

The Johnston Note incorporated and supplemented information from another note-to-file, which was prepared by Ms. Johnston on September 25, 2001 regarding Belhasa Motors Co. L.L.C. ("Belhasa"), a United Arab Emirates company. In the Belhasa case, the evidence consisted of specific documentation (referred to as an "undertaking"), which indicated that an agreement existed whereby the Iraqi regime would receive payments in connection with COMM no. 802803, a contract dated August 14, 2001 between Belhasa and the Iraqi State Company for Water Transport. The contract contained primarily standard contract terms, except for the final page of the contract, which consisted of a single paragraph entitled "Undertaking." The undertaking provided that Belhasa would pay the Iraqi State Company for Water Transport 1,436,640 Japanese yen, representing approximately ten percent of the contract value.²⁷⁴

²⁷² Benon Sevan note to Mr. Golitsyn (undated); Ralph Zacklin memorandum to Benon Sevan (Sept. 21, 2001) (emphasis added). Although undated, Mr. Sevan's note to OLA appears to have been sent on or before August 9, 2001, when he sent a letter to the Japanese Permanent Mission informing it that the matter had been referred to OLA. Benon Sevan letter to Japan Mission (Aug. 9, 2001).

²⁷³ Benon Sevan note to Carl de Cruze (Sept. 29, 2001); Benon Sevan letter to Japan Mission (Oct. 10, 2001); Carl de Cruze interview (Aug. 19, 2005).

²⁷⁴ Felicity Johnston note-to-file (Oct. 22, 2001); Felicity Johnston note-to-file (Sept. 25, 2001); COMM no. 802803, contract between Belhasa Motors Co. L.L.C. and Iraqi State Company for Water Transport (Aug. 14, 2001).

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UNDERTAKING

I, The undersigned, Commercial manager of BELHASA MOTORS CO. LLC. Hereby undertake, in accordance with the procreation and legal authorization granted to me, to settle to Messrs., Rafidain Bank/Amman Branch) the sum of (1,436,640) J.Yen after opening of the L/C related to Contract No. (17/00/WT/2000) dated in / / 2001 concluded between our Company and the state company for water transportation and the receipt of the contracted goods. Payment will be effected according to the method which will be mentioned by the first party.
Signed on 14/8/2001 .

Second Party
BELHASA MOTORS CO. LLC.

تعهد
اني الموقع ادناه المدير التجاري لشركة بالحصا للسيارات اتعهد بالنياية عن الشركة (بموجب التحويل القانوني الممنوح لي من قبل الشركة) بتسديد مبلغ (1,436,640) ين ياباني الى السيد (مصرف الراقدين/فرع عمان) بعد فتح الاعتماد المالي للعدد المسرقم (٢٠٠٠/٧٣/٠٠/١٧) في ٢٠٠١/٨/١٤ المبرم بين شركتي والشركة العامة للنقل المائي واستلام المواد المتعاقد عليها ، ويتم دفع المبلغ بحسب الطريقة التي يحددها الطرف الاول ولاجله وقعت بتاريخ ٢٠٠١/٨/١٤ .

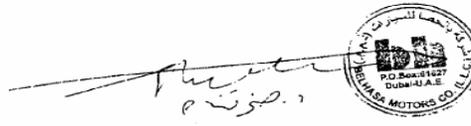

شركة بالحصا للسيارات
الطرف الثاني

Figure: COMM no. 802803, contract between Belhasa Motors Co. L.L.C. and Iraqi State Company for Water Transport (Aug. 14, 2001) (excerpt).

The Belhasa contract and undertaking provided for ten percent of the contract value to be deposited in Rafidain Bank in Amman, Jordan after the letter of credit was opened and the goods delivered. Ms. Johnston wrote that such a payment clearly would contravene Resolutions 661 and 986. Hence, “[a]t the risk of stating the obvious,” she asked the customs experts to watch for similar clauses and payment arrangements outside the United Nations escrow account.²⁷⁵

The OIP customs experts performed a preliminary investigation of Rafidain Bank and determined that it was founded by the Iraqi Ministry of Finance and its shareholder was listed as the Republic of Iraq. In Ms. Johnston’s view, the mere existence of Rafidain Bank potentially violated the

²⁷⁵ Felicity Johnston note-to-file (Sept. 25, 2001); Felicity Johnston e-mails to OIP customs experts, Farid Zarif, and Carl de Cruze (Sept. 21, 2001). At that time, Belhasa had several other contract applications under review by OIP. Ibid. Ms. Johnston’s September 25th note-to-file also indicated that: (1) the UAE Mission had been notified of the Belhasa contract provision and informed that such payment would violate the sanctions regime; and (2) Belhasa was requested to confirm that no payments to Rafidain Bank, or any bank account other than the United Nations escrow account, would be paid in connection with its Programme-related transactions. Ibid.

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sanctions regime. Ms. Johnston suggested that the Belhasa case, and Rafidain Bank connection, be brought to the attention of OLA and possibly thereafter the 661 Committee.²⁷⁶

Subsequent to the September 25th note, OIP obtained additional information about the Belhasa contract and undertaking. On September 30, 2001, Belhasa admitted to OIP that it had signed the undertaking, explaining that it was done out of “ignorance,” but claimed that it would not make any payment “to Rafidain bank or any other bank accounts.” Shortly thereafter, the Belhasa contract was circulated to the 661 Committee with an OIP customs report that mentioned the “undertaking by the supplier to settle the sum of J. Yen 1,436,640.00 to the Rafidain Bank Amman branch,” which the supplier attributed to “after sales service for two years.” The customs report indicated that the supplier had informed OIP that no payment would be made to Rafidain Bank or any other bank account. Ms. Johnston’s subsequent note indicates that the contract was placed on hold on October 12, 2001. The Committee has confirmed that COMM no. 802803 was not executed.²⁷⁷

Ms. Johnston recalled the Belhasa incident and stated that the written undertaking for a ten percent payment to a Rafidain Bank account was of particular interest to her and the customs experts. Additionally, she had seen references to Rafidain Bank before and confirmed that she requested her team to investigate, which revealed that Rafidain Bank was owned and controlled by the Iraqi regime. Ms. Johnston indicated that she directed the customs experts to use caution when reviewing any Belhasa contracts and to contact the UAE Mission with issues. Ms. Johnston stated that she also mentioned her concern about Rafidain Bank to an official from the United Kingdom Mission. Other than the foregoing, she does not remember OIP taking any action regarding either Belhasa or Rafidain Bank with either OLA or the 661 Committee.²⁷⁸

Ms. Johnston was shown a copy of the Irregularities Spreadsheet, which included a note indicating that she had discussed the Belhasa matter with Mr. Zarif on September 21, 2001 and recommended that it be brought to the attention of the 661 Committee. When interviewed, Ms. Johnston confirmed that the note on the spreadsheet was accurate and reflected her thoughts on the matter—that the 661 Committee should have been notified. Ms. Johnston stated that to her knowledge neither Mr. Sevan, Mr. Zarif, nor anyone else in OIP followed her suggestion that the issue be raised with the 661 Committee. Mr. Zarif recalled internal OIP discussions of the Belhasa contract, but was unaware of whether the matter was forwarded to the 661 Committee.²⁷⁹

²⁷⁶ Felicity Johnston e-mails to OIP customs experts, Farid Zarif, and Carl de Cruze (Sept. 21, 2001); Felicity Johnston note-to-file (Sept. 25, 2001).

²⁷⁷ Belhasa Motors Co. L.L.C. letter to OIP (Sept. 30, 2001); OIP customs report, S/AC.25/2001/986/COMM.802803T (Oct. 8, 2001); Felicity Johnston note-to-file (Oct. 22, 2001); TaR, COMM no. 802803.

²⁷⁸ Felicity Johnston interviews (May 26 and June 10, 2005).

²⁷⁹ Felicity Johnston interview (June 10, 2005); OIP, “Irregularities Spreadsheet” (undated); Farid Zarif interviews (July 6, 8, and 14, 2005). The Committee has located multiple versions of the Irregularities Spreadsheet. The version cited here was shown to Ms. Johnston, who confirmed that she produced the

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7. Safmarine Container Lines NV

The final, and perhaps most compelling, incident described in the Johnston Note involved a complaint to OIP by a shipping company, Safmarine Container Lines NV (“Safmarine”). Ms. Johnston discussed the ten percent “cargo tax” being exacted at the Umm Qasr port that had been raised in letters from Safmarine and the Belgian Mission. The cargo tax had come to OIP’s attention in September 2001 when Safmarine advised the Belgian Permanent Mission that *“shippers were being required to pay a 10% tax, prior to unloading cargo, for all contracts approved during Phases VIII and IX.”* The Johnston Note stated that such “tax” was payable to the Iraqi State Company for Water Transport or Alia Transportation Company and that vessels were not allowed to unload until the fees were paid. Ms. Johnston recognized that OLA had indicated previously that certain payments for port fees and transportation were permitted under Resolution 986, but any such fees had to be reasonable and acceptable. Ms. Johnston estimated that the payment of the ten percent fee at Umm Qasr would equal payments of approximately \$569,000,000 to Iraqi entities outside of the United Nations escrow account, which would be neither reasonable nor acceptable.²⁸⁰

On October 22, 2001, the same day that the Johnston Note was prepared and sent to Mr. Sevan, Ms. Johnston responded to the Belgian Mission, explaining that she was preparing a report detailing cases of potentially illicit payments to the Iraqi regime. Ms. Johnston stated her understanding that Mr. Sevan had written to the Government of Iraq outlining the cases and that any response from the Iraqi regime would be forwarded to the 661 Committee. As discussed more fully below, the Committee has not located an executed version of Mr. Sevan’s letter to Iraq and no such letter appears on OIP’s log of out-going correspondence during this timeframe. Nor does it appear that the 661 Committee was informed of any of the information provided by Safmarine.²⁸¹

On November 20, 2001 the Belgian Mission again wrote to OIP requesting an update on the issue of “after sales taxes” and inquiring whether any action had been taken. The Belgian Mission indicated that Safmarine had reported that “shippers [were] still paying the after sales tax for shipments from Dubai to Umm Qasr and containers [were] refused when proof of this payment [was] missing.” Six days later, the Belgian Mission sent another letter to OIP, enclosing copies of communications from Safmarine, which explained that shipments containers from a number of Belgian companies had been blocked because an “after sales tax” of ten percent of the total

document; however, she indicated that the handwriting on the particular version was not hers. Felicity Johnston interview (June 10, 2005); OIP, “Irregularities Spreadsheet” (undated).

²⁸⁰ Felicity Johnston note-to-file (Oct. 22, 2001). The Safmarine incident was cited in the Johnston Note and there were further developments afterward. According to its website, Safmarine is one of the largest international shipping companies and offers container and break-bulk shipping services to many parts of the world via a fleet of owned and chartered vessels. Safmarine, “Safmarine Web Site,” <http://mysaf.safmarine.com>.

²⁸¹ Felicity Johnston note-to-file (Oct. 22, 2001); Farid Zarif e-mail to Benon Sevan (Oct. 22, 2001); Felicity Johnston fax to Belgium Mission (Oct. 22, 2001); OIP correspondence log (1997-2004).

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contract value had not been paid. One of the written attachments to the mission's letter reported that for Phases VIII and IX an "after sales service payment' [was] *applicable for all shipments to Iraq*. This tax [was] about 10% of the value of the cargo." The Belgian mission requested that Ms. Johnston look into the matter and recommend what the shippers and companies should do in order to deliver the goods to Iraq in a timely manner.²⁸²

When interviewed, Ms. Johnston remembered the Safmarine incident and the series of correspondence with the Belgian Mission regarding its repeated efforts to address the matter through OIP. Ms. Johnston expressed frustration to Mr. Zarif and urged him to press Mr. Sevan for action—disclosure to the 661 Committee. At the very least, she needed guidance from Secretariat leadership regarding what to tell the Belgian Mission in response to its persistent inquiries. Mr. Zarif stated that he did not recall the Safmarine incident. However, he acknowledged that by October 2001 he was aware that the kickbacks were a widespread problem, involving a large amount of money.²⁸³

The reports from Safmarine and the Belgian Mission put OIP on further notice that the kickback issue was much more than an isolated problem. OIP's information was not limited to rumors about a few contracts as Secretariat officials would later maintain. Rather, written complaints made it apparent to the OIP leadership that the kickback payments were a pervasive problem with significant impact on the functioning of both the sanctions and humanitarian programs. During interviews, Secretary-General Annan, Deputy Secretary-General Fréchette and Mr. Riza acknowledged that the problem, and all the evidence thereof, should have been forwarded to the 661 Committee and Security Council.²⁸⁴

D. REACTION TO THE JOHNSTON NOTE

The Johnston Note precipitated some internal communications within OIP, in particular discussions and e-mails on the subject of the regime's kickback scheme. Two draft letters to Iraqi officials were prepared for Mr. Sevan's review and signature. Additionally, a softened version of

²⁸² Belgium Mission letter to Felicity Johnston (Nov. 20, 2001); Belgium Mission letter to Felicity Johnston (Nov. 26, 2001). There were consequences to suppliers and member states that resisted paying the kickbacks. Specifically, Iraq refused to transact business. For example, on November 20, 2001, Mr. Almstrom (at the time serving as the Deputy Humanitarian Coordinator in Iraq) met with members of the Japanese Embassy to Iraq. Japanese officials informed Mr. Almstrom that the Iraqi regime had not awarded any contracts to Japanese companies since late 2000. Japanese companies refused to pay "kickbacks and oil surcharges" and were thus penalized by the Iraqi regime, according to the Japanese officials. Furthermore, the Iraqi regime encouraged Japanese firms to act as third-party suppliers, an arrangement that the companies resisted. Mr. Almstrom, who was then engaged in field operations in Northern Iraq, referred the Japanese officials to OIP headquarters in New York. John Almstrom fax to Benon Sevan and Tun Myat (Nov. 25, 2001).

²⁸³ Felicity Johnston interview (May 26, 2005); Farid Zarif interviews (July 6, 8, and 14, 2005).

²⁸⁴ Kofi Annan interviews (July 26-27, 2005); Louise Fréchette interviews (May 25 and 31, 2005); S. Iqbal Riza interview (July 25, 2005).

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the Johnston Note was converted into a memorandum from Mr. Sevan to Deputy Secretary-General Fréchette. Yet there is no evidence that either of the letters or the memorandum to the Deputy Secretary-General were actually forwarded. The Johnston Note summarized much (but not all) of OIP's accumulated knowledge of the kickbacks and offered the Secretariat a prime opportunity to report that knowledge to the Security Council and 661 Committee. However, the 90 and 180-day reports to the Security Council and the records of formal and informal 661 Committee meetings are devoid of any reference to what OIP officials knew was a widespread fraudulent practice and a violation of the sanctions regime.

1. Draft Letters to the Iraqi Ambassador

In reviewing the United Nations records, the Committee located two draft letters prepared in October and November 2001 for Mr. Sevan's signature. Each was addressed to Ambassador Al-Douri, the Iraqi Permanent Representative to the United Nations, and each referenced concerns about the kickback scheme.

The first draft letter bore the same date as the Johnston Note—October 22, 2001—and referred to an enclosed “note summarizing some of the cases” involving payments to the regime. The letter explained that some of OIP's contacts had “*effectively confirmed the initial suspicion of a fraudulent practice.*”²⁸⁵ Further, the letter provided:

Extensive discussions with the suppliers . . . have revealed that, as a *precondition for awarding contracts, the Iraqi buyer institutions have systematically sought written unilateral undertakings . . . to make post-award payments* into bank accounts other than the United Nations Iraq Account of amounts representing 10 per cent or higher of the value of the negotiated contracts.²⁸⁶

The language of the draft letter reflected an awareness and understanding of the scope of the kickback issue even beyond that set forth in the Johnston Note. Further, the letter recognized that Mr. Sevan was “*duty bound to bring the matter to the attention of the [661 Committee].*” Before doing so, however, the letter stated that Mr. Sevan wanted to “receive most urgently the views and comments of the Government of Iraq.”²⁸⁷

²⁸⁵ Benon Sevan letter to Iraq Permanent Representative (Oct. 22, 2001) (emphasis added). The date of the letter corresponds with the date of an e-mail to Mr. Sevan in which Mr. Zarif referred to preparation of the draft letter to the Government of Iraq and the attachment. Mr. Zarif's e-mail anticipated a meeting with Mr. Sevan on the subject of the draft letter and the “reported illicit payments.” Mr. Zarif added that he would bring Mr. Sevan a “hard copy.” Farid Zarif e-mail to Benon Sevan (Oct. 22, 2001). In a related e-mail sent two days earlier, Mr. Zarif indicated that he would “log the letter once . . . [Mr. Sevan had] revised/cleared the text.” Farid Zarif e-mail to Benon Sevan (Oct. 20, 2001).

²⁸⁶ Benon Sevan letter to Iraq Permanent Representative (Oct. 22, 2001) (emphasis added).

²⁸⁷ Ibid. (emphasis added).

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The October 22, 2001 letter to Ambassador Al-Douri appears to be a draft that Mr. Sevan reviewed, but never sent. All copies of this letter located by the Committee are unsigned and OIP's outgoing correspondence logs make no reference to it, which seems to indicate that it was not forwarded to the Iraqi Mission. Nonetheless, this letter is highly significant in that it confirms: (1) the existence of a "fraudulent practice"; (2) extensive discussions between OIP and suppliers; (3) the fact that the Iraqi regime was "systematically" requiring the post-award payments; and (4) recognition that the payments were being made into bank accounts other than the United Nations escrow account. Further, the letter acknowledges that OIP was "duty bound" to report such conduct to the 661 Committee.²⁸⁸

The Committee has located a second draft letter from Mr. Sevan to Ambassador Al-Douri dated "November XX, 2001," advising him of OIP's concerns about the above-referenced reports from the Belgian mission. The letter provided that Mr. Sevan had "been informed by the Permanent Mission of Belgium to the United Nations that suppliers shipping approved goods to Iraq via the port of Umm Qasr are currently required to pay a 10 per cent tax [to Iraqi controlled entities] . . . for all contracts approved under phases VIII and IX." Mr. Sevan's letter emphasized that such payments are "clearly contrary to the spirit of paragraph 4 of Security Council resolution 661 (1990)." The letter requested that "[a]ll payments or reimbursements from suppliers made in connection with contracts approved under the ESB (59 per cent account) should be credited to the United Nations Iraq account." As with the October 22nd letter discussed above, there is no indication that this letter was ever finalized and forwarded to Ambassador Al-Douri. The Committee's review of the outgoing correspondence logs has not revealed any version of the letter being sent. The only copies of the letter in the custody of the Committee are undated and unsigned.²⁸⁹

The circumstances surrounding the preparation of the draft letters to Ambassador Al-Douri are consistent with Ms. Johnston's statements to the Committee. As noted above, Ms. Johnston explained that she brought her concerns to the attention of her supervisor, Mr. Zarif, with the expectation that he would take the matter up with Mr. Sevan. Consistent with Ms. Johnston's understanding, OIP's records indicate that Mr. Sevan failed to either disclose the evidence of kickbacks to the 661 Committee or address the matter with Iraqi officials. When pressed by Committee investigators, Mr. Zarif acknowledged that Mr. Sevan may have decided not to send either of the above letters to the Iraqi regime. Mr. Zarif described Mr. Sevan as "very hesitant [and] very reluctant" to raise embarrassing issues, such as the kickback scheme, with the Iraqi regime. Mr. Zarif maintained that he was "overruled" in a number of situations as a result of Mr. Sevan's "extremely cautious" approach when dealing with the Iraqi regime.²⁹⁰

²⁸⁸ OIP correspondence log (1997-2004); Benon Sevan letter to Iraq Permanent Representative (Oct. 22, 2001).

²⁸⁹ Benon Sevan letter to Iraq Permanent Representative (Nov. 2001) (draft); OIP correspondence log (1997-2004).

²⁹⁰ Felicity Johnston interview (May 26, 2005); OIP correspondence log (1997-2004); Farid Zarif interviews (July 6, 8, and 14, 2005).

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2. Note to Deputy Secretary-General Fréchette

The Committee has located a third document that appears to have been prepared for Mr. Sevan's signature in reaction to the Johnston Note, a note from Mr. Sevan to the Deputy Secretary-General dated November 4, 2001. The document is identical to the Johnston Note, with a few notable exceptions. The differences between the two documents reflect a softening of the information assembled by the customs experts. For example, the Johnston Note explained that OIP was aware of a number of cases involving "potentially illicit payments to the Government of Iraq." Mr. Sevan's version changed this language to describe cases "which would appear to involve potential financial transactions outside the United Nations Iraq account." Further comparison of the two documents reveals that key portions of the Johnston Note were deleted from Mr. Sevan's note to the Deputy Secretary-General. A section, which dealt with three of the Woodhouse contracts, was deleted entirely from Mr. Sevan's version. Similarly, with respect to the Marubeni incident, the Johnston Note provided that "OIP will bring the matter to the attention of the Committee in due course," but Mr. Sevan's version deleted this language altogether.²⁹¹

As with the letters to the Iraqi Ambassador, OIP's outgoing correspondence log makes no reference to the note to Deputy Secretary-General Fréchette, again raising questions about whether the document ever left OIP. When interviewed by the Committee, Deputy Secretary-General Fréchette could neither confirm nor deny receiving the letter. She indicated that if she had received the November 4th document, it would have been the only time that Mr. Sevan provided her with this level of detail. Further, she denied ever having any discussions with Mr. Sevan on a "contract by contract" basis.²⁹²

Deputy Secretary-General Fréchette did not know whether OIP brought any of the cases cited in the November 4th note (or the Johnston Note, which she also denied seeing) to the attention of the 661 Committee, but she assumed that OIP had done so. Deputy Secretary-General Fréchette acknowledged that she took no affirmative actions to ensure that Mr. Sevan reported matters to the 661 Committee. Instead, she trusted that if disclosures were warranted, Mr. Sevan would make them. Initially, Deputy Secretary-General Fréchette told the Committee that if she had seen Mr. Sevan's note, she would have concluded that he had followed the established procedure. However, upon further questioning, Deputy Secretary-General Fréchette conceded that, in hindsight and given the nature of the evidence, the Secretariat should have brought the matters to the attention of the Security Council.²⁹³

When shown a copy of the November 4th note, Secretary-General Annan indicated that he did not recall seeing it before, but acknowledged that if OIP had that degree of factual detail, Mr. Sevan "absolutely" should have brought the information to the attention of the 661 Committee. More particularly, the Secretary-General stated that the detailed information set forth should have been

²⁹¹ Benon Sevan note to Louise Fréchette (Nov. 4, 2001); Felicity Johnston note-to-file (Oct. 22, 2001).

²⁹² OIP correspondence log (1997-2004); Louise Fréchette interviews (May 25 and 31, 2005).

²⁹³ Louise Fréchette interview (May 25, 2005).

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included in either a 90 or 180-day report to the Security Council, or in a “separate special report” to the 661 Committee. He stated that he had conversations on the general subject of kickbacks with Mr. Sevan, Deputy Secretary-General Fréchette, and members of the Security Council during 2001, but those conversations never involved this level of detail—which he stated he never received.²⁹⁴

3. Secretary-General's Reports to the Security Council

Contemporaneously with this growing volume of kickback evidence and preparation of the Johnston Note, the Secretariat issued two reports to the Security Council regarding the implementation of the Programme. First, a Secretary-General's 90-day report to the Security Council was issued on or about September 28, 2001. The report did not contain any discussion of the kickback issue. On October 11, 2001, informal consultations of the Security Council were held to discuss the Secretary-General's 90-day report. At the commencement of that meeting, Mr. Sevan stated that the “report of the Secretary-General contained all the information necessary,” and thus he would avoid making a lengthy statement to the Security Council. That same day, Mr. Sevan sent a note to Deputy Secretary-General Fréchette, with a copy to Mr. Riza, attaching the meeting summary.²⁹⁵

On or about November 19, 2001, and shortly after the Johnston Note and his November 14, 2001 meeting with the Iraqi Foreign Minister (described below), Secretary-General Annan sent another report to the Security Council pursuant to the Secretariat's obligations under the relevant Security Council resolutions. Despite all of the Secretariat's accumulated knowledge, that report made no mention of the kickback issue.²⁹⁶ In fact, the Committee has reviewed all of the 90 and 180-day reports from the Secretary-General to the Security Council submitted after December 2000, when the kickback issue began to escalate, until the removal of the previous Iraqi regime and has not located any evidence that the Secretariat raised the issue of kickbacks, or conferred the information it possessed in such reports.²⁹⁷ Likewise, as set forth in Volume II, Chapter 3 of this

²⁹⁴ Kofi Annan interview (July 26, 2005).

²⁹⁵ “Report of the Secretary-General pursuant to paragraph 5 of resolution 1360 (2001),” S/2001/919 (Sept. 28, 2001); OIP notes of informal consultations of the Security Council (Oct. 11, 2001); Benon Sevan note to Louise Fréchette (Oct. 11, 2001).

²⁹⁶ “Report of the Secretary-General pursuant to paragraph 5 of resolution 1360 (2001),” S/2001/1089 (Nov. 19, 2001). The November 19, 2001 report was done as a “150-day” report instead of the normal 180-day report pursuant to Resolution 1360. Ibid.

²⁹⁷ “Report of the Secretary-General pursuant to paragraph 5 of resolution 1330 (2000),” S/2001/186 (Mar. 2, 2001); “Report of the Secretary-General pursuant to paragraph 5 of resolution 1330 (2000),” S/2001/505 (May 18, 2001); “Report of the Secretary-General pursuant to paragraph 5 of resolution 1360 (2001),” S/2001/919 (Sept. 28, 2001); “Report of the Secretary-General pursuant to paragraph 5 of resolution 1360 (2001),” S/2001/1089 (Nov. 19, 2001); Benon Sevan briefing to the Security Council (May 29, 2002); Benon Sevan briefing to the Security Council (Sept. 25, 2002); “Report of the Secretary-General pursuant to paragraph 7 and 8 of resolution 1409 (2002),” S/2002/1239 (Nov. 12, 2002); “Report of the Secretary-General pursuant to resolutions 1447 (2002), 1472 (2003) and 1476 (2003),” S/2003/576 (May 28, 2003).

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Report, the Committee has reviewed all of the available meeting notes from both the formal and informal meetings of the 661 Committee and has not identified any additional discussion of the kickback issue from April 2001 until after the war.

4. Meetings with the Government of Iraq

On November 14, 2001, shortly after the preparation of the Johnston Note, a high-level meeting occurred between members of OIP, the Secretariat and Iraqi officials. The meeting took place at virtually the same time that OIP customs experts were receiving evidence of widespread kickback payments and reporting such matters to Mr. Sevan. In attendance were Secretary-General Annan, Naji Sabri, the Iraqi Foreign Minister, Ambassador Al-Douri, Ambassador Hasan, Mr. Riza, Mr. Sevan, and others. The meeting covered, among other topics, extensive discussion of the Programme, Secretary-General Annan's re-election, and other matters. There was no apparent mention of the Iraqi regime's systematic imposition of kickbacks on Programme contracts.²⁹⁸

Mr. Sevan traveled to Iraq during January and February of 2002. During the trip, Mr. Sevan met with Dr. Mahdi Mohammed Saleh, the Iraqi Minister of Trade, on January 16, 2002. Mr. Sevan informed the Minister that "several Permanent Missions in New York had expressed their concern over an alleged ten per cent commission, above normal port charges, that was being levied on goods arriving to the port of Umm Qasr." Further, Mr. Sevan stated that the Permanent Missions had inquired whether the Iraqi regime had a set policy in this regard. The Minister of Trade did not directly answer Mr. Sevan's inquiry, but responded rhetorically and with a litany of Iraqi complaints about the sanctions and the Programme. The meeting notes do not reflect any additional attempts by Mr. Sevan to raise the issue for discussion.²⁹⁹

E. GLASSCO LABORATORY EQUIPMENTS—FURTHER KNOWLEDGE BY THE DEPUTY SECRETARY-GENERAL AND CHEF DE CABINET

Several other examples of kickback payments were forwarded to OIP during 2001, but were not included in the Johnston Note or Irregularities File. One notable example concerns an incident involving Glassco Laboratory Equipments ("Glassco"), which was reported to Deputy Secretary-General Fréchette and Mr. Riza. Specifically, on August 17, 2001, Glassco sent a fax to the Indian Permanent Mission concerning a Programme contract with the Iraqi Ministry of Higher Education and Research. According to a company representative, Glassco had already shipped forty percent of the order in the previous month. The shipping company informed Glassco that, according to new "UN criteria," Glassco had to pay ten percent of the letter of credit value to the Iraqi authorities before the shipment could be moved from Dubai to Umm Qasr. The Indian

²⁹⁸ Notes of Kofi Annan's meeting with Naji Sabri (Nov. 14, 2001).

²⁹⁹ Benon Sevan travel records (Jan. 14 to Feb. 10, 2002); Benon Sevan note-to-file (Jan. 16, 2002).

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Permanent Mission forwarded the fax to United Nations Treasury, which forwarded the fax to Mr. Sevan, Mr. Connor, and Mr. Elfverson.³⁰⁰

Mr. Sevan sent a letter, dated August 30, 2001, to the Permanent Representative of India, informing him that there had not been any change in the Programme mechanisms that would permit post-award payments to any bank account other than the United Nations escrow account. Deputy Secretary-General Fréchette and Mr. Riza were both copied on the letter, which noted that the payment of port fees within Iraq could be acceptable, but that such fees could not “reasonably be expected to amount to ten per cent of the contract value.” Mr. Sevan requested that the Indian Mission inform Glassco of the foregoing and submit all correspondence on the matter, including any letter referencing the ten percent payment, to OIP.³⁰¹ The Glassco incident offers another example of a ten percent kickback being brought to the attention of Mr. Sevan and OIP and conveyed to Deputy Secretary-General Fréchette and Mr. Riza, without subsequent action being taken.

During the same period of time, on August 27, 2001, Mr. Sevan forwarded a letter he received from a German lawyer, Dr. E. Kurten, Sr., to Mr. Zarif, with a copy to Deputy Secretary-General Fréchette with a note entitled “Illicit payments.” Mr. Sevan instructed Mr. Zarif to review the letter and the whole kickback issue and “*come up with some concrete proposals to the 661 Committee.*” Mr. Sevan made two key admissions in this document: (1) that the kickback payments were indeed illicit; and (2) that the Secretariat had a duty not only to inform the 661 Committee of the problem, but also to proactively provide “concrete proposals.” Mr. Sevan’s recognition of the Secretariat’s duties makes the failure to inform the 661 Committee or the Security Council even more serious. When interviewed by the Committee, Mr. Zarif did not specifically recall this note, but was puzzled by Mr. Sevan’s directive. Specifically, Mr. Zarif stated that did not think there was any great mystery regarding what OIP should provide to the 661 Committee: information on the kickback scheme, but not “concrete proposals.”³⁰²

³⁰⁰ Glassco Laboratory Equipments letter to India Mission (Aug. 17, 2001); India Mission fax to Jennifer Carpio (Aug. 17, 2001). The contract for laboratory equipment was designated “COMM no. 601580” and the total contract value was \$776,752.50. There is a hand-written note in the top right-hand corner of the letter reflecting the persons copied. Ibid.

³⁰¹ Benon Sevan letter to India Mission (Aug. 30, 2001). On August 24, 2001, Mr. Sevan had directed Mr. Zarif to consult with the United Nations Treasury and prepare an appropriate response to the information provided by Glassco. Benon Sevan note to Farid Zarif (Aug. 24, 2001).

³⁰² E. Kurten, Sr. letter to the United Nations (July 30, 2001); Benon Sevan note to Farid Zarif (Aug. 27, 2001) (emphasis added); Farid Zarif interviews (July 6, 8, and 14, 2005). The July 30th letter was sent errantly to the United Nations’ Geneva office and forwarded to OIP by Rolf Knutsson on or about August 13, 2001. Dr. Kurten wrote on behalf of a group of international lawyers requesting action against corruption in the Programme. Specifically, the letter cited “representation companies” in Jordan, Lebanon, and Syria that were working “secretly on behalf of the Saddam Hussein regime” to create revenue streams “even against all existing embargoes.” E. Kurten, Sr. letter to the United Nations (July 30, 2001).

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F. CONTINUED KICKBACK PAYMENTS

As explained above, OIP accumulated substantial evidence of kickback and illicit payments to the Iraqi regime occurring from 1999 through 2001, culminating in the Fall of 2001 with the Johnston Note and Ms. Johnston's advocacy for disclosure to the 661 Committee. No such disclosures occurred (other than through a limited number of customs reports) and the kickback scheme continued through the end of the Programme.

Following the outbreak of war in the spring of 2003, Programme-related contracts were administered with assistance from the Coalition Provisional Authority ("CPA"), an organization consisting primarily of officials from the United States and the United Kingdom. As the CPA prioritized contracts and interfaced with Iraqi officials and suppliers, it quickly became apparent that for years the regime had perpetrated a wide-spread kickback scheme that affected the vast majority of Programme-related contracts.

1. From Late 2001 to the Outbreak of War

In November 2001 OIP learned of another example of an illicit payment being demanded by the Government of Iraq. On November 14, 2001, Enterprise Nationale de Tubes et Transformation de Produits Plat Anabib ("Anabib") submitted a contract for the sale of galvanized steel pipes to the Iraqi State Trading Company for Construction Materials, which required Anabib to pay ten percent of the contract price (€18,664) to the Iraqi regime. OIP wrote to the Algerian Mission on November 30, 2001 to inform them that the repatriation of any sum of money to Iraq "would clearly contravene" Security Council resolutions 661 and 986 and to request that the Mission advise the supplier that any payments could only be made to the United Nations escrow account. The Algerian Permanent Mission responded on December 4, 2001, writing that it had confirmed with Anabib that "there [wa]s no payment to be repatriated to the Iraqi Government or to any Iraqi company" and the table, which was "enclosed inadvertently," should be disregarded and sent back to the Mission.³⁰³

The OIP customs report, which was circulated to the 661 Committee on December 7, 2001 noted that "a recapitulation table of the prices of the goods [was] attached to the contract" and that all the prices had "been increased by 10% and that this amount will be repatriated to the G.O.I." The report also noted that after OIP inquired about the ten percent payment, it received a letter from the supplier confirming that no payment would be made to the Government of Iraq, or other Iraqi company. The 661 Committee approved the contract on December 11, 2001.³⁰⁴

³⁰³ "Notification or Request to Ship Goods to Iraq," p. 7 (Nov. 14, 2001) (attaching COMM no. 901962); Christoph Kanel letter to Algeria Mission (Nov. 30, 2001) (also requesting a written undertaking from the supplier of its understanding); Algeria Mission letter to Christoph Kanel (Dec. 4, 2001).

³⁰⁴ OIP customs report, S/AC.25/2001/986/COMM.901962H (Dec. 7, 2001); 661 Committee Chairman letter to Algeria Mission, S/AC.25/2001/986/OC.901962 (Dec. 11, 2001). Anabib delivered the goods to Iraq and authentication was performed by Cotecna on or about February 12, 2003. "Communication by

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Reports of kickbacks continued to flow into OIP during 2002. While Mr. Sevan was traveling in Iraq on January 24, 2002, the Spanish Permanent Mission forwarded a copy of correspondence received from Laiex, S.L. ("Laiex"), a Spanish company, to a United Nations Treasury Finance Officer and OIP. The correspondence regarded the payment of ten percent of the contract value to its Iraqi customer. Laiex was informed that if it failed to pay the ten percent fee, it would not be paid for the goods delivered. The matter was reviewed by OIP and added to the Irregularities File, but it does not appear that any additional action was taken; nor does it appear that the 661 Committee was notified.³⁰⁵

On March 19, 2002, the Denmark Mission to the United Nations, wrote to OIP and explained that a Danish company, Oticon A/S ("Oticon"), was in the process of shipping hearing aids and related parts to Iraq pursuant to a Programme-related contract. The correspondence explained that Oticon was required to pay an "after sales tax" to the Iraqi regime; otherwise the shipment would be rejected. The Danish Mission asked Ms. Johnston whether OIP was aware of the "after sales tax" being levied against suppliers by the Iraqi regime. Three days later, Ms. Johnston responded that the payment of the "tax" would contravene the provisions of Resolutions 661 and 986 and requested that the Denmark Mission advise Oticon that the payment was not permissible. Further, Ms. Johnston recommended that the supplier proceed with the delivery of the goods and stated that, if the regime rejected the goods prior to authentication, "the Office of the Iraq Programme should be alerted without delay and the matter . . . referred to the Committee established by Security Council resolution 661."³⁰⁶ Ultimately, the Oticon transaction was completed. The goods were authenticated by Cotecna on or about March 28, 2002 and payment was made from the United Nations escrow account on or about May 7, 2002.³⁰⁷ The Committee has not located any additional correspondence between OIP and Oticon regarding the "after sales tax." Nor does it appear that the 661 Committee was notified of this matter.

On the eve of war in early 2003, the Iraqi regime still insisted that suppliers make illicit payments on Programme-related contracts, and the continuing sanctions breaches were evident to OIP. On March 26, 2003, shortly after the outbreak of hostilities in Iraq, Capex Spain ("Capex"), a

Designee of Secretary-General," no. 01191/184166 (Feb. 12, 2003). Payment was made to Anabib on or about April 4, 2003. Transaction summary (Apr. 4, 2003). This incident was added to the OIP Irregularities File. OIP, "Irregularities Spreadsheet" (undated).

³⁰⁵ Spain Mission fax to Jennifer Carpio (Jan. 24, 2002). There was, however, limited correspondence within the Secretariat. See, e.g., Suzanne Bishopric memorandum to Joseph Connor (Feb. 4, 2002) (a handwritten note on the memorandum, signed by Mr. Zarif, questioned: "Why is Treasury responding to this letter which is addressed to [OIP]?").

³⁰⁶ Denmark Mission fax to Felicity Johnston (Mar. 19, 2002) (attaching an e-mail from Oticon's Jordanian shipping agent); Felicity Johnston fax to Denmark Mission (Mar. 22, 2002); OIP customs report, S/AC.25/2001/986/COMM.802645M (July 5, 2001). The contract was approved by the 661 Committee on or about July 9, 2001. 661 Committee Chairman letter to Denmark Mission, S/AC.25/2001/986/OC.802645 (July 9, 2001).

³⁰⁷ "Communication by Designee of Secretary-General," no. 02677/162616 C (Apr. 3, 2002); Transaction summary (May 7, 2002).

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Spanish company, forwarded documents to the Spanish Mission regarding a contract with the Iraqi Ministry of Oil; the Spanish Mission forwarded the materials to OIP. Capex had paid a kickback to the Iraqi regime, but did not have a receipt of payment so the Iraqi officials blocked shipment of the goods in Basrah. Capex requested the Spanish Mission's assistance in resolving the situation and furnished documentation to its mission showing that it had paid a kickback in the amount of 28,623 euros. An OIP internal, handwritten note stated "nice one/they have paid 10%," indicating OIP's understanding that the kickback payment to Iraq had occurred. By letter dated April 25, 2003, OIP wrote to the Spanish mission, explaining that OIP could not assist Capex in their efforts to ship the goods, because the "payment to an Iraqi Government entity constitute[d] a breach of the sanctions [regime]."³⁰⁸

The above chronology of events establishes that OIP continued to receive a steady flow of reports demonstrating the existence of the kickback scheme up until the outbreak of war in the spring of 2003. However, neither OIP nor the Secretariat as a whole took proactive steps to raise the continuing issue of the kickback scheme with the Security Council or 661 Committee.

2. CPA Hand-Off

During the spring of 2003, Saddam Hussein and his Baathist regime were removed from power and governing authority became vested in the Coalition Provisional Authority ("CPA") and the Iraqi Governing Council ("IGC").³⁰⁹ The power shift resulted in a transfer of information as the Iraqi Ministries began to work directly with the CPA. Through this relationship with Iraqi officials, the CPA learned about the widespread kickback payments and side agreements connected to Programme-related contracts. Iraqi officials explained to the CPA how the system worked, i.e. that the inflated price was agreed between the buyer and the supplier with the balance being banked into accounts outside Iraq in Syria, Jordan, Lebanon, and Switzerland. In June 2003, Mr. Zarif and Mr. Mocibob traveled to Iraq and were informed of the kickback scheme by CPA officials. A United States official informed the Committee that Mr. Mocibob and Mr. Zarif admitted that OIP had heard rumors of kickbacks, but they had claimed that the rumors were unconfirmed and that OIP was unaware of the scope of the kickback scheme.³¹⁰

³⁰⁸ Capex Spain letter to Spain Mission (Mar. 26, 2003); Spain Mission fax to Felicity Johnston (Apr. 21, 2003) (handwritten note on document); Felicity Johnston fax to Spain Mission (Apr. 25, 2003). Capex furnished documentation to its mission that it had in fact paid a kickback in the amount of 28,623 euros.

³⁰⁹ The CPA was established as the temporary governing body of Iraq on or about April 21, 2003. See, e.g., Council on Foreign Relations, "Iraq Timeline," www.cfr.org/publication.php?id=535. Soon thereafter, the IGC was established, which was composed of twenty-five Iraqis who were authorized to name ministers and assist with the drafting of an Iraqi constitution. *Ibid.* Paragraph 16 of Security Council resolution 1483, which was enacted on May 22, 2003, authorized the Secretary-General to prioritize contracts in accordance with the needs of the Iraqi people and in coordination with the CPA and the interim Iraqi administration. S/RES/1483, para. 16 (May 22, 2003).

³¹⁰ United States official #17 interview (July 13, 2005); Farid Zarif interviews (July 6, 8, and 14, 2005); Darko Mocibob interview (Aug. 16, 2005). The United States official also indicated that Mr. Mocibob and Mr. Zarif were very concerned with making allegations against suppliers. Hence, a ruse was developed to

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On June 8, 2003, Mr. Mocibob met with a number of United Nations agencies and the CPA to discuss a number of issues in connection with the handover of the Programme from OIP to the CPA, including the after-sales-service fees of ten percent. Mr. Mocibob reported to Mr. Zarif that he had outlined OIP's plan to deal with the issue; once OIP was requested formally to do so by the CPA. Mr. Mocibob further reported to Mr. Zarif that, according to the CPA's information, approximately eighty percent of the contracts in the oil and food sectors included a kickback. When interviewed by the Committee, Mr. Mocibob contended that CPA personnel informed the United Nations that they had uncovered, from interviews with Ministry of Trade employees, that the former regime had been including an after-sales-service fee on most, if not all, contracts entered after Phase VIII. He stated that the revelation was news to him and that while OIP had begun "hearing rumors" and receiving calls from suppliers in late 2000 regarding kickback payments to the regime, it never received any written complaints.³¹¹

On June 10, 2003, shortly after his return from Iraq, Mr. Zarif appeared at an informal meeting of the 661 Committee. A variety of issues were discussed at that meeting. Remarkably, Mr. Zarif did not disclose to the 661 Committee the nature of Mr. Mocibob's conversations with the CPA regarding the kickback charges and the necessity to remove the side agreements from the contracts being prioritized. When interviewed by the Committee, Mr. Zarif insisted that he was "shocked and awed" by the information uncovered by the CPA about the magnitude of the kickback scheme. When asked why he did not inform the 661 Committee of this "shocking" information on June 10th, Mr. Zarif stated that he could not recall. Nor could he recall any specific conversations with Mr. Sevan on this significant issue.³¹²

When the Committee asked Ms. Johnston about the "revelation" by the CPA that the kickback scheme was prevalent across the board on almost all contracts, she remembered Mr. Zarif and Mr. Mocibob's visit to Iraq. In contrast to her colleagues' statements, she stated that she was not surprised about the extent of the kickbacks. Ms. Johnston said that her understanding, formed on the basis of a number of conversations, was that the senior OIP officials—namely, Mr. Zarif and Mr. Sevan—were not surprised by the news.³¹³ Based upon the body of evidence set forth above, Ms. Johnston's recollection—that the information was not surprising—is corroborated.

Toward the end of June, a United States official called Mr. Sevan to deliver a formal request from Ambassador L. Paul Bremer, the CPA Administrator in Iraq. The United States official requested that Mr. Sevan and OIP take measures to eliminate the kickbacks provisions. Mr. Sevan was also

reduce the contract prices by a percentage due to the removal of "after-sales-service fees"; rather than "kickbacks." Ibid. As set forth in Volume II, Chapter 3, the CPA also informed the 661 Committee of the kickback scheme.

³¹¹ Darko Mocibob e-mail to Farid Zarif (June 8, 2003); Darko Mocibob interviews (July 6, 2004 and Aug. 16, 2005). The Secretariat agreed to work with the CPA to save escrow account money by reducing the ten percent charges. Ibid.

³¹² OIP notes of informal 661 Committee meeting (June 10, 2003); Farid Zarif interviews (July 6, 8, and 14, 2005). Mr. Zarif stated that he "assumed the 661 Committee was being updated by others." Ibid.

³¹³ Felicity Johnston interview (May 26, 2005).

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directed to inform the CPA if the negotiations relating to prioritized contracts resulted in any price increases. There is no indication in Mr. Sevan's notes regarding this directive as to OIP's response.³¹⁴

Following the United States official's June 25, 2003 request to Mr. Sevan, a second United States official sent a letter to Secretary-General Annan, explaining that a "significant number of [Programme-related] contracts included after-sales service fees of 10-19 percent of the total value of each contract." The letter expressed the position that the suppliers should be relieved of their responsibility to pay such fees and that the CPA's agreement to the prioritization of contracts would be contingent upon the elimination of the kickback fees. A United States official indicated that the letter to Secretary-General Annan was meant confirm the CPA's position that it wanted to keep contracts moving, while at the same time clearly articulating that contracts providing for the payment of kickbacks would not be approved. The United States official did not have any personal contact with either the Secretary-General or the Deputy Secretary-General, but stated that the letter should not have come as a surprise.³¹⁵

Several weeks later, on July 22, 2003, Secretary-General Annan, Mr. Riza, Mr. Sevan, and others met with members of the Iraqi Governing Council ("IGC"). During that meeting, the IGC noted that "Saddam Hussein and his regime had, by collecting 10% of all contracts in the form of an 'after sales fee', managed to siphon off billions of dollars." In defense of the United Nations and OIP, Mr. Sevan offered a three-pronged response: (1) "what the previous Government of Iraq [did] was not under the UN's control"; (2) the Government of Iraq had selected the contractors and signed the contracts; and (3) the "**CPA had only recently made the UN aware of the 10% after sales fee.**" According to the meeting notes, the Secretary-General added that "in the unique sanctions environment of the previous period, the Iraqi government had established a superstructure of administration by choosing its own contractors, etc."³¹⁶ Mr. Sevan's suggestion that the Secretariat had been made aware of the kickback scheme only recently, which went uncorrected in the presence of the Secretary-General and Mr. Riza, defies the accumulation of detailed evidence within OIP and the less detailed, but clear reports conveyed to the 38th Floor.

In November of 2003, shortly before the official handoff of the humanitarian effort in Iraq to the CPA, a United States official wrote to Mr. Sevan recognizing that the CPA and OIP had achieved considerable success in addressing the kickback disputes. The letter informed Mr. Sevan that approximately eighty-eight percent of such disputes had been resolved. On November 21, 2003,

³¹⁴ Benon Sevan note-to-file (June 25, 2003).

³¹⁵ CPA letter to Kofi Annan (July 5, 2003); United States official #17 interview (July 13, 2005).

³¹⁶ United Nations record of Kofi Annan's meeting with the Iraqi Governing Council (July 22, 2003) (emphasis added).

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the Oil-for-Food Programme officially terminated and responsibility was transitioned to the CPA. OIP remained “open” to wind-down until May 31, 2004.³¹⁷

G. SECRETARIAT'S RESPONSE TO KICKBACKS ALLEGATIONS

Allegations surrounding Secretariat complicity or knowledge of sanctions violations began to surface prior to the end of the Programme. For example, on September 26, 2002, *The Wall Street Journal*, published an article entitled “The Oil-for-U.N.-Jobs Program,” which asserted that “Mr. Annan and his crew have winked at Iraq’s gross violations of U.N. agreements,” including the sanctions, which were intended to prevent Saddam Hussein from obtaining revenue for illicit purposes. The article charged that Saddam Hussein’s regime was avoiding the sanctions via surcharges, kickbacks and smuggling.³¹⁸

The allegations increased in specificity and frequency during the second half of 2003 and the beginning of 2004. On or about June 9, 2003, Edward Mortimer, Director of Communications and Chief Speech Writer for the Executive Office of the Secretary-General, met with Ahmad Chalabi, who indicated that he was going to initiate a public campaign against the United Nations for having enabled the Iraqi regime to make substantial profits under the Programme. When Mr. Mortimer responded that “such payments were made without the knowledge or approval of the UN,” Mr. Chalabi retorted that the “payments were notorious, and that the . . . [Secretary-General] should have made greater efforts to expose them or at least insisted that companies state whether or not they had made them.” At the conclusion of his summary note, which was copied to Secretary-General Annan, Deputy Secretary-General Fréchette, Mr. Riza, and Mr. Sevan, amongst others, Mr. Mortimer asserted, “you can see what the line of attack will be, and you may want to guard against it—particularly in your public appearances and statements.”³¹⁹

On December 16, 2003, Mr. Corell informed Secretary-General Annan and Deputy Secretary-General Fréchette that he had spoken to Mr. Hanks-Drielsma, who asserted various allegations of misconduct regarding the administration of the Programme. Mr. Corell informed the 38th Floor that during the conversation, Mr. Hanks-Drielsma maintained that “the Programme had been misused, including with kick-backs and arrangements for siphoning off certain money for the benefit of [the] then President of Iraq.”³²⁰

Toward the end of January 2004, an Iraqi newspaper, *al-Mada*, published a list of approximately 270 individuals and entities that were awarded oil allocations by the former Iraqi regime during

³¹⁷ CPA letter to Benon Sevan (Nov. 10, 2003); Kofi Annan statement to the Security Council (Nov. 20, 2003); President of the Security Council statement, S/PRST/2003/24 (Nov. 20, 2003); OIP, “Closure of the Office of the Iraq Programme,” <http://www.un.org/Depts/oip/closure.html>.

³¹⁸ Claudia Rosett, “The Oil-for-U.N.-Jobs Program,” *The Wall Street Journal*, Sept. 26, 2002, p. A16.

³¹⁹ Edward Mortimer note to Sergio Vieira de Mello (June 10, 2003).

³²⁰ Hans Corell note to Kofi Annan (Dec. 16, 2003). Mr. Corell directed Mr. Hanks-Drielsma to set forth the allegations in writing. *Ibid.*

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the Programme. Prominent among the names on that list was Mr. Sevan, the Programme's Executive Director. This story was picked up in the international press on or about January 29, 2004. Several days later, on February 6, 2004, a high-level meeting was chaired by Deputy Secretary-General Fréchette and attended by Mr. Sevan and other senior Secretariat officials to discuss the growing allegations. At the conclusion of the meeting, it was agreed that the Secretariat would prepare a substantive paper on "management related issues, explaining how the . . . [Programme] functioned" for the purpose of "educating" the press and others on the mechanics of the Programme."³²¹

Pursuant to the direction given at the February 6th meeting, a briefing paper, entitled "Responsibilities Under the Oil-for-Food Programme and Iraq Sanctions," was prepared, setting out the Secretariat's positions regarding the allegations and issues that had arisen in connection with the Programme, including the kickback issue. The paper maintained that OIP "did not have a policing role under the sanctions" and "operated on the basis of complex rules and procedures established by the Security Council and its 661 Sanctions Committee." However, the briefing paper asserted that "[i]f someone brought documented concerns or evidence of breaches to the attention of OIP, that information was passed directly by OIP to the 661 Committee, which had the authority to bring it to the attention of the Government concerned for investigation." Further, it provided that "the UN had no way of knowing what other transactions might be going on directly between the Iraqi government and the buyers or sellers," but admitted that "it was more and more widely suspected that the Iraqi government was extracting illicit premiums from oil purchasers, and illicit kickbacks from suppliers."³²²

With respect to kickbacks, the Secretariat's initial position was that it learned of the scheme after the war, when the CPA informed it that contractors added an after-sales-service fee to bids in order to pay the kickback to the Government of Iraq. Further, the briefing paper stated that because the kickback "arrangements were not reflected in contracts submitted to the Programme for approval, *the UN was unaware of this practice until the CPA passed this information on.*" The briefing paper does not contemplate any misconduct or negligence by the Secretariat or its officials, but attempts to shift the blame to the Security Council, the 661 Committee, the member states, the relevant Security Council resolutions, and Saddam Hussein and his regime.³²³

³²¹ "Presidents, Journalists, and Parties Received Millions of Oil Barrels from Saddam," *al-Mada*, Jan. 25, 2004; Sabah Jerges, "Iraq council asks Oil Ministry to supply information on Saddam oil-for-support scandal," *Associated Press* (Jan. 29, 2004); senior management meeting notes (Feb. 6, 2004). The February 6th meeting, which was chaired by Deputy Secretary-General Fréchette, was attended by Mr. Corell, Mr. Prendergast, Mr. Sevan, Mr. Nair, Mr. Mortimer, Mr. Mengesha, and Mr. Dujarric. *Ibid.*

³²² United Nations briefing paper, "Responsibilities Under the Oil-for-Food Programme and Iraq Sanctions" (Feb. 12, 2004). The document contains a header, which indicates it is the work product of "steele+Mortimer+input from laishley, dujarric and manuel 12 Feb 2004." *Ibid.* It does not appear that the subject briefing paper was officially published, but was used as a primer for Secretariat officials in their public statements and written responses to allegations.

³²³ *Ibid.* (emphasis added).

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However, the evidence chronicled above reflects that the Secretariat had significantly greater information during the Programme than the briefing paper would suggest.

By March 26, 2004, in a briefing to United States Congress staff members, the Secretariat advanced a slightly revised position regarding the kickback allegations. During that meeting the Secretariat maintained that it “had heard rumors and had seen media articles in late 2000” regarding ten percent kickbacks, but never had any hard evidence of such payments. Further, the Congressional staffers were told that while a handful of companies had informally approached OIP about kickbacks, the companies did not want to put the allegations into writing and OIP had advised them to go to their Permanent Missions.³²⁴ Likewise, these statements from the briefing clearly conflict with the substantial evidence accumulated by the OIP customs experts during the Programme.

That same day, March 26th, the Secretariat received an advance copy of a report to be released by the United States Defense Department regarding the Programme. In response, Mr. Mocibob wrote that the kickback issue was “a multifaceted one that ha[d] been emerging in various forms throughout the programme, not only limited to the so-called 10% after service fee cases[.]” Mr. Mocibob stated that while OIP was “often limited by the mandate and procedures, there is ample evidence that the UN Secretariat invested a considerable effort in documenting, reporting and, where appropriate, addressing various cases in order to close loopholes allowing for potential surcharges.”³²⁵

On April 20, 2004, Mr. Mocibob conducted a teleconference with certain Congressional staffers for a briefing on the Programme. During the teleconference, Mr. Mocibob reiterated the Secretariat's prepared position that the Secretariat was unaware of the kickbacks on Programme contracts until the end of the war when the CPA notified the Secretariat of such payments. However, the position continued to evolve. Mr. Mocibob now admitted that prior to 2003, OIP was aware of a few isolated cases, which had been reported to the 661 Committee. Mr. Mocibob stated that because the kickbacks “were kept around 10 per cent, it was not surprising that any excessive pricing was not noticed since it would have fallen within an acceptable range of prices.”³²⁶

This reference to cases being reported to the 661 Committee, appears to allude to “Darko's List,” which is discussed in Volume II, Chapter 3 of this Report. As set forth therein, “Darko's List” was a list of OIP customs reports compiled by Mr. Mocibob—after the allegations surfaced against the Secretariat—which purportedly identified to the 661 Committee approximately seventy contracts (out of thousands) as being potentially overpriced. The Committee's analysis in Chapter 3 of Volume II indicates that this claim is somewhat misleading for a number of reasons, including the fact that a significant number of the contracts were approved by OIP under the GRL

³²⁴ Darko Mocibob note-to-file (Mar. 26, 2004).

³²⁵ United Nations e-mail correspondence (Mar. 24-26, 2004) (e-mail exchange between Deputy Secretary-General Fréchette, Mr. Mortimer, Mr. Mocibob, and Mr. Eckhard, among others).

³²⁶ Frances Kinnon note-to-file (Apr. 21, 2004).

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procedures. During interviews with Committee investigators, both Secretary-General Annan and Deputy Secretary-General Fréchette pointed to this *ex post facto* document as evidence that the 661 Committee was informed by OIP of the kickback issue during the Programme.³²⁷ However, the Secretary-General, as well as several senior OIP officials, acknowledged that the inclusion of comments about pricing concerns in the customs reports alone was an insufficient approach to the kickback problem. These individuals acknowledged that the information regarding illicit payments should have been included in a 90 or 180-day report to the Security Council, a letter to the 661 Committee, or a special report.³²⁸

On April 29, 2004, Mr. Mocibob sent an e-mail to a number of Secretariat officials in advance of a meeting with the United States General Accounting Office (“GAO”). Mr. Mocibob questioned whether the Compendium, which was discussed in Part III of this Chapter, should be provided to the GAO. The GAO had requested the Compendium to determine whether OIP’s process of reviewing contract prices was appropriate. Mr. Mocibob noted that the Compendium procedures had a price review and referred to “fair market value” and possible “kick-backs.” Mr. Mocibob queried, “do we want to share these internal procedures with the US Mission/GAO. These have never been shared with the [661] Committee.” Mr. Mocibob stated that he did not think the Compendium had been provided in connection with the GAO’s April 29th request, but he did not know whether it had been provided subsequently.³²⁹

As the documentary and witness evidence detailed throughout this Chapter 4, Part II demonstrate, the public statements advanced by the Secretariat in the wake of the kickback allegations significantly downplayed or omitted both the volume and specificity of the Secretariat’s knowledge of the kickback scheme during the Programme. Moreover, when questioned by investigators, Secretary-General Annan, Deputy Secretary-General Fréchette, Mr. Riza, Mr. Zarif, and Ms. Johnston, among others, all acknowledged significantly greater awareness of the Iraqi regime’s illicit activity than the Secretariat publicly admitted.

H. CONCLUSION

During the Programme, the Secretariat received written complaints and information about illicit payments to the Iraqi regime from numerous Permanent Missions, including the Algerian, Austrian, Belgian, Canadian, Danish, Indian, Japanese, Spanish, Swiss, and United Arab Emirates Permanent Missions. Notwithstanding those reports, the Secretariat represented to the 661 Committee that it did not have any formal, documented complaints from missions. As set forth

³²⁷ OIP spreadsheet, “Cases identified as ‘problems with pricing’” (May 14, 2004); Kofi Annan interview (July 27, 2005); Louise Fréchette interview (May 25, 2005); Darko Mocibob interviews (July 6 and Sept. 20, 2004; Jan. 6, 2005).

³²⁸ Kofi Annan interviews (July 26-27, 2005); Felicity Johnston interview (May 26, 2005); Farid Zarif interviews (July 6, 8, and 14, 2005).

³²⁹ OIP Customs Compendium (undated) (emphasis added); Darko Mocibob e-mail to multiple recipients (Apr. 29, 2004); Darko Mocibob interview (Aug. 16, 2005).

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above, the OIP customs experts made limited efforts to prevent individual contracts (i.e. Hajlaoui, Belhasa, and Anabib) with obvious kickback provisions from being approved by inserting references into the customs reports, but this effort alone was plainly insufficient. There was no attempt by either Mr. Sevan or the Secretariat as a whole, to address the larger issue of systematic kickback demands—which it knew to exist. More particularly, not one of the numerous 90 or 180-day reports submitted to the Security Council, which were cleared for accuracy and completeness by the Deputy Secretary-General and signed by the Secretary-General, mentioned the illicit payment demands in connection with Programme contracts. Nor did Mr. Sevan, or the other members of the OIP staff who participated in 661 Committee meetings, convey the full extent of the Secretariat's knowledge of kickbacks.

The failure to divulge information did not rest with OIP alone. Secretary-General Annan, Deputy Secretary-Fréchette, and Mr. Riza were all informed of the issue of kickbacks, but remained passive. Secretary-General Annan stated that he orally directed Mr. Sevan to report sanctions violations to the 661 Committee, but the Committee has been unable to corroborate that statement with any documentary evidence or witness statements. Beyond such an oral directive, it does not appear that the Secretary-General or the Deputy Secretary-General took any action to ensure that OIP acted transparently with the Security Council and 661 Committee—in the 90 and 180-day reports or otherwise. Thus, the kickback scheme, which violated Security Council resolutions 661 and 986 and enabled Saddam Hussein and his regime to garner in excess of \$1.6 billion dollars, continued until the removal of his regime.

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IV. OIL SURCHARGES

The Committee's First Interim Report indicated that Resolution 986 allowed the Government of Iraq to select the buyers of its oil and described the process by which the Iraqi regime, more particularly the "Command Council," decided to whom it would sell its oil. During the first three phases of the Programme, the regime focused its allocations on major oil companies. Beginning in the fourth phase, the Iraqi regime increasingly targeted individuals and entities, who supported it, politically or otherwise. By 2000, the Iraqi regime was emboldened to the point that they sought to use the allocation process for dual purposes. The Iraqi regime continued to make special allocations of oil to its political supporters, but it also demanded that those persons and entities pay a surcharge on every barrel of oil into bank accounts controlled by the regime.³³⁰

As set forth in the Chapter 1 of Volume II, Iraq first began requesting its customers to pay an oil surcharge (outside of payments to the United Nations escrow account) of ten cents per barrel in August 2000. This demand originated during the middle of Phase VIII and many buyers did not comply. In November 2000, Iraq decided to make the payment of the surcharge mandatory and increased the demand to fifty cents per barrel. In October 2001, the United States and United Kingdom introduced a retroactive pricing mechanism in order to curtail the surcharge payments. Toward the end of the Programme, the Iraqi regime decided to discontinue the surcharge scheme. However, before doing so, the regime derived approximately \$229 million in revenue from the illicit surcharge payments.³³¹

Other sections of this Report describe in greater detail the allocation process and the conduct of the 661 Committee regarding surcharges. This section concentrates on the Secretariat's knowledge and response with respect to the issue of oil surcharges by the Iraqi regime. The investigation and evaluation begins in 1998 and focuses on the period of time from the beginning of Phase VIII through the end of the Programme.

A. EARLY WARNING—1998

Questions concerning the Iraqi regime's use of so-called "surcharges" on its oil exports surfaced on November 16, 1998, when a column entitled "PetroDollars" appeared in *Platt's Oilgram News*. The article stated that the regime was receiving sanctions-busting payments "through lucrative kickbacks and money laundering wittingly or unwittingly built in to the UN's little-watched Iraq oil pricing regime." Further, the article maintained that since the commencement of the Oil-for-Food Programme, Iraq had consistently proposed prices below market and the United

³³⁰ "First Interim Report," pp. 125-26. A complete list of the companies and individuals that received oil allocations was published by the Committee on October 21, 2004, and can be located on the Committee's website. See Independent Inquiry Committee, "Documents," <http://www.iic-offp.org/documents.htm>.

³³¹ Chapter 3 of Volume II includes a discussion of the developments in connection with the surcharge. Additionally, Chapter 2 of Volume I includes a discussion of the oil surcharges and the calculation of the figures cited by the Committee.

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Nations oil overseers had to prod them to bring prices up. The discount between the prices set by the United Nations and the fair market value had become a “black market currency” for the former Iraqi regime.³³²

As indicated above, under the terms of the Programme, Iraq was allowed to determine which companies were allocated the right to lift oil. The “PetroDollars” article explained that the Iraqi regime allocated its oil to “obscure trading companies,” rather than the major western refiners. The “obscure trading companies” had no use for the crude oil except to resell it for quick profits. Iraq sought to direct the flow of the discounts. The day after the publication of the “PetroDollars” article, Standard & Poors issued a press release regarding the Iraqi regime’s manipulation of the Programme, suggesting that the money was being used to fund the Iraqi military.³³³

The same day the “PetroDollars” article was published, Mr. Sevan met with the Secretary-General. The occurrence of this meeting is confirmed by both the Secretary-General’s official schedule and Mr. Sevan’s electronic organizer; however, the Committee has not located meeting notes from such meeting. When interviewed by the Committee, the Secretary-General indicated that he did not recall seeing the “PetroDollars” article. While not confirming any meeting with Mr. Sevan regarding the article, the Secretary-General explained more generally that he met with Mr. Sevan and asked him to follow up and look into the surcharge allegations.³³⁴

The two articles also caught the attention of OIP officials. On November 19, 1998, Stephani Scheer, the Chief of Office for OIP, forwarded a note on the subject to the oil overseers with a copy to Mr. Sevan. Attached to Ms. Scheer’s note were the “PetroDollars” article and the Standard & Poors press release. Ms. Scheer requested immediate review and comment by the oil overseers. The following day, Mr. Kramar responded with a memorandum dismissing the content of the “PetroDollars” article, which he claimed consisted of “groundless allegations” and “provocative statements.” Mr. Kramar did not cite any facts or offer any concrete arguments to show how the article was “groundless” other than simply declaring that certain statements were false.³³⁵

When interviewed by the Committee, Ms. Scheer recalled the issue of surcharges surfacing with the “PetroDollars” article. Further, she remembered discussing the article with Mr. Sevan before seeking comment from the oil overseers. To Ms. Scheer’s knowledge, OIP did not raise the issue

³³² James Norman, “PetroDollars,” *Platt’s Oilgram News*, Nov. 16, 1998.

³³³ “First Interim Report,” pp. 125-26; James Norman, “PetroDollars,” *Platt’s Oilgram News*, Nov. 16, 1998; “Standard & Poor’s Platt’s Uncovers Breaking News: UN Oil-for-Food Deal Helps Iraq Pay for New Arms,” *Standard & Poor’s Press Release*, Nov. 17, 1998.

³³⁴ Kofi Annan appointment calendar (Nov. 16, 1998); Benon Sevan electronic calendar (Nov. 16, 1998) (recovered from Mr. Sevan’s office computer at the United Nations); Kofi Annan interview (July 26, 2005).

³³⁵ Stephani Scheer note to the oil overseers (Nov. 19, 1998); Alexandre Kramar memorandum to Stephani Scheer (Nov. 20, 1998). As of November 1998, there were two oil overseers, Mr. Kramar and Mr. Cullet. Alexandre Kramar interview (Nov. 18, 2004); Bernard Cullet interview (Nov. 10, 2004).

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with the 661 Committee or circulate the article to the 661 Committee. Ms. Scheer stated that the emergence of the surcharge issue in 1998 was likely to have been raised with Saybolt (the independent inspection agent charged with monitoring oil exports) officials, though she did not have any such specific recollection. Nor was she aware of any further discussions of the “PetroDollars” article, or the surcharge issue in general, either within OIP or the 661 Committee, until late 2000.³³⁶

Ms. Scheer expressed her belief that the article was “over-blown” and the source was one of the former oil overseers, Maurice Lorenz. Mr. Lorenz confirmed that he had been contacted by Mr. Norman, the author of the “PetroDollars” article, who asked him to confirm the article. Mr. Lorenz stated that he made a few minor corrections, but the remainder of the article was correct. When interviewed by investigators, neither Mr. Kramar nor Mr. Cullet was able to provide additional detail. Mr. Cullet did not recall the article and did not recall taking any action during that period of time. Mr. Kramar recalled the article, but did not provide any information beyond that in his memorandum to Ms. Scheer. However, Mr. Kramar did state that he was dismissive of the article, because of information he had received from David B. Chalmers, an oil trader, about its author.³³⁷

B. AWARENESS OF SURCHARGES—OCTOBER/NOVEMBER 2000

From November 1998 to October 2000, neither the Secretariat nor the 661 Committee appear to have discussed the possibility that Iraq was levying oil surcharges. In early October 2000, OIP was informed of reports that the Iraqi regime was demanding surcharge payments. The surcharge issue escalated in the subsequent months as the Secretariat gathered additional evidence of the Iraqi regime’s intent from a variety of sources—including from the regime itself.

1. Growing Reports—October 2000

In early October 2000, Mr. Sevan received word that illicit payments to the Iraqi regime in connection with oil sales would be the subject of discussion at an upcoming 661 Committee

³³⁶ Stephani Scheer interview (Apr. 25, 2005).

³³⁷ Ibid.; Maurice Lorenz interview (Sept. 15, 2004); Alexandre Kramar interview (Nov. 18, 2004); Bernard Cullet interview (Nov. 10, 2004). Mr. Norman previously had written an article associating Mr. Chalmers with illegal arms trading. Mr. Chalmers also told Mr. Kramar that if what Mr. Norman wrote was true, he (Mr. Chalmers) would be in jail. Alexandre Kramar interview (Nov. 18, 2004). It should be noted that on April 14, 2005, the United States Attorney’s Office for the Southern District of New York unsealed an indictment of Mr. Chalmers; two of his associates (John Irving and Ludmil Dionissiev); Bayoil (USA), Inc., a Delaware corporation based in Houston, Texas; and Bayoil Supply & Trading Limited, a company based and incorporated in the Bahamas. The four count indictment charges the aforementioned with: (1) conspiracy to commit wire fraud and to engage in prohibited financial transactions with Iraq; (2) wire fraud; (3) prohibited financial transactions with Iraq; and (4) violation of the International Emergency Economic Powers Act. Additionally, the indictment makes a forfeiture allegation. *United States v. David Chalmers, Jr., et al.*, S1 05 Cr. 59 (S.D.N.Y. Apr. 14, 2005) (criminal indictment).

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meeting. On October 11, 2000, Mr. Sevan sent an e-mail to the three oil overseers at the time, Mr. Kramar, Michel Tellings, and Morten Buur-Jensen, warning them to be prepared to answer questions from the 661 Committee about “how oil contracts are awarded, whether oil pricing mechanisms allow buyers to manipulate contracts to make additional profits and whether the current procedures in place could potentially allow abuses to raise hard currency for the regime.” The next day, Ms. Scheer circulated an e-mail to Mr. Sevan, inviting him to attend a “dress rehearsal” to discuss the oil pricing issue in preparation for the upcoming 661 Committee meeting. According to Ms. Scheer, as of October 2000, the oil pricing and surcharge issue were “coming to a head.”³³⁸

On October 13, 2000, the 661 Committee held an informal meeting, during which the oil overseers made a presentation on oil pricing, which was followed by a discussion of the possibility of surcharge payments. The United Kingdom representative informed the 661 Committee that, according to multiple sources, the Iraqi regime was manipulating the pricing and destinations of its oil contracts to raise illegal revenue. The oil overseers were asked what protections were in place to detect and prevent such conduct. Mr. Kramar denied any knowledge that “contractual manipulation as identified by the United Kingdom” was occurring, though he conceded that the possibility of such activity “could not be totally excluded.”³³⁹

2. Correspondence from Iraq's Minister of Oil

On November 5, 2000, Amer Muhammad Rashid, the Iraqi Minister of Oil, informed Secretary-General Annan of the regime's intent to levy a 1.5 euro surcharge on every barrel of oil sold through the Programme. The regime claimed that the payments, which were to be deposited into a “special account designated by SOMO,” were necessary to maintain its oil infrastructure.³⁴⁰ As of November 2000, pursuant to Security Council resolution 1293, Iraq had secured \$600 million per phase, from Programme funds, earmarked for oil spare parts to maintain its oil infrastructure. The 1.5 euro surcharge sought by the Iraqi regime was intended to be in addition to that amount, but outside of United Nations control.³⁴¹

³³⁸ Benon Sevan e-mail to oil overseers (Oct. 11, 2000); Stephani Scheer e-mail to Benon Sevan (Oct. 12, 2000); Stephani Scheer interview (Apr. 25, 2005). The meeting was attended by Mr. Sevan, the oil overseers (Mr. Kramar, Mr. Tellings, and Mr. Buur-Jensen), Peter Boks of Saybolt, Georges Nasr, an OIP Programme Officer, and Ms. Scheer. Ibid.

³³⁹ OIP notes of informal 661 Committee meeting (Oct. 13, 2000).

³⁴⁰ Amer Muhammad Rashid letter to Kofi Annan (Nov. 5, 2000). Minister Rashid's letter was presented to the Secretary-General by Ambassador Hasan, together with an accompanying cover letter from the latter. Ibid. Those letters were provided to Secretary-General Annan through Mr. Riza, who also distributed copies to Deputy Secretary-General Fréchette, Joseph Connor, the Under Secretary-General of Management, and Mr. Sevan, among others. Vladimir Grachev note to Kofi Annan (Nov. 6, 2000).

³⁴¹ S/RES/1293 (Mar. 31, 2000); S/RES/1302 (June 8, 2000). Prior to Resolution 1293, Security Council resolution 1175 had permitted Iraq to apply \$300 million of Programme funds, per phase for the rehabilitation of its oil infrastructure. S/RES/1175 (June 19, 1998).

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The next day, Mr. Riza met with Ambassador Hasan, who expressed the Iraqi Government's expectation that the Secretary-General "would provide his assistance in explaining [the regime's] legitimate demand to the 661 Committee." Ambassador Hasan informed Mr. Riza that Oil Minister Rashid's intended "to start implementation" of his "decision" to impose oil surcharges charges "as early as tomorrow [November 7, 2000]." Ambassador Hasan indicated that he had advised Oil Minister Rashid to allow the Secretary-General to read the letter before taking action; however, the regime would take steps to open a "special account" for oil surcharges in "one of the Arab countries" in the coming days.³⁴²

On November 7, 2000, Secretary-General Annan forwarded Oil Minister Rashid's letter to the President of the Security Council with a cover letter, requesting that the matter be raised before the 661 Committee. That same day, the Secretary-General met with Ambassador Hasan to discuss the November 5th letter and informed him that he had forwarded the matter to the 661 Committee. He also advised Ambassador Hasan that "difficulties might be expected in the 661 Committee concerning this decision."³⁴³ Subsequent to the Secretary-General's meeting with Ambassador Hasan, there were several communications within the Secretariat commenting on Oil Minister Rashid's proposal.³⁴⁴

On November 17, 2000, the 661 Committee met to address several topics, including the November 5th request to impose the 1.5 Euro payments. In response to an inquiry, Mr. Buur-Jensen estimated that a 1.5 euro surcharge per barrel would benefit the Government of Iraq by approximately \$500 million per phase. Ms. Scheer stated that additional consultations were necessary "before the Secretariat could comment further on this issue."³⁴⁵

As set forth below, by the November 17th 661 Committee meeting, the Iraqi regime had already begun eliciting illegal surcharges on oil sold through the Programme. The Committee has not located any documentation indicating that the Secretariat formally responded to the Iraqi regime on the 1.5 euro issue.³⁴⁶ This approach was consistent with Mr. Sevan's position that the issue

³⁴² Vladimir Grachev note to Kofi Annan (Nov. 6, 2000).

³⁴³ Kofi Annan letter to Security Council President (Nov. 7, 2000); Notes of Kofi Annan's meeting with Iraq Permanent Representative (Nov. 7, 2000).

³⁴⁴ Benon Sevan note to Tun Myat (Nov. 8, 2000) (explaining that Iraq's interest in imposing surcharges fell "within the purview of the Council and its Committee"); Benon Sevan note to the oil overseers (Nov. 8, 2000) (advising that any provisions allowing for payments to the Iraqi regime of 1.5 euros per barrel were not permissible unless approved by the 661 Committee); Joseph E. Connor note to Kofi Annan (Nov. 8, 2000) (indicating that the Secretariat should not approve any contracts for the sale of Iraqi oil which provide for the payment of 1.5 euro/barrel to a special account); S. Iqbal Riza note to Joseph Connor (Nov. 17, 2000) (stating that the Secretariat "must try and ensure that Iraq does not take any unilateral actions").

³⁴⁵ OIP notes of informal 661 Committee meeting (Nov. 17, 2000).

³⁴⁶ The Committee did locate a draft letter written by Mr. Connor, but has not found any evidence that it was actually sent. Joseph Connor letter to Iraq Mission (Nov. 17, 2000) (draft). Additionally, in preparation for a meeting in late February 2001 between Secretary-General Annan and the Iraqi Foreign

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was “within the purview” of the Security Council and 661 Committee.³⁴⁷ This event was significant for a number of reasons. First, it showed the Iraqi regime’s bold intent to raise money outside of the United Nations’ control on each barrel of Programme oil. Second, this event was an example where the Secretary-General and Mr. Riza were at the forefront of a significant Programme issue, including interaction with the Iraqi Ambassador; rather than the Deputy Secretary-General or Mr. Sevan. Third, although both the Secretary-General and Mr. Riza met with Ambassador Hasan and gathered additional information beyond the text of the November 5th letter, it appears the Secretariat forwarded the letter to the Security Council without providing the additional information gained from the two meetings with Ambassador Hasan to the 661 Committee or Security Council.

3. Increasing Evidence of Surcharge Demands—November 2000

Not only did Iraq’s Oil Minister specifically advise the Secretariat of the regime’s desire to receive payments in connection with its oil exports, but during the ensuing days and weeks, the Secretariat also received a steady flow of reports that the regime had taken matters into its own hands. At this point, Secretariat officials—from both OIP and the 38th Floor—were also grappling with an onslaught of reports that the regime was smuggling oil to Syria and receiving kickbacks on Programme-related contracts.³⁴⁸ When the surcharge issue arose, Ms. Scheer stated that Mr. Sevan’s reaction was “here they [the Iraqi regime] go again.” According to Ms. Scheer, by late 2000 the Iraqi regime had gotten “cocky” and was testing the limits of the Programme.³⁴⁹

Following the 661 Committee’s discussion of surcharges on October 13th, Mr. Sevan had requested Saybolt to keep an eye on the surcharge issue and to report back to him. On November 16, 2000, Graham Brett of Saybolt sent an e-mail to Mr. Sevan confirming that “approaches [had] been made to the market to ‘set aside’ US\$0.50 per barrel on contracts[.]” Further, Mr. Brett warned Mr. Sevan that traders “would consider buying the oil at a US\$0.50 premium per barrel over [the price set by the oil overseers] from an intermediary, thus avoiding breaking UN Sanctions.”³⁵⁰

The next day, a spokesman for the Secretariat informed the press that the Iraqi regime was imposing a fifty cent surcharge per barrel on oil sales in contravention of sanctions provisions. The statement caught Mr. Sevan’s attention and prompted him to explain his understanding of the circumstances in an e-mail dated November 17, 2000. Mr. Sevan was upset that the Secretariat issued the press statement, explaining that the statement’s suggestion of “sanctions-busting”

Minister, Mr. Sevan prepared talking points, which referred to the outstanding issue of the 1.5 euro per barrel surcharge. Benon Sevan note to Jayanta Dhanapala (Feb. 14, 2001).

³⁴⁷ Benon Sevan note to Tun Myat (Nov. 8, 2000).

³⁴⁸ The Secretariat’s responses to kickbacks and smuggling are addressed in Volume III, Chapter Four, Parts III and V, respectively.

³⁴⁹ Stephani Scheer interview (Apr. 25, 2005).

³⁵⁰ *Ibid.*; Graham Brett e-mail to Benon Sevan (Nov. 16, 2000).

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activity by the Iraqi regime threatened to chill efforts by Secretary-General Annan to “entice” the regime to “cooperate.” However, Mr. Sevan acknowledged that “payments such as the 50 cents per barrel of oil demanded by Iraq from its customers is [*sic*] non-compliant with sanctions.”³⁵¹

Thus, the e-mail exchange demonstrates that as of November 17, 2000, Mr. Sevan was aware of the fifty cent per barrel surcharge imposed by the Iraqi regime and understood that such surcharges violated the sanctions.³⁵² Yet Mr. Sevan opposed the Secretariat’s public acknowledgment that the problem existed.

4. Benon Sevan’s Other Sources of Information

No discussion of this period would be complete without consideration of the parallel events unfolding with respect to Mr. Sevan and his other sources of information regarding the oil surcharges. The Committee has previously concluded that Mr. Sevan corruptly benefited from his request and receipt of Iraqi oil allocations and that Efraim (Fred) Nadler and Fakhry Abdelnour benefited financially from and assisted in Mr. Sevan’s corrupt activity. The day after Mr. Sevan received the November 16, 2000 e-mail from Saybolt (discussed above), AMEP and Shell exchanged correspondence about SOMO’s surcharge demand, which was made to AMEP on November 17, 2000. The same day that SOMO communicated to AMEP its oral surcharge demand of fifty cents per barrel, several phone calls were placed between numbers used by Mr. Nadler and Mr. Abdelnour and between Mr. Nadler and Mr. Sevan.³⁵³

C. IRAQ HALTS PROGRAMME EXPORTS—DECEMBER 2000

Disagreement between SOMO and the oil overseers as to pricing mechanisms for the month of December 2000 culminated with the Iraqi regime threatening to and then shutting off the flow of its oil through the Programme. The regime’s actions brought the pricing issue to the attention of the 38th Floor of the Secretariat; namely, Secretary-General Annan, Deputy Secretary-General Fréchette and Mr. Riza. During early December there was substantial communication between Mr. Sevan and those individuals. Although the 38th Floor was kept apprised of the situation and had ample information from which to take action, it maintained a passive approach to the oil surcharges.

By the end of November 2000, the United Nations and SOMO had been unable to agree on a price for December oil exports. Mr. Sevan informed Deputy Secretary-General Fréchette and Mr. Riza that he had met with Ambassador Hasan on November 27, 2000 to discuss the oil pricing impasse. Mr. Sevan stated that he had been urged “to consult with the oil overseers and encourage them to be more flexible in their approach to reviewing the pricing mechanism submitted by SOMO.” Three days later, Mr. Sevan updated Deputy Secretary-General Fréchette

³⁵¹ Benon Sevan e-mail to Frederic Eckhard (Nov. 17, 2000) (original in all capital letters).

³⁵² Ibid.

³⁵³ “First Interim Report,” pp. 121-164; “Third Interim Report,” pp. 5-52.

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and Mr. Riza on the situation, informing them that SOMO continued to seek a lower market value for Iraqi crude “in order to allow the necessary margin for buyers to pay Iraq 50 cents per barrel, with payments made into an account outside the control of the United Nations.” Further, Mr. Sevan added that the payment of a surcharge and deposit of funds outside of United Nations control was “unacceptable to the 661 Committee.”³⁵⁴

On December 1, 2000, Iraq stopped pumping oil through the Programme, which triggered a string of correspondence between Mr. Sevan, the Deputy Secretary-General, Mr. Riza, and the Secretary-General. Mr. Sevan informed the Deputy Secretary-General by e-mail that Iraq’s decision to cutoff oil production was “part of their effort to chip off the sanctions by insisting on a surcharge of 50 cents per barrel of oil to be placed outside the UN control.” Deputy Secretary-General Fréchette assured Secretary-General Annan that she was in touch with Mr. Sevan regarding the surcharge demands and cautioned him against making a statement before an official communication was received from the Iraqi regime. At the end of the day, Mr. Sevan submitted a written briefing to Secretary-General Annan, Mr. Riza, and Deputy Secretary-General Fréchette, explaining that no agreement had been reached between the oil overseers and SOMO. Mr. Sevan indicated that “anybody familiar with the global oil market can discern that the pricing proposed by Iraq was not reasonable.” He also reiterated that the excessive premia allowed for surcharge payments to Iraq, outside of United Nations control, which was unacceptable to the 661 Committee.³⁵⁵ It was beyond dispute that the lower pricing sought by the Iraqi regime was the mechanism that supported the payment of surcharges, which (beyond being “unacceptable” to the 661 Committee) were an obvious violation of Resolutions 661 and 986.

Importantly, Mr. Sevan alerted the Secretary-General and other high-ranking officials within the Secretariat that “the position taken by the Iraqis regarding the pricing of December oil [was] a culmination of a number of previous actions taken or attempted by the Government of Iraq.”³⁵⁶ Put in context, Mr. Sevan was aware that not only was the regime imposing surcharges on oil sales but, as explained below, he and others within the Secretariat were simultaneously contending with reports that the regime was illicitly smuggling oil to Syria.³⁵⁷

³⁵⁴ OIP notes of meeting with Iraq Permanent Representative (Nov. 27, 2000); Benon Sevan note to Louise Fréchette (Nov. 30, 2000).

³⁵⁵ Louise Fréchette e-mail to Benon Sevan (Dec. 1, 2000); Benon Sevan e-mail to Louise Fréchette (Dec. 1, 2000); Louise Fréchette cable to Kofi Annan (Dec. 1, 2000); Benon Sevan note to Kofi Annan (Dec. 1, 2000). Mr. Sevan also informed the Secretary-General that the 661 Committee had requested that the oil overseers notify all buyers that: (1) no pricing mechanism had been agreed to for December; (2) loadings of oil could continue without a pricing mechanism; (3) until there was a pricing mechanism, no payments could be made for the oil lifted; (4) once an acceptable pricing mechanism was agreed upon, buyers would be notified and payments would be permitted into the United Nations escrow account; and (5) the 661 Committee remained committed to reaching a pricing agreement. *Ibid.*

³⁵⁶ Benon Sevan note to Kofi Annan (Dec. 1, 2000).

³⁵⁷ Chapter 4, Part V of Volume III discusses the Secretariat’s knowledge and action regarding the Iraqi regime’s smuggling operations.

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On December 5, 2000, Mr. Sevan informed the Deputy Secretary-General and Mr. Riza that the pricing “issue has now changed to the question of the prices at which the customers are, at this moment after the events of last week, prepared to commit to the re-start of lifting Iraqi crude oil.” Based upon his assessment of the situation, Mr. Sevan stated that “the Oil Overseers would be prepared to recommend to the 661 Committee a price level of \$0.40 and \$0.20 below their assessment of fair market value” for the first twenty days of December, but the fair market price, without discount, for the final ten days.³⁵⁸

When shown the December 5th memo, Ms. Scheer acknowledged that the pricing compromise may have enabled the payment of surcharges. However, she stated that the Secretariat favored the compromise in order to get the oil flowing again, because it did not want to be seen, or portrayed by the regime, as obstructing the flow of humanitarian aid. Ms. Scheer’s position is consistent with the Deputy Secretary-General’s written statement to the Secretary-General, wherein she stressed the importance of reaching a resolution in order to maintain the humanitarian objectives of the Programme.³⁵⁹

On December 7, 2000, Mr. Riza forwarded the Secretary-General a report, which Mr. Sevan had sent to Deputy Secretary-General Fréchette, informing him that OIP had reached an agreement with SOMO for the December pricing of oil. Mr. Sevan informed the 38th Floor that because of the “erosion in confidence in Iraq as a reliable supply source . . . customers would need some incentive before resuming their imports of Iraqi crude oil.” Mr. Sevan further indicated that OIP had agreed to SOMO’s newly submitted pricing mechanism, which included “appropriate discounts” and had been circulated to the 661 Committee for approval under the no objection procedure.³⁶⁰ Thus, by cutting off the supply of oil, the Iraqi regime induced the Secretariat and 661 Committee to accept and justify excessive premia, which were known to enable the payment of illegal surcharges.

The compromise by the 661 Committee and Secretariat did not go unnoticed by the Iraqi government. In a note entitled “Not a Dull Moment,” dated December 11, 2000, Mr. Sevan warned the Deputy Secretary-General and Mr. Riza that Iraqi officials were claiming that the United Nations had agreed that proceeds derived from the forty cent discount would be deposited in an Iraq account. Mr. Sevan assured the 38th Floor that he had “denied it categorically.”³⁶¹

³⁵⁸ Benon Sevan note to Louise Fréchette (Dec. 5, 2000).

³⁵⁹ Stephani Scheer interview (Apr. 25, 2005); Louise Fréchette cable to Kofi Annan (Dec. 1, 2000).

³⁶⁰ S. Iqbal Riza cryptofax to Kofi Annan (Dec. 7, 2000) (the cryptofax was copied to the “Deputy Secretary-General ONLY”); Benon Sevan note to Louise Fréchette (Dec. 7, 2000). Secretary-General Annan was traveling in early December 2000, but he was kept informed on the surcharge issue by Mr. Riza. Ibid.

³⁶¹ Benon Sevan note to Louise Fréchette (Dec. 11, 2000). The following day, *Reuters* reported that Iraq was keeping all oil sales on hold, because customers were refusing to comply with demands for surcharge payments. The article stated that the Indian Oil Corporation Limited (“IOC”) had rejected a demand for the payment of a forty cent per barrel surcharge. An IOC official said that “any agreement between India and

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On December 13, 2000, Mr. Sevan forwarded another note to Deputy Secretary-General Fréchette and Mr. Riza, which attached a summary of the formal 661 Committee meeting held earlier that day.³⁶² When asked whether the oil overseers had received any information from buyers regarding the payment of surcharges, Mr. Tellings responded that “*some buyers had indeed confirmed the surcharge request and had put their reports in writing.*” Mr. Buur-Jensen backed up his colleague’s position, stating that “*sufficient information had been received in various forms*” from those in the process of purchasing oil to enable him to state that surcharges were in fact being requested.” Mr. Buur-Jensen cited a need to protect the confidentiality of purchasers’ communications with the oil overseers.³⁶³

On December 14, 2000, loadings of oil resumed. For the balance of the month, however, the media continued to report that the Iraqi regime was demanding surcharge payments.³⁶⁴ The day after the resumption of oil pumping, the oil overseers circulated an advisory, which provided the following guidance: (1) the 661 Committee had not approved a surcharge of any kind on Iraqi oil; (2) payments for the purchase of Iraqi crude oil were not to be made to any non-United Nations account; and (3) buyers of Iraqi oil were not to pay any kind of surcharge to the Iraqi regime.³⁶⁵

In early January 2001, Mr. Sevan informed Deputy Secretary-General Fréchette and Mr. Riza that the December shutdown of oil exports produced a shortfall of 22 million barrels of oil, by comparison to typical export levels over “such a period.” Further, Mr. Sevan explained that several oil purchasers told the oil overseers that SOMO continued to demand surcharges of forty to fifty cents per barrel, which payments were: (1) to be paid into an account outside the control of the United Nations; and (2) a pre-requisite for oil liftings to take place. Mr. Sevan concluded

Iraq had to fall within the bounds of U.N. sanctions” because IOC could not “afford to get isolated globally.” “Iraq, demanding surcharge, keeps oil sales on hold,” *Reuters* (London), Dec. 12, 2000.

³⁶² Benon Sevan note to Louise Fréchette (Dec. 13, 2000); Provisional record of 661 Committee meeting, S/AC.25/SR.209 (Dec. 13, 2000). In preparation for the meeting, the oil overseers circulated a written summary of the situation, which provided the following: (1) the prices for December had been endorsed by the 661 Committee on December 8; (2) during the price negotiations, the oil overseers had asked SOMO directly whether there was a fifty cent surcharge, and SOMO denied the allegation; (3) SOMO had not provided a reason for the non-resumption of oil exports since December 8, when a price was set for December; and (4) eight vessels were waiting to load at Mina Al-Bakr. *Ibid.*

³⁶³ Provisional record of 661 Committee meeting, S/AC.25/SR.209, pp. 2-3, 5 (Dec. 13, 2000) (emphasis added). Mr. Tellings also informed the 661 Committee that an IOC vessel had begun loading oil at Mina al Bakr and a second Indian vessel was about to begin loading. Mr. Buur-Jensen and Mr. Kramar each indicated that IOC had denied paying any surcharge. Mr. Kramar stated that the other vessels that were waiting to load had been requested to pay a surcharge, but claimed to have refused to do so. *Ibid.*

³⁶⁴ See, e.g., Jim Efstathiou, “Iraq deferred surcharge for recent crude sales-source,” *Dow Jones Energy Service*, Dec. 19, 2000; “Iraq tells lifters it seeks surcharge on exports,” *Reuters News*, Dec. 20, 2000; and “Confrontation over surcharges cuts Iraqi December exports,” *Middle East Economic Survey*, Dec. 25, 2000.

³⁶⁵ Oil overseers fax to buyers of Iraqi crude oil, S/AC.25/2000/Oil/1330/Fax (Dec. 15, 2000).

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that “[a]t this moment there is a lack of clarity in the oil industry as to SOMO’s continued insistence or otherwise on the payment of surcharges in order to allow liftings to take place.”³⁶⁶

The above episode from October 2000 to January 2001 reflects significant involvement by the 38th Floor of the Secretariat with the Programme. This level of involvement was not typical of senior management’s response to sanctions violations. When interviewed by investigators, Deputy Secretary-General Fréchette appreciated the implications of the oil pricing issue insofar as the shutdown in oil exports threatened the United Nations’ ability to fund the humanitarian relief effort. More specifically, the Deputy Secretary-General attributed the increased involvement of the 38th Floor on the surcharge issue to the “risk of a major breakdown in the program,” recognizing that it could have brought the Programme to a halt.³⁶⁷

Taken together, the communications within the Secretariat in late 2000 reflect knowledge and understanding of the surcharge problem and its implications on the humanitarian program. However, other than back-and-forth communication and updates on the situation, the correspondence does not reflect action to eliminate the surcharge by the Secretariat. Rather, it suggests that the Secretariat’s primary goal was to get the oil flowing again—a return to the status quo.

D. ADDRESSING THE IRAQI REGIME’S RECEIPT OF SURCHARGES: ACTION AND INACTION BY THE SECRETARIAT

Just as in the case of kickbacks on Programme contracts discussed above, in the early months of 2001, the Secretariat had several opportunities to take proactive steps regarding the surcharge issue, but failed to adequately do so.

1. Secretary-General’s Meeting with Foreign Minister

On February 26-27, 2001, Secretary-General Annan held a series of high-level meetings with Mohammed Said Al-Sahaf, the Foreign Minister of Iraq, to discuss Iraqi concerns, including the future of the Oil-for-Food Programme.³⁶⁸ In connection with the previous discussion of the regime’s receipt of kickbacks, the Committee described a process by which members of the Secretariat prepared briefing notes and talking points for the Secretary-General. The purpose of these documents was to assist in the Secretary-General’s preparations for the upcoming meetings with Iraqi officials.³⁶⁹

³⁶⁶ Benon Sevan note to Louise Fréchette (Jan. 10, 2001).

³⁶⁷ Louise Fréchette interview (May 31, 2005).

³⁶⁸ Benon Sevan note to Jayanta Dhanapala (Feb. 14, 2001).

³⁶⁹ As described in Part III of this Chapter, these documents were provided in order to prepare the Secretary-General for upcoming meetings with Iraqi officials.

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One of the topics set forth in the briefing notes was entitled “Alleged surcharge on the purchase of Iraqi oil,” which provided the following information:

In October/November 2000, media reports indicated that Iraq had requested lifters of its oil to pay a surcharge of approximately 50 US cents per barrel (now reported to be approximately 20-30 US cents per barrel), over the official selling price . . . and also requested that this surcharge be deposited in [a] non-United Nations account that would be designated by [SOMO]. The [OIP] ha[d] received information from some potential buyers that such demand was in fact made by the authorities concerned. However, they have refused to provide us with a proof in writing. It has been noted, however, that lately a number of contracts are being signed with companies previously unknown to us.³⁷⁰

Regarding the talking points, Secretary-General Annan was advised to inquire about media reports that (1) “Iraq has been requesting lifters of oil to pay a surcharge of approximately 20 to 50 US cents per barrel” and (2) the Iraq regime was further requesting that the payments be deposited in a “non-United Nations account designated by Iraq.”³⁷¹

The meeting notes and summaries from the meetings between Secretary-General Annan and the Iraqi Foreign Minister do not contain a single reference to a discussion of surcharges. As with the kickback issue discussed above, the Secretary-General stated that the surcharge issue was categorized as “technical” and was among the issues that were supposed to be addressed by Mr. Sevan and he assumed that it was.³⁷²

On February 28, 2001, Mr. Sevan held a meeting with Iraqi officials as well, including Ambassadors Hasan and Al-Douri. Mr. Sevan prepared a note-to-file regarding his meeting with the Iraqi officials, which was copied to Deputy Secretary-General Fréchette and Mr. Riza. Mr. Sevan’s note-to-file indicates that the meeting was held to follow-up on issues raised during the Secretary-General’s meetings. There is no indication that the issue of surcharges was discussed during Mr. Sevan’s February 28th meeting with the Iraqi officials.³⁷³

2. Reports to the Security Council February and March 2001

On February 28, 2001, Secretary-General Annan made a statement to the Security Council, briefing them on his meetings with Iraqi officials. There is no reference in the Secretary-

³⁷⁰ Benon Sevan note to Jayanta Dhanapala (Feb. 14, 2001).

³⁷¹ Briefing notes for Kofi Annan’s meeting with the Iraqi delegation (undated) (“Background briefing notes/talking points; 26-27 February 2001”).

³⁷² Notes of Kofi Annan’s meetings with the Iraqi delegation (Feb. 26-27, 2001); Kofi Annan interview (July 26, 2005) (stating that the meetings were divided into “political” and “technical” discussions; the Secretary-General led the “political” discussions, and Mr. Sevan led the “technical” discussions).

³⁷³ Benon Sevan note to Louise Fréchette (Mar. 3, 2001).

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General's statement to the regime's receipt of surcharge payments. Nor is there any indication that during the meetings with the Iraqi officials the Secretary-General addressed any of the Iraqi regime's efforts to violate the sanctions.³⁷⁴

Following the Secretary-General's presentation to the Security Council, the representative from the United Kingdom specifically stated that "[t]here had been a disruption of oil supplies as Iraq had tried to levy illegal surcharges." The United Kingdom representative recommended that the Secretariat address the surcharge issue with Iraqi officials in any upcoming meetings. The Secretary-General did not offer any reply to the comments made by the United Kingdom representative.³⁷⁵

Several days later, on March 2, 2001, Secretary-General Annan issued the Phase IX 90-day report to the Security Council. In the report, the Secretary-General mentioned, in a single paragraph, the "widespread reports of additional charges imposed on buyers of Iraqi crude oil." That paragraph also referenced the statement made by the 661 Committee and the oil overseers to purchasers on December 15, 2000, but did not provide any additional detail or description of the on-going surcharge problem.³⁷⁶

The Secretary-General's report did not make reference to any action taken by the Secretariat to oppose the imposition of oil surcharges and offered no strategy for addressing the problem going forward. Nor did the report convey additional information about which OIP and the oil overseers had become aware. These omissions are striking, because at roughly the same time, OIP received reports that the regime was still demanding surcharge payments. Further, as explained in Parts III and V of this Chapter 4, the Secretariat simultaneously possessed information regarding the Iraqi regime's receipt of kickbacks on Programme-related contracts and oil smuggling.

3. *New York Times* Report on Surcharges

On March 7, 2001, *The New York Times* published an article which commented on several schemes by which the Iraqi regime was exploiting the Oil-for-Food Programme, including the imposition of oil surcharges. As explained above, the article addressed a range of efforts by the regime to manipulate the Programme and provoked an exchange between Mr. Sevan and the 38th Floor. Among the subjects described in the article were the regime's demands for surcharges as an "established policy of adding illegal surcharges to each barrel of oil sold." Additionally, the

³⁷⁴ Kofi Annan statement to the Security Council (Feb. 28, 2001).

³⁷⁵ Notes of informal Security Council meeting (Feb. 28, 2001). Secretary-General Annan did not respond to this point directly, but did mention that he had requested information from the Iraqi delegation about the reduction in oil production, which resulted in a loss of approximately \$2.2 billion. Secretary-General Annan indicated that the Iraqi delegation had declined comment on this subject in the absence of Oil Minister Rashid. Ibid.

³⁷⁶ "Report of the Secretary-General pursuant to paragraph 5 of resolution 1330 (2000)," S/2001/186, para. 11 (Mar. 2, 2001). In a separate paragraph, the report noted tensions between SOMO and the oil overseers and the marked decrease in oil liftings and revenues during the preceding three months. Ibid., para. 10.

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article noted that while Secretary-General Annan had mentioned the oil surcharges in the 90-day report, he did not address the “broader problem of illegal payments.”³⁷⁷

That same day, Mr. Sevan sent a note to Mr. Riza, Deputy Secretary-General Fréchette, and Mr. Eckhard, responding to March 7th article. As set forth in Part III of this Chapter, the Committee has located a copy of Mr. Sevan’s note with handwritten comments from both Secretary-General Annan and Mr. Riza. When interviewed by the Committee, Mr. Riza and Secretary-General Annan confirmed their own and each other’s handwriting on the document.³⁷⁸

In his March 7th note, Mr. Sevan stated that Secretary-General Annan’s most recent report to the Security Council, dated March 2, 2001, referred to concerns about the widespread reports of the regime’s demands for surcharges on oil sales. Mr. Sevan indicated that “the surcharge [was] reportedly up to 50 cents per barrel.” Mr. Sevan also indicated that the oil overseers, who were authorized to maintain direct contacts with purchasers of oil from Iraq, had informed the 661 Committee that “*direct contacts with traders and end-users in the oil industry confirm in broad terms what has been written in the professional press in this matter.*” Mr. Sevan also noted that when the oil overseers had asked SOMO about the surcharges, it had categorically denied the allegations.³⁷⁹

Three days later, Mr. Sevan sent a note to the oil overseers, with copies to Deputy Secretary-General Fréchette and Mr. Riza, requesting an immediate review of the criteria used to register oil importers under the Programme. Mr. Sevan emphasized that it was essential for OIP to “tighten up” its procedures to ensure that only bona fide companies were registered. The oil overseers replied that they were not authorized to apply criteria to registering companies and that companies became automatically registered upon nomination by the respective Permanent Mission.³⁸⁰

From the referenced chronology of events, it is evident that high-ranking members within the Secretariat were aware of Iraq’s efforts to generate revenues through oil sales in violation of the

³⁷⁷ Barbara Crossette, “Iraq is Running Payoff Racket, U.N. Aides Say,” *The New York Times*, Mar. 7, 2001, p. A1.

³⁷⁸ Benon Sevan note to S. Iqbal Riza (Mar. 7, 2001) (with handwritten notes from Secretary-General Annan and Mr. Riza); S. Iqbal Riza interview (July 7, 2005); Kofi Annan interview (July 26, 2005). As described above, Secretary-General Annan placed his distinct initials in the bottom right-hand corner of the document, signifying that he received and reviewed it. Further, Secretary-General Annan wrote that in the “future [he] . . . would like to be forewarned and given a gist or key elements in the reports.” Mr. Riza made two comments on the document before forwarding it to Secretary-General Annan. First, he noted that the March 2, 2001 90-day report referenced in Mr. Sevan’s Note was “cleared by DySG,” a reference to Deputy Secretary-General Fréchette. Second, Mr. Riza clarified that the “widespread reports concerning ‘kickbacks’” were “not referred to in report—only in press.” *Ibid.*

³⁷⁹ Benon Sevan note to S. Iqbal Riza (Mar. 7, 2001) (emphasis added).

³⁸⁰ Benon Sevan note to the oil overseers (Mar. 10, 2001); Oil overseers note to Benon Sevan (Mar. 21, 2001).

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sanctions regime. Interviews of witnesses and document exchanges specifically establish knowledge on the part of the Secretary-General, the Deputy Secretary-General, the Chef de Cabinet and the Executive Director of OIP. By March 2001, these officials within the Secretariat had also received reports of other sanctions violations, such as the regime's receipt of kickbacks and its smuggling of oil, yet no meaningful action was taken.³⁸¹

E. THE IRAQI REGIME'S CONTINUED RECEIPT OF SURCHARGES

Throughout 2001, the issue of the pricing of Iraqi oil, and the surcharge issue in particular, was a regular topic of discussion during the formal and informal meetings between the 661 Committee, oil overseers, Iraq, and OIP officials.³⁸² Notwithstanding these extended discussions, the parties were unable to reach any consensus agreement for action to eliminate the excessive premia, which enabled the payment of the illegal surcharges. While the 661 Committee and OIP talked, the Iraqi regime continued to collect surcharge payments from those receiving the Iraqi oil allocations.

As set forth in Volume I, Chapter 2, the surcharge scheme benefited the Iraqi regime by approximately \$229 million. The Committee has been able to confirm ninety-eight point seven percent (98.7%) of those surcharge payments through embassy receipts or bank statements and receipts.³⁸³ One confirmed example of a surcharge payment, which occurred in 2001, involved AMEP, the company that lifted the oil allocations granted to Mr. Sevan. The Committee has previously found that AMEP paid illegal surcharges in 2001. Mr. Sevan received an oil allocation for Phase IX, but AMEP did not purchase this oil because of the oil surcharge policy. During the following phase, Phase X, the Iraqi regime granted Mr. Sevan another allocation of one million barrels of oil. On August 13, 2001, Mr. Abdelnour traveled to Baghdad to execute the contract and agreed to pay both the unpaid surcharge from AMEP's Phase VIII contract and a further surcharge on the pending Phase X contract for one million barrels. The Committee has

³⁸¹ Kofi Annan interview (July 26, 2005); S. Iqbal Riza interview (July 7, 2005); Louise Fréchette interview (May 31, 2001); Benon Sevan note to Kofi Annan (Dec. 1, 2000); Benon Sevan note to Louise Fréchette (Jan. 10, 2001). Additionally, discussion of the kickbacks and smuggling are found in Chapter 4, Parts III and V, of this Volume.

³⁸² See, e.g., Provisional record of 661 Committee meeting, S/AC.25/SR.211 (Jan. 8, 2001); OIP notes of informal 661 Committee meeting (Feb. 13, 2001); Provisional record of 661 Committee meeting, S/AC.25/SR.213 (Feb. 26, 2001); OIP notes of informal 661 Committee meeting (Mar. 16, 2001); OIP notes of informal 661 Committee meeting (Apr. 11, 2001); OIP notes of informal 661 Committee meeting (Aug. 14, 2001); OIP notes of informal 661 Committee meeting (Aug. 20, 2001); OIP notes of informal 661 Committee meeting (Aug. 27, 2001); OIP notes of informal 661 Committee meeting (Aug. 30, 2001); Provisional record of 661 Committee meeting, S/AC.25/SR.222 (Sept. 6, 2001); Provisional record of 661 Committee meeting, S/AC.25/SR.223 (Sept. 10, 2001).

³⁸³ The Committee's calculations and confirmation of payments are set forth in Volume I, Chapter 2. The details of particular companies and surcharge payments will be the subject of a subsequent report to be issued by the Committee. Independent Inquiry Committee press release (Aug. 8, 2005).

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confirmed that AMEP subsequently paid a €177,978 (US\$160,088) oil surcharge into an account controlled by SOMO.³⁸⁴

As noted in the First Interim Report, SOMO continued to allocate oil to Mr. Sevan in phases XI, XII and XIII of the Programme. However, the transactions for these allocations were not completed in light of factors that cumulatively made these allocations less valuable, including Iraq's surcharge policy and the advent of retroactive pricing (described below) as a condition for approval of contracts by certain members of the 661 Committee. The AMEP surcharge payment is just one example of the payments made during 2001.³⁸⁵

Clearly, Mr. Sevan was aware that the Iraqi regime continued to collect illicit surcharges throughout 2001. In addition to this awareness, he also acknowledged that such payments had an adverse impact on the implementation of the Programme. For example, on May 7, 2001, Mr. Sevan and Mr. Elfverson held a meeting with Raymond Johansen, the Under-Secretary of Foreign Affairs for Norway. During the meeting, Mr. Sevan detailed the extent of his knowledge regarding the existence of oil surcharges and acknowledged OIP's responsibility to curtail the surcharge activity for the benefit of the Programme. Specifically, Mr. Sevan informed Under-Secretary Johansen that "billions of dollars had been lost during the current phase as a result of the imposition of illegal surcharges and explained in some detail how oil deals are carried out and how the above mentioned surcharges had been collected." Further, Mr. Sevan acknowledged that OIP must administer the Programme more effectively and suggested that the surcharges could be controlled by not allowing the oil traders to communicate directly with the oil overseers; as was the rule for humanitarian supplies.³⁸⁶

Mr. Sevan did not clarify how that "rule" would curb the imposition of surcharges. As set forth above, even though a similar rule was in place on the humanitarian side of the Programme, it did not curb kickbacks on those contracts. While Mr. Sevan's claim that the surcharge issue could be curtailed in the manner he suggested is not persuasive, his claim is significant as an acknowledgment that OIP had an obligation to combat the surcharges for the benefit of the Programme.

F. RETROACTIVE PRICING MECHANISM

1. Implementation of Retroactive Pricing

The culmination of the discussions regarding oil pricing, which were on-going throughout 2001, occurred in October, with the implementation of the retroactive pricing mechanism by the United Kingdom and United States.

³⁸⁴ "Third Interim Report," pp. 47-48; "First Interim Report," pp. 150-52.

³⁸⁵ *Ibid.*, p. 151; "Third Interim Report," p. 48. Additionally, Volume I, Chapter 2 discusses surcharge payments made during 2001.

³⁸⁶ J. Christer Elfverson note to Benon Sevan (May 8, 2001).

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The retroactive pricing mechanism, which was first utilized in October 2001, worked as follows: (1) the prices submitted by SOMO were placed on hold until late in the month; (2) at that point, the 661 Committee either (a) released the hold and accepted the price or (b) rejected the price and requested that SOMO submit a revised price based on actual market information during the period of lifting. The objective was to enable the prices to be set at accurate market levels. By connecting the prices to market levels, purchasers would be inhibited from collecting premia in excess of thirty cents per barrel, which would prevent the payment of surcharges to the Iraqi regime.³⁸⁷

Prior to the implementation of retroactive pricing, the Iraqi regime and entities that received oil allocations, had two distinct advantages with respect to setting the price of oil: (1) if the market price increased before a purchaser lifted the oil, the price could be increased; and (2) if the market price fell, the purchaser could cancel. Retroactive pricing was intended to eliminate those advantages and to ensure more accurate pricing, which would eliminate the margin necessary to pay the surcharges.³⁸⁸

Following the institution of the retroactive pricing mechanism in late 2001, there was a substantial amount of criticism of that system from certain members of the 661 Committee, contractors doing business within the Programme, and OIP—specifically by its Executive Director, Mr. Sevan.³⁸⁹ Likewise, the Government of Iraq voiced its opposition to the retroactive pricing mechanism and lobbied Mr. Sevan for support against the measure. At times Iraq criticized Mr. Sevan and Secretary-General Annan for their perceived failure to speak out against retroactive pricing. As a result of the criticism, the issue of oil pricing remained on the agenda of the 661 Committee and OIP; however, it continued to be employed until the end of the Iraqi regime.

³⁸⁷ Oil overseers letter to 661 Committee Chairman, S/AC.25/2002/OIL/COMM.14, pp. 1-2 (Feb. 7, 2002).

³⁸⁸ Morten Buur-Jensen interview (Sept. 9, 2004); Oil overseers letter to 661 Committee Chairman, S/AC.25/2002/OIL/COMM.14, p. 1 (Feb. 7, 2002).

³⁸⁹ One of the most outspoken contractors against retroactive pricing was Oscar Wyatt. On April 16, 2002, Mr. Wyatt wrote to Secretary-General Annan “suggest[ing] that [he] take the initiative to correct the untenable situation caused by two of the U.N. overseers, namely . . . Mr. Michel Tellings and Mr. Morten Buur-Jensen.” Mr. Wyatt alleged that Saddam Hussein may have “tied the overseers’ actions and his political position together in making his decision to cut off production.” Mr. Wyatt emphasized the economic impact on the United Nations, stating that the result of the oil overseers’ actions and retroactive pricing was that “the United Nations’ income will be substantially reduced as well as the Iraqi’s [*sic*].” Oscar Wyatt letter to Kofi Annan (Apr. 16, 2002). Subsequently, Mr. Wyatt arranged a meeting with Danilo Turk of the United Nations Department of Political Affairs, during which he again expressed his frustrations with the retroactive pricing mechanism. When Mr. Turk remarked that retroactive pricing had been introduced to combat illegal surcharges, Mr. Wyatt stated that “the Iraqis have learned the lesson now and that reintroduction of the previous pricing system would not result in surcharging—with the possible exception of a few minor oil traders.” Danilo Turk note to S. Iqbal Riza (Aug. 16, 2002).

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2. Mr. Sevan's Opposition to Retroactive Pricing

In general, Mr. Sevan did not interact well with oil overseers Mr. Buur-Jensen and Mr. Tellings, who were known to advocate a more aggressive stance on the regime's efforts to manipulate oil prices. The retroactive pricing issue further drove a wedge between Mr. Sevan and Mr. Tellings and Mr. Buur-Jensen. Mr. Elfverson indicated that Mr. Sevan was opposed to retroactive pricing because of a basic lack of understanding. More particularly, Mr. Sevan told Mr. Elfverson that the retroactive pricing mechanism was "an American scheme to screw people." Despite the efforts of the oil overseers, himself, and others to educate Mr. Sevan, Mr. Elfverson stated that no matter what arguments were advanced in favor of retroactive pricing, Mr. Sevan used the same comeback: "If I get my kilo of sugar, I want to know what I am paying before I leave the store."³⁹⁰

From January 14, 2002 until February 10, 2002, Mr. Sevan traveled to Iraq. During this trip, Mr. Sevan met with numerous Iraqi officials, including Oil Minister Rashid, Minister of Trade Mahdi Mohammed Saleh, and Vice President Taha Yassin Ramadan.³⁹¹ A frequent topic of conversation during those meetings was the oil pricing mechanism.

The first meeting between Mr. Sevan and Minister Rashid took place on January 15, 2002. While the meeting was attended by at least thirteen people, the meeting notes indicate that beforehand, Mr. Sevan and Minister Rashid had a "tete-a-tete." During the private meeting, the following issues were discussed: (1) the high value of holds in the oil sector; (2) the 600 million euros provided for oil spare parts; and (3) the oil pricing mechanism. The meeting notes do not provide any additional detail regarding the private meeting between Mr. Sevan and Oil Minister Rashid. With respect to the "public" portion of the meeting, Minister Rashid criticized both Secretary-General Annan and OIP for remaining silent on the issue of retroactive pricing.³⁹²

On February 10, 2002, Mr. Sevan's last day in Baghdad, he met with Vice President Ramadan. Immediately following the meeting, Mr. Sevan held a press conference to summarize his meetings with the Iraqi officials. The first issue covered at the press conference was the retroactive pricing of oil, which Mr. Sevan stated was "having serious and adverse effects on the volume [of] oil exports, thus decreasing the revenues available for the humanitarian programme."

³⁹⁰ Morten Buur-Jensen interview (Sept. 9, 2004); Michel Tellings interview (Oct. 14, 2004); Stephani Scheer interview (Apr. 25, 2005); J. Christer Elfverson interview (July 20, 2005). In contrast, Ms. Scheer indicated that Mr. Sevan "pandered" to Mr. Kramar, who favored a less suspicious approach to the Iraqi regime. Stephani Scheer interview (Apr. 25, 2005). Mr. Buur-Jensen corroborated this account and noted that Mr. Sevan and Mr. Kramar got along well because Mr. Kramar shared Mr. Sevan's "don't rock the boat" attitude. Morten Buur-Jensen interview (Sept. 9, 2004).

³⁹¹ Benon Sevan travel records (Jan.-Feb. 2002).

³⁹² OIP notes of meeting at the Ministry of Oil (Jan. 15, 2002). During this trip to Iraq, Mr. Sevan also met with Minister of Oil Rashid on January 29 (a dinner at the Oil Cultural Center), January 31, and February 9, 2002. Benon Sevan travel records (Jan.-Feb. 2002).

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Further, Mr. Sevan stated his objection to extending the retroactive pricing mechanism for oil heading to all destinations.³⁹³

After reading an “approximate verbatim” transcript from the February 10th press conference, Mr. Elfverson sent Mr. Sevan a fax recommending that he clarify the portion of his remarks regarding the oil pricing mechanism to avoid those remarks from being misconstrued. Mr. Elfverson noted that Mr. Sevan had indicated that the implementation of retroactive pricing was “having serious and adverse effects on oil exports” and “creat[ing] havoc for Iraqi oil exports because there are numerous buyers who are either postponing or canceling their contracts or even postponing their lifting of oil.” Mr. Sevan did not make any mention in his comments of the reason for the implementation of retroactive pricing—excessive premia and surcharges being collected by the Iraqi regime. Mr. Elfverson recommended that Mr. Sevan issue a clarification of his statements on retroactive pricing to explain that the decline in oil revenues and the decision to employ retroactive pricing occurred in the context of “the insistence on high premia collected by contract holders of Iraqi crude.”³⁹⁴

Additionally, Mr. Elfverson attached an undated statement from the oil overseers, which maintained that the contract holders of Iraqi oil were requesting very high premia—thirty to fifty US cents per barrel—in excess of industry standards and that, despite the efforts of the Overseers, the magnitude of the premia remained unchanged and the buyers had a free option to lift and exercised that option only when the market conditions guaranteed the excessive premia. The statement also pointed out that SOMO had “demonstrated a reluctance to change prices upwards in comparison with downwards.” The decline in oil exports was attributed to the insistence of contract holders for premia in excess of thirty cents per barrel, when the retroactive pricing mechanism effectively reduced the margin available to pay such premia.³⁹⁵

Although he recalled this incident, Mr. Elfverson was not certain whether Mr. Sevan ever clarified his statement. Mr. Elfverson reiterated that Mr. Sevan’s comment was wrong, but he most likely did not change it because of his opposition to retroactive pricing and the fact that Mr.

³⁹³ Benon Sevan travel records (Jan.-Feb. 2002); Benon Sevan press conference, ED/PR/01 (Feb. 10, 2002). As of February 2002, retroactive pricing had been implemented on all cargoes heading to Europe and the United States, but did not apply to Asian-bound cargoes. See, e.g., Dinakar Sethuraman and John van Schaik, “India Reveals Iraqi Crude Kickback Request,” *Oil Daily Incorporating Energy Alert via NewsEdge Corporation*, Feb. 11, 2002. The article mentioned that the United Kingdom was a proponent of extending the pricing system to all shipments of oil. *Ibid.*

³⁹⁴ J. Christer Elfverson fax to Benon Sevan (Feb. 11, 2002).

³⁹⁵ *Ibid.* On several occasions the oil overseers informed the 661 Committee or Security Council that the normal industry premia were approximately five cents per barrel. See, e.g., OIP notes of informal Security Council meeting (Sept. 24, 2001); OIP notes of informal 661 Committee meeting (Mar. 21, 2002); OIP notes of informal 661 Committee meeting (June 10, 2002).

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Elfverson and the oil overseers supported it.³⁹⁶ The Committee has not found any evidence that Mr. Sevan ever clarified his remarks.

As Mr. Elfverson pointed out, Mr. Sevan's comments neglected to mention the fact that the retroactive pricing mechanism was developed specifically to respond to the problem of excessive premia and surcharges—which Mr. Sevan acknowledged to be in violation of the sanctions. Further, there was no recognition by Mr. Sevan that the surcharges, paid to the Iraqi regime, and the excessive premia, which ended up in the pockets of those sympathetic to the regime, diverted hundreds of millions of dollars out of the Programme and away from humanitarian uses. Mr. Sevan flipped the issue and placed the blame for the decline in demand for Iraqi oil not on those responsible for the illegal conduct, but on those that attempted to curtail that conduct.

3. Continued Opposition to Retroactive Pricing—Security Council and 661 Committee

Shortly after his return from his trip to Iraq, Mr. Sevan briefed the Security Council. He warned that the Programme was facing an increasing “financial crisis due to the substantial drop in revenues received from Iraqi oil exports under the [P]rogramme.” Mr. Sevan cited several factors for the revenue shortfall, including a sharp decline in oil market prices, a reduced level of Iraqi exports under the Programme, and the “uncertainties” regarding the price of Iraqi oil due to “yet unresolved serious difficulties” caused by the retroactive pricing mechanism. However, Mr. Sevan opined that the reduced level of exports was “most likely a consequence of retroactive pricing imposed by the [661] Committee since October 2001, in combination with the insistence on excessive profits by Iraqi crude oil contract-holders.” Mr. Sevan did not make any mention of the fact that a principal reason the oil contractors needed to garner “excessive profits” was that they were required to make surcharge payments to the Government of Iraq. Instead, he stated that “[e]veryone [was] fully aware of the reasons as well as the intentions behind the retroactive pricing,” and he implored the parties to reach a compromise. Further, Mr. Sevan informed the Security Council that he understood that some contractors were reluctant to enter new contracts and were postponing or canceling their existing contracts to lift Iraqi oil.³⁹⁷

As discussed above, the Committee's First and Third Interim reports concluded that AMEP was allocated oil from the Iraqi regime on behalf of Mr. Sevan. It bears emphasis in this context that although Mr. Sevan received oil allocations for Phase XI (December 1, 2001-May 29, 2002), Phase XII (May 30-December 4, 2002), and Phase XIII (December 5, 2002-June 3, 2003), AMEP did not lift any oil during those phases. When interviewed by the Committee, Mr. Abdelnour stated that AMEP did not lift during those phases for several reasons, including: (1) “buyers were forced to do illegal things”; and (2) it was not possible for him to make any money because of the pricing mechanism and surcharge demands. A March 11, 2004 *Wall Street Journal* article quoted

³⁹⁶ J. Christer Elfverson interview (July 20, 2005).

³⁹⁷ Benon Sevan statement to the Security Council (Feb. 26, 2002). At an informal meeting two days later, several members of the 661 Committee seized upon Mr. Sevan's opposition to the retroactive pricing mechanism. OIP notes of informal 661 Committee meeting (Feb. 28, 2002).

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Mr. Abdelnour as saying, with respect to the oil surcharges, “[e]verybody knew it. The U.N. knew about it.”³⁹⁸

Several months later, Mr. Sevan issued another statement to the Security Council, in which he again addressed the issue of retroactive pricing. Specifically, Mr. Sevan noted that the “continuing practice” of retroactively pricing oil, combined with the excessive premia, had led to a reduction of 500,000 barrels of oil per day or \$1.2 billion in lost revenue since the beginning of Phase XI. Mr. Sevan added that Iraq’s month long suspension of oil exports, which had begun on April 8, 2002, had resulted in further revenue loss of \$1.2 billion. Finally, Mr. Sevan emphasized that unless the issue of the pricing of oil was resolved “all other efforts and decisions taken to expedite the approval of humanitarian supplies for Iraq may unfortunately remain academic.”³⁹⁹

4. Awareness of the 38th Floor to the Issue of Retroactive Pricing

Secretary-General Annan and Mr. Riza were aware of, and requested information concerning, the issue of retroactive pricing in July 2002. In advance of a Security Council luncheon, where there would be “an open exchange of views on Iraq,” Mr. Riza requested that Mr. Sevan provide talking points for the Secretary-General on several issues, including “the developments concerning the pricing mechanism.” Two days later, Mr. Sevan forwarded such talking points, which reiterated Mr. Sevan’s “very serious concern” regarding the funding shortfall as a result of the substantial drop in oil exports under the Programme. He attributed the decline to several factors, including “the absence of an agreement over the manner in which the price of Iraqi crude [was] set.” Mr. Sevan stated that all were aware of the “reasons behind the practice of retroactive pricing,” but that the 661 Committee alone could not resolve the problems and the cooperation of the Iraqi regime was necessary to remove the “reasons for the excessive premia[.]”⁴⁰⁰

When interviewed by the Committee, Secretary-General Annan stated that he was aware of the issue of retroactive pricing, which he viewed as an initiative of 661 Committee members. The Secretary-General indicated that he had some hesitations about retroactive pricing, but agreed the action should be taken because something had to be done to check the surcharges. Further, the Secretary-General explained that he directed Mr. Sevan to convey support for retroactive pricing on his behalf and understood this to have been done. Secretary-General Annan was unaware of Mr. Sevan’s position on the issue and did not realize that he opposed it.⁴⁰¹

Deputy Secretary-General Fréchette was also kept apprised of the issue of retroactive pricing. On August 20, 2002, Mr. Elfverson, as the OIP Officer-in-Charge, forwarded a note from Elpida Rouka to the Deputy Secretary-General, summarizing the discussions at the August 19th formal

³⁹⁸ “First Interim Report,” p. 151; “Third Interim Report,” p. 48; Fakhry Abdelnour interviews (Jan. 17-19, 2005); Therese Raphael, “The Oil-for-Food Scandal,” *The Wall Street Journal*, Mar. 11, 2004.

³⁹⁹ Benon Sevan statement to the Security Council (May 29, 2002).

⁴⁰⁰ S. Iqbal Riza memorandum to Benon Sevan (July 17, 2002); Benon Sevan draft talking points for Kofi Annan (July 19, 2002).

⁴⁰¹ Kofi Annan interview (July 27, 2005).

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661 Committee meeting. At that meeting, Russia introduced a proposal from the Iraqi regime to eliminate the surcharges, in exchange for the 661 Committee's removal of retroactive pricing and approval of a cash component. Syria, China and France declared their support for this proposal. The United States and United Kingdom opposed it, with the United States emphasizing three elements: (1) illegal surcharges; (2) the failure of Iraq to ship oil; and (3) the illegal oil smuggling occurring outside the Programme.⁴⁰²

When interviewed, Deputy Secretary-General Fréchette indicated that she was not involved with the decision to implement retroactive pricing, which she described as a decision of the Security Council and oil overseers. Further, she stated that she did not recall ever discussing the issue of the retroactive pricing mechanism with Mr. Sevan or being aware of his position on the matter.⁴⁰³

On September 16, 2002, Mr. Sevan sent draft talking points for an upcoming meeting between Secretary-General Annan and Naji Sabri, the Foreign Minister of Iraq, to Deputy Secretary-General Fréchette and Mr. Riza. Mr. Sevan highlighted a number of points for the 38th Floor, including his position that declines in oil exports and revenue were the result of "the absence of an agreement between the Government of Iraq and the [661 Committee]" on pricing. Mr. Sevan noted that the 661 Committee had imposed retroactive pricing "amidst market reports of Iraq's demands for illegal surcharge payments[.]" Additionally, he informed that unless the issue of retroactive pricing was addressed, all other efforts to improve the humanitarian situation would be academic. Mr. Sevan reiterated this position in a subsequent statement to the Security Council dated September 25, 2002.⁴⁰⁴

Mr. Sevan's protestations to the Security Council and the 661 Committee regarding the decline of Programme revenue, which he attributed to retroactive pricing, stand in stark contrast to his silence regarding other losses of Programme revenue. More particularly, Parts III and V of this Chapter detail the Secretariat's substantial knowledge of the kickback and smuggling operations by the Iraqi regime and Mr. Sevan's comparative silence.⁴⁰⁵

5. Iraq Terminates its Surcharge Program—Fall 2002

By October 2002 unconfirmed reports began to emerge that the Iraqi regime had reduced or eliminated its surcharge demands. For example, at an October 2, 2002 meeting of the 661 Committee, the French representative noted that the regime "had signaled a positive gesture

⁴⁰² J. Christer Elfverson fax to Louise Fréchette (Aug. 20, 2002); Elpida Rouka note to Louise Fréchette (Aug. 19, 2002).

⁴⁰³ Louise Fréchette interview (May 31, 2005).

⁴⁰⁴ Benon Sevan note to Louise Fréchette (Sept. 16, 2002); Benon Sevan statement to the Security Council (Sept. 25, 2002).

⁴⁰⁵ Chapter 4, Parts III and V of Volume III, which deal with kickbacks and smuggling, respectively, involve billions of dollars being diverted from the Programme. Yet, as those sections indicate, there is limited response from the Secretariat.

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evident in the fact that for the past month premia were reportedly down to five cents per barrel, while contracts had been concluded directly with end-users at official selling price (OSP).” In addition, as detailed in Chapter 3 of Volume II, there were numerous media articles discussing the reduction of the oil surcharge demands.⁴⁰⁶

Notwithstanding such reports, oil continued to be priced retroactively by the 661 Committee until the Iraqi regime was removed from power during the spring of 2003. The Government of Iraq, members of the 661 Committee and Security Council, and OIP officials continued to debate both the effectiveness and impact of the retroactive pricing mechanism.⁴⁰⁷ As Mr. Sevan noted, in a January 15, 2003 letter to the Chairman of the 661 Committee, the “issue of the oil pricing mechanism . . . remained on the agenda of the [661] Committee.”⁴⁰⁸

G. SECRETARIAT'S RESPONSE TO SURCHARGE ALLEGATIONS

As set forth in Chapter 4, Part III of Volume III above, beginning in the second half of 2003 and continuing into 2004, serious allegations began to accumulate regarding the administration of the Programme by the Secretariat. On the issue of surcharges, inapposite to the issue of kickbacks, the Secretariat conceded that it was aware of the issue and took the position that it acted to eliminate the surcharge payments. The public statements do not reference the fact that the head of OIP, Mr. Sevan, was an outspoken critic of the retroactive pricing mechanism.⁴⁰⁹ In fact, on March 26, 2004, Mr. Mocibob gave a briefing to Congressional staff and indicated that when there was clear evidence of sanctions violations “both the [661] Committee and, *in particular, the Secretariat would act and introduce measures such as ‘retroactive pricing’*.”⁴¹⁰

Deputy Secretary-General Fréchette told investigators that the Secretariat's approach to the surcharge issue was more responsive than its reaction to other Programme violations.

⁴⁰⁶ OIP notes of informal 661 Committee meeting (Oct. 2, 2002).

⁴⁰⁷ See, e.g., SOMO letter to the 661 Committee (Jan. 8, 2002); Provisional record of 661 Committee meeting, S/AC.25/SR.230 (Feb. 1, 2002); Provisional record of 661 Committee meeting, S/AC.25/SR.231 (Feb. 8, 2002); OIP notes of Security Council consultations (Feb. 26, 2002); OIP notes of informal 661 Committee meeting (Feb. 28, 2002); OIP notes of informal 661 Committee meeting (June 10, 2002); OIP notes of informal 661 Committee meeting (Aug. 7, 2002); Provisional record of 661 Committee meeting, S/AC.25/SR.237 (Aug. 19, 2002); OIP notes of informal 661 Committee meeting (Sept. 3, 2002); OIP notes of Security Council consultations (Sept. 25, 2002); OIP notes of informal 661 Committee meeting (Oct. 2, 2002); Provisional record of 661 Committee meeting, S/AC.25/SR.240 (Oct. 11, 2002); Provisional record of 661 Committee meeting, S/AC.25/SR.243 (Dec. 11, 2002); OIP notes of informal 661 Committee meeting (Jan. 17, 2003).

⁴⁰⁸ Benon Sevan letter to 661 Committee Chairman, S/AC.25/2003/COMM.19 (Jan. 15, 2003).

⁴⁰⁹ See, e.g., United Nations briefing paper, “Responsibilities Under the Oil-for-Food Programme and Iraq Sanctions” (Feb. 12, 2004); Darko Mocibob note-to-file (Mar. 26, 2004); Frances Kinnon note-to-file (Apr. 21, 2004).

⁴¹⁰ Darko Mocibob note-to-file (Mar. 26, 2004).

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Specifically, she maintained that the Secretariat's response to the emergence of the regime's surcharge demands "worked properly." She stated that "everyone played a role and ultimately it was for the Security Council to make a decision."⁴¹¹ While it is true that the Secretariat generated more correspondence regarding the surcharges than regarding the kickbacks, the fact remains that the Secretariat did very little to oppose the Iraqi regime's surcharge scheme.

Mr. Sevan blamed the 661 Committee for the surcharge problem, claiming that he had "told the 661 Committee over 1,000 times that he was concerned about [oil] prices."⁴¹² The records described above do not support Mr. Sevan's claim. In fact, Mr. Sevan's primary concern, and most vigorous activity, in connection with oil pricing was in the context of his opposition to retroactive pricing—the mechanism specifically designed to eliminate the illegal surcharges. Moreover, Mr. Sevan's claims to the Committee conflict with the impressions of several OIP officials familiar with his approach to the surcharge issue. Ms. Scheer indicated that Mr. Sevan did not want to get involved with the surcharge issue and did not believe OIP had that authority. Similarly, Mr. Fellows stated that Mr. Sevan adopted a narrow view of the OIP mandate and refused to address sanctions violations, which he did not view as his job.⁴¹³

H. CONCLUSION

As with the kickback and smuggling schemes detailed in this Chapter, the illicit surcharges on oil sales provided Saddam Hussein and his regime with access to hard currency outside of the control of the Secretariat and Security Council. The illicit surcharges negatively impacted the Programme by redirecting approximately \$229 million from the humanitarian relief effort to the Iraqi regime. Additionally, the select countries, companies and individuals that received oil allocations, by agreeing to pay the surcharges, generated significant profits at further expense to the Programme's humanitarian effort. Despite knowledge of this problem, and opportunities to confront the Iraqi government, the Secretariat maintained a passive attitude and made no serious effort to curtail the surcharge scheme or bring that substantial volume of revenue into the United Nations escrow account. In fact, the primary affirmative conduct engaged in by a Secretariat official in connection with surcharges, was Mr. Sevan's outspoken opposition to retroactive pricing—the very measure enacted to prevent the illegal surcharges.

⁴¹¹ United Nations briefing paper, "Responsibilities Under the Oil-for-Food Programme and Iraq Sanctions" (Feb. 12, 2004); Darko Mocibob note-to-file (Mar. 26, 2004); Louise Fréchette interview (May 31, 2005).

⁴¹² Benon Sevan interview (May 18, 2004). As set forth in the Committee's Third Interim Report, Mr. Sevan has refused to be interviewed since January 21, 2005, and investigators have been unable to question him further about his management of the Programme, including his conduct with respect to sanctions violations by the Iraqi regime. "Third Interim Report," pp. 7, 50.

⁴¹³ Stephani Scheer interviews (Sept. 15 and Nov. 22, 2004); Alan Fellows interview (Dec. 18, 2004).

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V. OIL SMUGGLING

In Volume II, Chapter 4, the Committee described the widely-acknowledged circumstances in which the Iraq regime engaged in a pattern of smuggling oil and petroleum-related products in clear violation of Resolution 661. The regime's oil smuggling activities were not only the subject of discussion within the 661 Committee, but were discussed within the Secretariat, specifically among OIP officials and at the levels of Secretary-General Annan, Deputy Secretary-General Fréchette, and Mr. Riza, the former Chef de Cabinet. While there was awareness of the smuggling issue, there was not a disparity of knowledge to the same degree as that described in Part III of this Chapter. Nonetheless, the Secretariat not only possessed detailed knowledge of the various destinations of the smuggled oil, but had specific information about the volumes of oil and revenues generated pursuant to such illicit sales—revenue that was controlled by the Iraqi regime. Moreover, awareness within the Secretariat coincided with knowledge of Iraq's other Programme violations, notably its receipt of kickbacks and surcharges. What follows is a description of the manner in which members of the Secretariat learned of and responded to allegations of smuggling by the Iraqi regime. As explained below, the senior officials within the Secretariat were well-informed about the regime's aggressive approach to smuggling oil in violation of the sanctions regime, yet they took no proactive measures to address the flagrant violations of United Nations Security Council resolutions.

A. EARLY WARNINGS

From the beginning of the Programme, it was well-known within the senior management of the Secretariat that Iraq engaged in the practice of oil smuggling. According to Secretary-General Annan, the Iraqi regime's oil smuggling operation was "generally known" about as early as 1991. Deputy Secretary-General Fréchette specifically recalled that Iraq's oil smuggling was known to her throughout the period in which she oversaw OIP, i.e., from October 1998 forward. Iraq's smuggling activities also were well known to others within OIP; these activities were common knowledge, as Mr. Zarif reported, since 1991 or 1992.⁴¹⁴

Documents obtained by the Committee demonstrate that within the Secretariat there were multiple accounts of and discussions concerning Iraq's efforts to export oil in violation of the sanctions regime. For example, in June 1998, reports of prohibited oil sales in the Persian Gulf were the subject of consideration by OIP officers, including Mr. Sevan, Humanitarian Coordinator Denis Halliday, and Kevin Farrell, the Chief of the Programme Management Division. Similarly, in August 1998, senior OIP staff members, including Mr. Halliday and Ms. Scheer, learned of reports of increased oil smuggling and Uday Hussein's control over much of Iraq's smuggling network. In October 1998, Mr. Sevan was apprised of reports that Uday

⁴¹⁴ Kofi Annan interview (July 26, 2005); Louise Fréchette interview (May 25, 2005); J. Christer Elfverson interview (Dec. 4, 2004); Jeremy Owen interview (Dec. 13, 2004); Farid Zarif interview (May 11, 2005); John Almstrom interview (Aug. 2, 2005); Darko Mocibob interview (Aug. 16, 2005); Farid Zarif telefax to Juan-Carlos Brandt (Mar. 25, 1998).

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Hussein was directing oil smuggling routes by vessel through Iranian waters and across the Turkish border. According to one of the reports forwarded to Mr. Sevan, Uday Hussein owned fleets of ships and trucks being used in connection with oil smuggling operations.⁴¹⁵

On November 16, 1998, Mr. Sevan attended a conference in Washington, D.C., where he addressed the Middle East Institute and discussed the Programme. During a question and answer session, Mr. Sevan was asked what the United Nations could do to stop Iraq's oil smuggling. Mr. Sevan replied that it was neither his nor his OIP colleagues' job to police what was happening outside the Programme and that there were other organizations and mechanisms to address matters such as Iraq's oil smuggling.⁴¹⁶

The following month, Andrew Mack, of the Strategic Planning Unit of the Executive Office of the Secretary-General, drafted a report entitled "The Future of Sanctions on Iraq?," which was dated December 20, 1998. In his report, Mr. Mack explained that Iraq had improved its relations with neighboring countries such as Syria and Iran, paving the way for "smuggling/sanctions busting—as already appear[ed] to be happening." Mr. Mack further explained that smuggling in the Persian Gulf through Iraqi-Iranian waters had increased by 500 percent, according to sources from the United States Navy. Mr. Mack summarized Iraq's smuggling efforts as of December 1998 as follows: "Currently Iraq's main smuggling partners are Turkey (where oil is smuggled via trucks) and Iran (where it goes via barge traffic within both Iraq and Iranian territorial waters . . . and Syria[.]) Syria's role may radically increase in importance over the next year." Mr. Mack advised that Iraq's increased smuggling activities had the effect of "enrich[ing] the regime" in a manner that the regime could not achieve through the Oil-for-Food Programme. Specifically, Mr. Mack wrote that smuggled oil did not suffer the "humiliations" of Programme oil because: (1) the revenues went directly to the regime; (2) were not subject to a "35% tax"; and (3) could be used to purchase items—including weapons—proscribed by the sanctions. Hence, he concluded that "[t]he humanitarian consequences would be extremely serious" if the Iraqi government redirected a large part of Programme oil into the smuggling channels.⁴¹⁷

Mr. Mack informed investigators that the issue of sanctions was a frequent topic of conversation during Secretariat senior staff meetings. His recollection was that he was asked to prepare the subject report during one of those staff meetings, which he did from publicly available materials. Mr. Mack indicated that Mr. Riza received a copy of the report, but he was unaware of whether

⁴¹⁵ Kevin Farrell fax to Benon Sevan and Denis Halliday (June 24, 1998); John Mills e-mail to Denis Halliday (Aug. 17, 1998); Bo Asplund fax to Benon Sevan (Oct. 20, 1998).

⁴¹⁶ Benon Sevan address to Middle East Institute, Washington, D.C. (Nov. 16, 1998).

⁴¹⁷ Andrew Mack report, "The Future of Sanctions on Iraq?" (Dec. 20, 1998). Mr. Mack was employed by the United Nations Strategic Planning Unit of the Executive Office of the Secretary-General from approximately August 1998 to February 2001. Andrew Mack interview (Aug. 22, 2005).

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Mr. Riza forwarded it to the Secretary-General. Mr. Mack could not recall how widely the report was distributed, but thought that Deputy Secretary-General Fréchette also had received a copy.⁴¹⁸

In short, from the beginning, OIP and the Secretariat were well aware of allegations from multiple sources that Iraq engaged in the practice of exporting oil beyond the supervision of the United Nations and in clear violation of the sanctions regime. Likewise, the Secretariat had a significant presence on the ground and access to information not available to the member states. However, the Committee's review of the Secretary-General's 90 and 180-day reports to the Security Council has not revealed a single instance where the Secretariat shared its information regarding Iraq's smuggling operations. In time, the nature and details of Iraq's oil smuggling would become even clearer to the Secretariat, particularly in regards to illegal exports to Turkey and Syria, but the silence on the issue continued.⁴¹⁹

B. IRAQ'S OIL EXPORTS TO TURKEY

OIP officials were well aware of Iraq's illegal export of petroleum products into Turkey. Indeed, several OIP officials and staff witnessed the Iraqi-Turkish smuggling activities first hand. In early 1997, at the beginning of his tenure with UNOHCI, Mr. Zarif, then UNOHCI's Officer-in-Charge, personally observed lines of trucks carrying petroleum products traveling through Northern Iraq and bound for Turkey. According to Mr. Zarif, the trucks were fitted with fuel bladders placed underneath their cargo areas. Mr. Zarif regarded the matter as a sanctions violation and discussed it with a number of individuals, including Staffan de Mistura, the Humanitarian Coordinator at the time. The prevailing attitude conveyed to Mr. Zarif was that Iraq's smuggling into Turkey was well-known and the matter was outside the scope of the mandate of the Programme.⁴²⁰

The Secretariat's knowledge of the Turkish smuggling operation was not limited to those in the field. Mr. Sevan witnessed the smuggling first hand. When he was on mission in Iraq from November 14 through November 23, 1997 and again from June 21 through July 5, 1998, Mr. Sevan was accompanied by Mr. Soussan. During one of Mr. Sevan's visits, he and Mr. Soussan traveled to Northern Iraq, near the Turkish border. Numerous trucks were lined up at the border with Turkey. Mr. Soussan confirmed that, while he was with Mr. Sevan, he personally saw the trucks at the border. The United Nations escort for Messrs. Sevan and Soussan explained to them

⁴¹⁸ Ibid. Mr. Mack stated that the senior staff meetings were held twice a week and were chaired by the Secretary-General, when he was in town, and either Mr. Riza or Deputy Secretary-General when he was not. Andrew Mack interview (Aug. 22, 2005).

⁴¹⁹ The Secretariat clearly possessed some information about the Iraqi regime's smuggling operation to Jordan. See, e.g., Andrew Mack report, "The Future of Sanctions on Iraq?" (Dec. 20, 1998); Nathalie Fustier note to J. Christer Elfverson (June 13, 2001). However, a majority of the internal, Secretariat discussions focused on the Turkish and Syrian operations. Thus, this Chapter likewise focuses on those two operations. Chapter 4 of Volume II of this Report contains a detailed discussion of the Jordanian smuggling operation.

⁴²⁰ Farid Zarif interview (May 11, 2005); Eric Falt interview (Apr. 2, 2005).

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that the trucks were leaving Iraq with petroleum products and that such products were contained in specially constructed tanks located underneath the trucks. During another of Mr. Sevan's missions, a Kurdish leader requested Mr. Sevan to address the smuggling issue, but Mr. Sevan refused. In his view, the illegal exports of oil to Turkey violated the sanctions regime but were not the business of the Programme.⁴²¹ Other senior OIP officials similarly described their familiarity with the regime's smuggling practices across the Turkish border.⁴²²

As mentioned above, on December 20, 1998, Mr. Mack issued his report on the future of sanctions on Iraq, which included a discussion of information that he collected on Iraq's smuggling to Turkey. Mr. Mack explained that, at the time, Turkey was one of Iraq's "main smuggling partners." According to Mr. Mack's report, the sanctions regime had strained the Turkish economy, leading to a general state of "sanctions fatigue." Smuggling routes thus had emerged, including oil smuggling into Turkey "via truck."⁴²³

Further, Ms. Kinnon was briefed on the subject of oil smuggling to Turkey on July 31, 1999. Specifically, she received an in-house report entitled "Diesel Trade at Iraqi-Turkish Border" that had been prepared in 1998. OIP's Programme Management Division requested a copy of the report as "necessary" for the division's preparation of "an overview paper on the situation in . . . [Northern Iraq]." From the report, the Programme Management Division learned that there was a large-scale smuggling operation on the northern border of Iraq, involving five hundred to seven hundred Turkish trucks per day, being used to lift diesel fuel. The report also explained that Iraq's illicit exports of crude oil were also increasing as of 1999.⁴²⁴

The Iraqi-Turkish smuggling operation continued throughout the Programme. For example, Mr. Almstrom, who was the Deputy Humanitarian Coordinator stationed in Northern Iraq from early 2000 until the middle of 2002, stated that everyone had an awareness of smuggling as it was a phenomenon that occurred throughout the region. Mr. Almstrom indicated that the evidence of illegal smuggling between Iraq and Turkey was two-fold: (1) non-Programme goods were entering Iraq; and (2) oil was being transported out to Turkey. He further stated that these practices were common knowledge for several reasons. First, the scale of the smuggling was so great that the trucks transporting the illicit goods and oil created additional traffic backlogs and delays, which adversely affected the implementation of the Programme because it delayed delivery of Resolution 986 goods. Second, the smuggled oil frequently spilled from the makeshift storage bladders onto the roads, which created a transportation danger. As a

⁴²¹ Benon Sevan travel records (Nov. 1997; June-July 1998); Michael Soussan interview (Mar. 16, 2005); Farid Zarif interview (May 11, 2005).

⁴²² See, e.g., J. Christer Elfverson interview (Dec. 4, 2004); Jeremy Owen interview (Dec. 13, 2004); John Almstrom interview (Aug. 2, 2005); Darko Mocibob interview (Aug. 16, 2005).

⁴²³ Andrew Mack report, "The Future of Sanctions on Iraq?" (Dec. 20, 1998).

⁴²⁴ Frances Kinnon e-mail to Bisrat Habtemichael (July 30, 1999); Bisrat Habtemichael e-mail to Frances Kinnon (July 31, 1999) (information received from unofficial sources.).

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consequence, from both the truck traffic volume and road conditions, anybody living in, or visiting the area, must have been aware of the illegal smuggling to and from Turkey.⁴²⁵

Notwithstanding its general awareness of the issue, the Secretariat did not challenge the Turkish smuggling route, which remained open and operational throughout the Programme.

C. IRAQ'S OIL EXPORTS TO SYRIA

1. Initial Considerations Regarding the Syrian Pipeline

In 1998, OIP officials learned of Iraq's interest in reopening the Syrian pipeline. On June 12, 1998, Saybolt officer Peter Boks advised Ms. Scheer that Iraq was reportedly expecting to use the Syrian pipeline to export its oil. Specifically Mr. Boks reported that Oil Minister Rashid told the Iraqi Press Agency that "Iraq has completed final arrangements to make the Iraq-Syria pipeline ready." Mr. Boks explained to Ms. Scheer that, in his view, the Syrian pipeline was not ready for use because eighty kilometers of the pipeline required repairs.⁴²⁶

On August 20, 1998, John Mills, an OIP Information Officer, selectively circulated to a number of OIP officials in New York a newspaper article discussing Iraqi-Syrian talks to reopen the oil pipeline. Those who received copies of the article included Ms. Scheer and Mr. Kramar, one of the oil overseers. The article quoted Oil Minister Rashid as stating that Iraq and Syria had "set a timetable to re-operate the pipeline." Unnamed Iraqi officials further stated that approximately \$80 million was needed to repair the pipeline. During this period, reports of efforts to reopen the Syrian pipeline—specifically, Mr. Mack's report—were also circulating within the 38th Floor of the Secretariat.⁴²⁷

During a 661 Committee expert meeting on July 13, 1999, a representative of Russia asked whether the Syrian pipeline could be considered as an alternative route for transferring Iraq's oil. Mr. Boks, who represented Saybolt at that meeting, stated that it had not yet been examined. In explaining the need for additional funding for spare parts, Mr. Boks explained to the 661 Committee members that Iraq's infrastructure for oil production was very weak. He also told the 661 Committee that Iraq had a limited ability to manufacture spare parts for its oil industry. In an e-mail sent to Ms. Scheer several months before the July 13th meeting, Mr. Boks had expressed

⁴²⁵ John Almstrom interview (Aug. 2, 2005).

⁴²⁶ Peter Boks e-mail to Stephani Scheer (June 12, 1998).

⁴²⁷ John Mills e-mail to OIP Staff (Aug. 20, 1998) (attaching a *Reuters* article on Iraqi intent to reopen the Syrian pipeline); Andrew Mack report, "The Future of Sanctions on Iraq?" (Dec. 20, 1998); Andrew Mack interview (Aug. 22, 2005).

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his concern about the oil transportation system in Iraq, in particular, the “degradation” of the Syrian pipeline.⁴²⁸

Resolution 1284 requested that the Secretary-General establish a team of experts to report on Iraq's oil production and export capacity and make recommendations for increasing Iraq's export capacity consistent with other Security Council resolutions. Accordingly, in January 2000, Mr. Sevan coordinated a team of experts to examine Iraq's oil industry, including Graham Brett of Saybolt. In a letter dated January 5, 2000, Mr. Sevan requested that Ambassador Hasan assist in coordinating the endeavor. As Mr. Sevan expressed in his letter, OIP was interested in the Syrian pipeline and, in particular, the pipeline's operating and metering capacities at the Iraq-Syria border.⁴²⁹

From January 16 to January 31, 2000, the team of experts conducted its investigation in Iraq. Three senior members of Iraq's Ministry of Oil were assigned to accompany the team during the period. The experts' report was issued in March 2000, in advance of the meeting of the Security Council on March 24, 2000. There is no indication that the experts actually focused their energies on the Syrian pipeline, as initially proposed. The report's executive summary merely explained that “the export of crude oil via the Iraqi/Syrian Pipeline, as stated by the Ministry of Oil, is not being contemplated before 2001.” The upshot of the report and the Secretary-General's remarks to the Security Council was that Iraq's oil industry and its related infrastructure were in a state of disrepair. In a later section of the report, the Ministry of Oil was cited as stating that the Syrian pipeline “is mostly in working condition but is unlikely to be considered for use until 2002 at the earliest.”⁴³⁰

The Iraqi regime and Syrian officials did not wait until 2002 before considering use of the Syrian pipeline. Rather, as set forth in Chapter 4 of Volume II, of this Report, it is undisputed that as of the fall of 2000, Syrian and Iraqi authorities were contemplating an arrangement whereby Iraq would export oil to Syria. Moreover, as set forth below, by November 2000, this emerging relationship was clear to those running OIP, including Mr. Sevan and Deputy Secretary-General Fréchette.

⁴²⁸ OIP notes of 661 Committee expert meeting (July 13, 1999); Peter Boks e-mail to Stephani Scheer (Mar. 17, 1999).

⁴²⁹ S/RES/1284, para. 30 (Dec. 17, 1999); Stephani Scheer fax to Farid Zarif (Jan. 6, 2000); Benon Sevan letter to Iraq Permanent Representative (Jan. 5, 2000). Mr. Sevan's proposed itinerary for a trip to Iraq included the possibility of a visit to the Syrian pipeline. Mr. Sevan's next visit to Iraq occurred in August 2000. A document recording his meetings during that trip does not reflect a visit to the Syrian pipeline. Benon Sevan travel records, record of meetings (Aug. 1-16, 2000).

⁴³⁰ “Report of the Group of United Nations Experts Established Pursuant to Paragraph 30 of the Security Council Resolution 1284 (2000),” pp. 5, 6, 10, 64 (Mar. 2000).

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2. November 2000—Pipeline Activity Begins

Multiple and varied sources confirm use of the Syrian pipeline as early as November 2000. Mr. Sevan was well aware of reports that the pipeline was again in service. For example, on November 16, 2000, Graham Brett of Saybolt informed Mr. Sevan that Syria and Iraq had re-established a “full diplomatic relationship[.]” Mr. Brett specified that, as he understood the circumstances, “Iraq moves the oil to the Syrian Govern[ment] Trading organisation, who in turn would—barrel for barrel—sell Syrian oil to the market.” In response, Mr. Sevan asked Mr. Brett to regularly keep him informed as to reports of smuggling.⁴³¹

On November 21, 2000, Mr. Sevan received additional information concerning the operation of the Syrian pipeline. Peter Boks of Saybolt reported to Mr. Sevan that, according to “local contacts in Syria . . . Iraq has commenced the transfer of approximately 150,000 barrels per day of . . . Light Crude Oil.” Mr. Boks specifically stated that the crude oil was transferred to “refineries in Syria.”⁴³² These e-mail exchanges are indicative of the specificity of the information known to Saybolt regarding the operation of the Syrian pipeline, which information was imparted to OIP. The Committee has not found any indication that this information was provided to the 661 Committee, either by Mr. Sevan or Saybolt.

In addition to information fed directly to OIP by Saybolt, the media was widely reporting that Iraq and Syria had reopened the pipeline. For example, on November 20, 2000, the *Energy Intelligence Briefing* reported that, according to industry sources, “Baghdad on Nov. 16 at 7:55 am local time started pumping Kirkuk crude oil into the pipeline running to the Syrian terminal at Baniyas.”⁴³³ Records obtained from the United Nations confirm that Mr. Sevan possessed the referenced article from the *Energy Intelligence Briefing* and forwarded it to Deputy Secretary-General Fréchette.⁴³⁴

Against this backdrop, on November 21, 2000, Mr. Sevan forwarded a note to Deputy Secretary-General Fréchette marked “URGENT.” In the note, Mr. Sevan explained that reporters had “bombarded” OIP with questions concerning whether Iraq had begun transferring oil to Syria. According to Mr. Sevan’s note, Saybolt had reported that Iraq was transferring oil to Syria, specifically to the Baniyas and Homs refineries. Mr. Sevan explained that a representative from Syria recently had sought Mr. Sevan’s advice on the subject of “how Syria should proceed

⁴³¹ Graham Brett e-mail to Benon Sevan (Nov. 16, 2000); Benon Sevan e-mail to Graham Brett (Nov. 16, 2000). With respect to the media reports, Volume II, Chapter 4 of this Report includes a detailed discussion of the media reports surfacing during this period of time.

⁴³² Peter Boks e-mail to Benon Sevan (Nov. 21, 2000).

⁴³³ See, e.g., “Syria Seeks Breathing Space through Iraqi Pipeline,” *Arabia.com*, Nov. 1, 2000; “Iraq and Syria Agree to Reopen Oil Pipeline in November,” *Middle East Economic Survey*, Nov. 6, 2000; Axel Busch and Antoine Halff, “Iraq Said to Have Started Filling Line to Syria,” *Energy Intelligence Briefing*, Nov. 20, 2000, p. 1.

⁴³⁴ Benon Sevan note to Louise Fréchette (Nov. 21, 2000).

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regarding export of oil through the Iraq/Syria pipeline.” Mr. Sevan told the Syrian official that he had a choice: export oil in violation of the sanctions regime or comply by allowing the United Nations to monitor the oil exports and sales. If Syria wished to comply, then Mr. Sevan predicted that the Security Council might approve the export of Iraq’s oil to Syria. Mr. Sevan concluded the note advising Deputy Secretary-General Fréchette that the United Nations should tell reporters that it would be “checking with the parties concerned.”⁴³⁵ While this information was shared internally, there is no indication that the Secretariat relayed Saybolt’s information to the 661 Committee.

That same day, Mr. Sevan also sent a note to Fred Eckhard, Spokesman for the Secretary-General. Copying Deputy Secretary-General Fréchette and Mr. Riza (among others), Mr. Sevan advised Mr. Eckhard not to volunteer any information on the subject of the Syrian pipeline. In the event the subject came up, however, Mr. Sevan instructed Mr. Eckhard to explain that the United Nations had received reports of oil smuggling and would be following up on the information.⁴³⁶

3. Discussions between OIP and the 661 Committee

Iraq’s oil smuggling operations posed a threat to the Programme and limited the amount of humanitarian aid that the Programme was capable of providing to the Iraqi people. Mr. Sevan advised Mr. Eckhard to explain that “all proceeds from oil exports should be deposited directly in the United Nations (Iraq) escrow account.” Secretary-General Annan, Deputy Secretary-General Fréchette, and Mr. Riza acknowledged that oil smuggling diminished the amount of oil channeled through the United Nations escrow account and signaled looseness in the sanctions regime. The negative implications to the Programme were particularly acute following the passage of Resolution 1284 in December 1999, through which the Security Council lifted the ceiling on Iraq’s capacity to sell oil through the Programme.⁴³⁷

Furthermore, the context in which the smuggling allegations surfaced is significant. As explained above, in November and December 2000, the Iraqi regime was mounting a three-pronged assault—kickbacks on Programme contracts, oil surcharges, and smuggling—on the sanctions regime within which the Programme operated. By this point, Mr. Sevan and his superiors within the Secretariat were well aware of Iraq’s demands for surcharges on oil sales. On December 1, 2000, the regime had gone as far as shutting off oil supplies altogether when the oil overseers questioned the regime’s pricing mechanism. For his part, Mr. Sevan was also apprised by Mr. Elfverson, on December 5, 2000, of increasing evidence that the regime was demanding kickback

⁴³⁵ Ibid.

⁴³⁶ Benon Sevan note to Fred Eckhard (Nov. 21, 2000).

⁴³⁷ Ibid.; Kofi Annan interview (July 26, 2005); Louise Fréchette interview (May 25, 2005); S. Iqbal Riza interview (July 7, 2005); S/RES/1284 (Dec. 17, 1999).

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payments. With these circumstances in mind, the Secretariat's response, or lack thereof, to the smuggling allegations is troubling.⁴³⁸

On December 21, 2000, Mr. Sevan attended a meeting of the 661 Committee, where he was questioned about reports that the Syrian pipeline had been reopened. Mr. Sevan reported that Syrian officials had been questioned, but they denied that the pipeline had been reopened other than to test its capabilities in the event of Iraq's export of oil. He did not make any reference to the advice that he had given the Syrian representative. Mr. Sevan also told the 661 Committee that he had spoken to representatives from Iraq, who also denied the reports. During the 661 Committee meeting, Mr. Sevan refused a request to conduct an investigation of matters pertaining to the pipeline. In his view, OIP "had no mandate to investigate, and *no sources of information* other than those available to the [661] Committee." In addition to resisting investigation by OIP, Mr. Sevan also opposed an investigation by Saybolt, stating that Saybolt "simply guarded the metering stations and monitored how much oil was flowing in the pipeline between Iraq and Turkey and how much oil was being loaded onto the ships; its job was not investigation."⁴³⁹

The next day, Mr. Sevan reported back to Deputy Secretary-General Fréchette and Mr. Riza on the nature of the prior day's formal meeting with the 661 Committee. Mr. Sevan stated that "[o]n the issue of the Syrian/Iraqi pipeline . . . you will note that I categorically objected to the request for an investigation by the Secretariat of the operational status of this pipeline, in the absence of a mandate from the Security Council." OIP's notes from the formal meeting also reveal OIP's position that "the buck was being passed once again to the Secretariat." Further, the OIP meeting note referenced Mr. Sevan's objection to Saybolt having any role in addressing concerns about the Syrian pipeline. This objection is peculiar given Saybolt's role as an "independent inspection agent" and that under Resolution 986 and the Iraq-UN MOU between the Secretariat and the Government of Iraq, the independent inspection agents were designated to assist the 661 Committee.⁴⁴⁰

Mr. Sevan's claims to the 661 Committee that OIP had "no mandate to investigate" and "no sources of information" are striking for several reasons. First, Mr. Sevan, on his own initiative, had already conducted a preliminary inquiry with the Syrian and Iraqi Governments. Second, he did not relay the full extent of his conversations with the Syrian and Iraqi representatives to the 661 Committee. Third, by this point, Saybolt had advised Mr. Sevan that oil was flowing through the Syrian pipeline at a rate of 150,000 barrels per day. Fourth, Mr. Sevan's November 21st note

⁴³⁸ The Secretariat's responses to kickbacks and surcharges are discussed in Volume III, Chapter 4, Parts III and IV.

⁴³⁹ Provisional record of 661 Committee meeting, S/AC.25/SR.210, pp. 2-4 (Dec. 21, 2000) (emphasis added); OIP notes of formal 661 committee meeting, p. 1 (Dec. 21, 2000).

⁴⁴⁰ Benon Sevan note to Louise Fréchette (Dec. 22, 2000); OIP notes of formal 661 committee meeting, p. 1 (Dec. 21, 2000); S/RES/986, para. 6 (Apr. 14, 1995); Iraq-UN MOU, S/1996/356, Annex II, para. 4 (May 20, 1996).

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to Deputy Secretary-General Fréchette directly contradicts his statement to the 661 Committee that he had “no sources of information.”⁴⁴¹

Secretary-General Annan explained to the Committee that he recalled the issue of oil smuggling to Syria. He stated that the Secretariat “would have liked to have seen every dollar and cent” fall under the umbrella of the Programme, but he felt that it was “not in a position” to stop the regime’s smuggling activities. Secretary-General Annan generally recalled discussing the matter with members of the Security Council, as well as Syrian officials, but could not recall raising the issue in discussions with the Iraqi regime. However, the Secretary-General emphasized he expected the Deputy Secretary-General to ensure that the matter was raised with the 661 Committee. With respect to the detailed information gathered by Saybolt and forwarded to Mr. Sevan, the Secretary-General remarked, “Saybolt was our overseas agent. Saybolt worked for us.” The Secretary-General’s expectation was that Mr. Sevan would bring Saybolt’s information to the attention of the Security Council.⁴⁴²

When questioned by the Committee regarding the operation of the Syrian pipeline and the Secretariat’s knowledge thereof, Deputy Secretary-General Fréchette admitted that she did not offer any guidance to Mr. Sevan on the issue. Moreover, she could not recall whether she discussed the issue with Mr. Sevan, but stated that she was not “seized in a fundamental way” regarding smuggling and the issue was not clear in her mind.⁴⁴³ Further, the Committee has not located any records indicating that Deputy Secretary-General Fréchette ensured that the 661 Committee or the Security Council received OIP’s information regarding the Syrian pipeline.

In short, as of December 2000, the Iraqi regime’s oil smuggling activities were known to and discussed among senior officials within the Secretariat, including Secretary-General Annan, Deputy Secretary-General Fréchette, Mr. Riza, and Mr. Sevan. While it is evident that the 661 Committee was also aware of the regime’s smuggling activities, it is apparent that through Saybolt, the Secretariat possessed its own source of information on the subject, information which Mr. Sevan shared with Deputy Secretary-General Fréchette, but not with the 661 Committee. Mr. Sevan expected Saybolt to monitor smuggling activities through the Syrian pipeline but was unwilling to investigate the matter for the 661 Committee, citing no clear mandate. Moreover, notwithstanding the fact that the smuggling activities arose at the same time OIP received reports of the Iraqi regime’s receipt of illegal surcharges and kickbacks, the Deputy Secretary-General was not seized of the matter and took no apparent steps to ensure that the full extent of its knowledge—including the information obtained from Saybolt—was addressed by OIP with the Security Council or 661 Committee.⁴⁴⁴

⁴⁴¹ Peter Boks e-mail to Benon Sevan (Nov. 21, 2000); Benon Sevan note to Louise Fréchette (Nov. 21, 2000); Provisional record of 661 Committee meeting, S/AC.25/SR.210 (Dec. 21, 2000).

⁴⁴² Kofi Annan interview (July 26, 2005).

⁴⁴³ Louise Fréchette interview (May 31, 2005).

⁴⁴⁴ Benon Sevan note to Fred Eckhard (Nov. 21, 2000); Provisional record of 661 Committee meeting, S/AC.25/SR.210, pp. 3-4 (Dec. 21, 2000); Peter Boks e-mail to Benon Sevan (Nov. 11, 2000); Benon

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4. 2001—Secretariat's Knowledge of Ongoing Exports to Syria

Over the next several months, while OIP and the Secretariat received reports of revenue streams to the Government of Iraq in violation of the sanctions such as surcharges and kickbacks, Secretary-General Annan and Mr. Sevan kept abreast of Iraq's use of the Syrian pipeline. By the winter of 2001, it was widely accepted that Iraq was making regular use of the pipeline and thus supplying oil to Syria in clear violation of the sanctions program. In February 2001, the Secretary-General twice forwarded press accounts of Iraq's smuggling activities to the 661 Committee. On January 24, 2001, Secretary-General Annan forwarded an article appearing in *The Wall Street Journal*, which noted that "experts said the new smuggling route is Iraq's most blatant slap at the sanctions regime to date." Several weeks later, Secretary-General Annan forwarded to the 661 Committee another article, dated March 1, 2001, entitled "March Syrian Loadings Confirm Iraqi Crude Flows." As the headline suggested, industry experts reported an appreciable up-tick in crude oil exports by Syria and noted "the obvious conclusion" that Syria was importing between 90,000 and 150,000 barrels per day from Iraq. Rather than officially denying the reports, Syrian President Bashar Al-Assad pledged to United States Secretary of State Colin Powell to bring the oil imports from Iraq into compliance with the sanctions regime—under the control of the Oil-for-Food Programme. President Al-Assad did not specify, however, when or how Syria would comply with the sanctions regime.⁴⁴⁵

Throughout 2001, the Secretariat's knowledge of oil smuggling and other sanctions violations became increasingly concrete without a resultant sharing of information. On June 11, 2001, Mr. Elfverson prepared a "Briefing on Iraq" in anticipation of the Secretary-General's mission to the Middle East. Mr. Elfverson circulated the memorandum to the Executive Office of the Secretary-General, Deputy Secretary-General Fréchette, and Mr. Sevan. Without disputing the fact that the Syrian pipeline was in use, Mr. Elfverson's note estimated that the monetary value of illegal exports was \$1.5 billion per year. Mr. Elfverson, however, reported that OIP did not have "reliable figures" as to the quantities being sold in violation of the sanctions regime.⁴⁴⁶

The following day, on June 13, 2001, Mr. Elfverson received additional information on the breadth of Iraq's illegal exports. Specifically, Nathalie Fustier, an OIP Programme Officer, explained that Syria gained "tremendous benefits from its trade relations with Iraq." According to Ms. Fustier, after re-opening the pipeline in November 2000, Syria used Iraqi oil locally, enabling Syria to increase its own oil exports. Ms. Fustier valued the Syria-Iraq trade protocol at \$1 billion, with another \$1 billion being discussed. Additionally, Ms. Fustier prepared a detailed chart and estimated that Iraq's smuggling revenue amounted to \$1.5 to \$1.8 billion annually, with

Sevan note to Louise Fréchette (Nov. 21, 2000); Benon Sevan e-mail to Graham Brett (Nov. 16, 2000); Benon Sevan note to Louise Fréchette (Dec. 22, 2000); Louise Fréchette interview (May 31, 2005).

⁴⁴⁵ Memorandum to 661 Committee, S/AC.25/2001/INF.2 (Feb. 6, 2001); Neil King Jr., "Oil Smuggling by Iraq Poses Bush Challenge," *The Wall Street Journal*, Jan. 24, 2001, p. A6.; Memorandum to 661 Committee, S/AC.25/2001/INF.4 (Mar. 1, 2001); Paul Sampson, Ruba Husari, and Axel Busch, "March Syrian Loadings Confirm Iraqi Crude Flows," *Energy Intelligence Briefing*, Mar. 1, 2001.

⁴⁴⁶ J. Christer Elfverson note to S. Iqbal Riza (June 11, 2001).

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\$547 million to \$730 million attributed to Iraq's exports to Syria. Ms. Fustier further noted the significant revenue that Iraq was generating through smuggling activities to Jordan and Turkey. Ms. Fustier explained that the "oil smuggling constitute[d] only part of [Iraq's] revenues." For a complete figure on Iraq's revenues, "estimates of commissions perceived within the framework of SCR 986 (oil commissions and 'humanitarian' commissions) should be added." Ms. Fustier's memorandum, which was submitted to Mr. Elfverson, received wider circulation and the Committee located a copy of the memorandum in Mr. Sevan's office files.⁴⁴⁷

From July 2001 through the handover of the Programme to the CPA, reports of widespread sanctions violations continued.⁴⁴⁸ Detailed reports summarized the ongoing nature of the smuggling activities from Iraq to Syria. For example, the Coalition for International Justice, which issued a report entitled "Sources of Revenue for Saddam, & Sons" in September 2002, explained that since December 2000 Syria had increased its oil exports from 100,000 to 200,000 barrels per day. The report rejected Syria's claims that the pipeline was only used for testing purposes, and concluded instead that "[a]s the Syrian oil fields have been in decline for quite some time, the overnight increase can only be due to Iraqi oil." The report estimated that by using the Syrian pipeline and tanker trucks, Iraq was exporting between 180,000 and 230,000 barrels per day to Syria from 2000 through 2002. The report noted that despite pledges by Syrian officials to bring pipeline flows under the Programme, as of September 2002 it had "yet to happen."⁴⁴⁹

D. THE SECRETARIAT'S RESPONSE TO ALLEGATIONS OF OIL SMUGGLING

As the foregoing chronology of events makes clear, senior officials within the Secretariat, including Secretary-General Annan, Deputy Secretary-General Fréchette, Mr. Riza, and Mr. Sevan, were well aware of the extensive information regarding oil smuggling by the Iraqi regime. Moreover, the Secretariat acknowledged that the smuggling activities blatantly violated the sanctions regime in Iraq and undeniably had a negative impact on the implementation of the humanitarian program.⁴⁵⁰

As the Committee has noted in Volume III, Chapter 1 above, monitoring sanctions violations by the Iraqi regime was among the Secretariat's responsibilities under Resolutions 661 and 986, as well as under the 1997 transfer of DPA's sanctions monitoring authority to OIP. When OIP was created it subsumed not only the responsibilities inherent to providing humanitarian aid to the

⁴⁴⁷ Nathalie Fustier note to J. Christer Elfverson (June 13, 2001).

⁴⁴⁸ See, e.g., Jonathan Leff, "Iraq Still Pumping Illicit Oil through Syria," *Forbes.com*, Sept. 26, 2002; Coalition for International Justice, "Sources of Revenue for Saddam & Sons" (Sept. 2002).

⁴⁴⁹ Coalition for International Justice, "Sources of Revenue for Saddam & Sons" (Sept. 2002).

⁴⁵⁰ Kofi Annan interview (July 26, 2005); Louise Fréchette interview (May 25, 2005); Benon Sevan note to Louise Fréchette (Nov. 21, 2000); Farid Zarif interview (May 11, 2005).

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Iraqi people, but also the authority to monitor potential sanctions violations.⁴⁵¹ OIP was expected to and, when it chose to, did conduct inquiries and gather facts pertaining to issues that affected the Programme, including sanctions violations.⁴⁵² Though Iraq's oil smuggling did not directly concern OIP's processing of contracts under the Programme, senior officials within the Secretariat clearly appreciated the threat that oil smuggling posed. Those officials agreed that Iraq's purported sale of oil to Syria diminished the amount of money flowing into the Programme for humanitarian aid.⁴⁵³

The question distills to what efforts OIP undertook to curtail, or at least expose, Iraq's oil smuggling practices. Put simply, the Secretariat and OIP did very little. In fact, the prevailing attitude was that "the onus was not necessarily on OIP" to monitor sanctions violations. Although Deputy Secretary-General Fréchette has stated that the Programme "was not a sanctions monitoring program," this view is clearly erroneous in light of the applicable Security Council resolutions and the Secretariat's responsibilities thereunder.⁴⁵⁴ Furthermore, the Deputy Secretary-General's statement offers an insight into the lack of engagement and grasp of the Secretariat's functions with respect to the Programme in Iraq by the individual responsible for overseeing the Programme on behalf of the Secretariat.

Mr. Sevan similarly viewed the issue of Iraq's oil smuggling as beyond the scope of OIP's mandate. In his view, there were other organizations and mechanisms to address matters such as Iraq's oil smuggling. While the actual interception of illicit oil shipments may have been beyond the capability of the Secretariat, Resolutions 661 and 986 conferred responsibility upon the Secretary-General to report to the 661 Committee regarding the implementation of the sanctions regime and humanitarian programme.⁴⁵⁵ The wide-spread smuggling operation was a threat to both the sanctions and the humanitarian program and pertinent information should have been reported to the 661 Committee.

On the ground in Iraq, Secretariat officials—including Mr. Zarif, Mr. Almstrom and Mr. Mocibob—observed Iraq's smuggling activities and knew that such conduct violated the

⁴⁵¹ S/RES/661 (Aug. 6, 1990); S/RES/986 (Apr. 14, 1995); Iraq-UN MOU; Kieran Prendergast and Benon Sevan agreement (Oct. 31, 1997).

⁴⁵² Louise Fréchette interview (May 31, 2005); Felicity Johnston interview (May 26, 2005); Farid Zarif interviews (July 6, 8, and 14, 2005).

⁴⁵³ Kofi Annan interview (July 26, 2005); Louise Fréchette interviews (May 25 and 31, 2005); S. Iqbal Riza interview (July 7, 2005); Benon Sevan note to Fred Eckhard (Nov. 21, 2000).

⁴⁵⁴ Louise Fréchette interview (May 23 and 25, 2005); S/RES/661 (Aug. 6, 1990); S/RES/986 (Apr. 14, 1995); S. Iqbal Riza note to Yasushi Akashi and Kieran Prendergast (Oct. 13, 1997); Kieran Prendergast and Benon Sevan agreement (Oct. 31, 1997).

⁴⁵⁵ Benon Sevan address to Middle East Institute, Washington, D.C. (Nov. 16, 1998); S/RES/661, para. 10 (Aug. 6, 1990); S/RES/986 (Apr. 14, 1995).

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sanctions regime. However, Secretariat officials declined to treat the matter as within their area of responsibilities.⁴⁵⁶

In April 2004, when the Secretariat's management of the Programme, including its approach to sanctions violations, came under increased scrutiny, members of the Secretariat again acknowledged their hands-off approach to allegations of smuggling. On April 11, 2004, a response to a report that the Iraqi regime had generated \$5.7 billion in revenues via exports of oil in violation of the sanctions regime, argued that OIP "had no responsibility whatsoever to check and report on illegal oil sales." The Secretariat's position was that OIP "was responsible for overseeing legal oil sales under the [Oil-for-Food] Programme, not illicit oil sales that have been going on since 1990."⁴⁵⁷

On April 26, 2004, following his referral of the Oil-for-Food investigation to the Committee, Secretary-General Annan received a briefing on media strategy with respect to the Programme allegations. When responding to the allegations that Saddam Hussein profited by as much as \$10 billion from the Programme, the briefing advised Secretary-General Annan to separate revenue that the Iraqi regime generated through oil smuggling from revenue connected to transactions falling directly under the umbrella of the Programme. According to the Secretariat's briefing report, the illegal oil smuggling was "quite unconnected" to the Programme.⁴⁵⁸

E. CONCLUSION

Given the tone established at the highest levels within the Secretariat, it follows that OIP did not sufficiently address reports of oil smuggling during the life of the Programme. To be sure, OIP was aware of the Iraqi regime's smuggling operations; however, the Secretariat distanced itself from the smuggling issue and refused to take action. While she was clearly informed of the matter, Deputy Secretary-General Fréchette did not offer Mr. Sevan any guidance regarding smuggling, particularly as to the Syrian pipeline.⁴⁵⁹ In fairness, reports of Iraq's smuggling activities were open and notorious and the subject of discussion during a number of 661 Committee meetings. According to Deputy Secretary-General Fréchette, the Security Council "was in a position to act" and was "well aware" of reports and rumors concerning smuggling.⁴⁶⁰

⁴⁵⁶ Farid Zarif interview (May 11, 2005); John Almstrom interview (Aug. 2, 2005); Darko Mocibob interview (Aug. 16, 2005).

⁴⁵⁷ Darko Mocibob e-mail to Philip J. Thomas (Apr. 11, 2004). The report at issue was released by the United States General Accounting Office ("GAO") on or about April 7, 2004. "United Nations—Observations on the Oil for Food Programme," GAO-04-651T (Apr. 7, 2004).

⁴⁵⁸ Edward Mortimer note to Kofi Annan (Apr. 23, 2004).

⁴⁵⁹ "Report of the Secretary-General to Security Council," S/2000/1132 (Nov. 29, 2000); Provisional record of 661 Committee meeting, S/AC.25/SR.210, p. 2 (Dec. 21, 2000); Louise Fréchette interview (May 31, 2005).

⁴⁶⁰ Louise Fréchette interviews (May 25 and 31, 2005); OIP notes of informal Security Council consultations (Sept. 25, 2002); United Nations Security Council Affairs Division notes of formal 661

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Nevertheless, the fact remains that the Secretariat, and specifically OIP, had good reason to pay close attention to smuggling concerns. Following Resolution 1284, which lifted restrictions on the volume of oil that Iraq could export through the Programme, Iraq's smuggling had significant implications with respect to OIP's humanitarian objectives, not to mention sanctions monitoring.⁴⁶¹ More particularly, each barrel of oil smuggled out of Iraq was a barrel of oil not sold under the Programme, which proceeds would have funded the purchase of additional humanitarian supplies. Hence, whether reports of smuggling were widely known or not, OIP's interests and responsibilities demanded more than assuming knowledge and action on the part of the 661 Committee. As set forth throughout this Report, the Secretariat had a duty to report on the implementation of both the sanctions and humanitarian programs, pursuant to Resolutions 661, 986 and subsequent resolutions. The Secretariat's response to the Iraqi government's smuggling activities, like its failures with respect to Iraq's kickback scheme, reveals a pattern of inaction and inadequate disclosure to the Security Council and the 661 Committee.

Committee meeting (Feb. 8, 2002); Provisional record of 661 Committee meeting, S/AC.25/SR.210 (Dec. 21, 2000).

⁴⁶¹ S/RES/1284, para. 15 (Dec. 17, 1999); Benon Sevan note to Fred Eckhard (Nov. 21, 2000); Louise Fréchette interviews (May 25 and 31, 2005).

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I. INTRODUCTION

Chapters 2 through 4 above have focused on various management failures and challenges occurring within OIP and under the leadership of Benon Sevan. For example, Mr. Sevan failed to embrace OIP's responsibilities with respect to sanctions monitoring, withheld critical evidence from the 661 Committee of reports of kickbacks on humanitarian contracts, marginalized the important role of the Programme Management Division, and did not ensure that the Contracts Processing and Monitoring Division possessed adequate resources and expertise to scrutinize Programme-related contracts. Mr. Sevan's failures are all the more troubling when considered against his corrupt receipt of oil allocations from the Iraqi regime from which he profited.⁴⁶²

But Mr. Sevan cannot bear all responsibility alone. His management of the Programme was subject to supervision from senior management of the top floor—the 38th Floor—of the United Nations: Secretary-General Kofi Annan, Deputy Secretary-General Louise Fréchette, and former Chef de Cabinet S. Iqbal Riza. In particular, the Secretary-General appointed Mr. Sevan to run OIP and thereby manage the “the activities of the United Nations Secretariat” pursuant to both Resolutions 661 and 986. The Secretary-General also designated Deputy Secretary-General Fréchette to oversee Mr. Sevan and OIP. Mr. Riza frequently involved himself in issues pertaining to the Programme and advised the Secretary-General accordingly. This Chapter addresses the conduct of the Secretary-General and the Deputy Secretary-General in connection with the Programme and discusses how their general inattention to reports of Iraqi manipulation of the Programme contributed to the Programme's failures and weaknesses. It also discusses the role of Mr. Riza and his involvement in the Programme.

The Secretary-General serves as the United Nations' Chief Administrative Officer and has the discretion to bring to the attention of the Security Council any matter that may threaten the “maintenance of international peace and security.” With respect to the operation of the Programme, the Security Council set forth specific responsibilities for the Secretariat regarding the implementation of the humanitarian program and the sanctions regime within which it operated. Specifically, Resolution 661 required the Secretariat to report on the progress of the implementation of the sanctions regime and provide the 661 Committee “all necessary assistance.” Resolution 986 required the Secretariat to perform several functions in the administration of the Programme, including quarterly reporting on the implementation of the Programme (referred to as the “90 and 180-day reports”) and otherwise take the “actions necessary to ensure the effective implementation” of the Programme. Within this framework, the 661 Committee set up procedures that further delineated the role of the Secretariat, including the use of “experts” to examine the propriety of Programme-related contracts and the coordination of

⁴⁶² “Third Interim Report,” pp. 5-52. There is no indication or evidence that senior United Nations management knew about Mr. Sevan's corrupt solicitation and receipt of oil allocations from the Iraqi regime.

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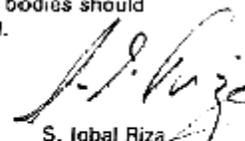
communications between various entities and divisions monitoring the Programme and the circumstances in Iraq.⁴⁶³

As discussed in Chapter 1 of this Volume, Secretary-General Annan created OIP and appointed Mr. Sevan as its Executive Director in October 1997. OIP was designed by the Secretary-General to manage the Secretariat's responsibilities under both Resolutions 661 and 986. In March 1998, after creating the position of Deputy Secretary-General, the Secretary-General delegated his authority for the "overall supervision of the Iraq Programme" to Deputy Secretary-General Fréchette. "Consequently, such correspondence regarding the Programme which has heretofore been signed by the Secretary-General should henceforth be prepared for the Deputy Secretary-General's signature. Similarly, the Secretary-General's reports to the Security Council and other bodies [specifically, the 90 and 180-day reports] should now be referred to the Deputy Secretary-General for her approval."⁴⁶⁴

Note to Mr. Sevan

Subject: Supervision of the Iraq Programme

This is to confirm the Secretary-General's decision, with immediate effect, to delegate authority for the overall supervision of the Iraq Programme to the Deputy Secretary-General. Consequently, such correspondence regarding the programme which has heretofore been signed by the Secretary-General should henceforth be prepared for the Deputy Secretary-General's signature. Similarly, the Secretary-General's reports to the Security Council and other bodies should now be referred to the Deputy Secretary-General for her approval.



S. Iqbal Riza
Chef de Cabinet
4 March 1998

Figure: S. Iqbal Riza note to Benon Sevan (Mar. 4, 1998).

The Deputy Secretary-General maintains that she did not receive the note to Mr. Sevan regarding the delegation. However, in recognition of the Secretary-General's delegation of authority, Mr. Sevan forwarded a note to the Deputy Secretary-General "welcom[ing] most heartily the Secretary-General's decision" and pledging his "unswerving support and full cooperation."

⁴⁶³ UN Charter, ch. XV, arts. 97, 99; S/RES/661, paras. 6, 8, 10 (Aug. 6, 1990); S/RES/986, paras. 11, 13 (Apr. 14, 1995); 661 Committee Procedures, paras. 33, 43.

⁴⁶⁴ Chapter 1, Part III of this Volume discusses the chronology and mechanics of the Secretary-General's creation of OIP. S. Iqbal Riza note to Benon Sevan (Mar. 4, 1998) (regarding "Supervision of the Iraq Programme").

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Several days later, the Secretary-General introduced the Deputy Secretary-General to high-ranking officials within the Iraqi regime to whom he explained that the Deputy Secretary-General was “now responsible for overseeing the Oil for Food programme.” Deputy Secretary-General Fréchette recently remarked that ensuring the accuracy of the 90 and 180-day reports was one of her most significant responsibilities under the Programme. Clearly, the contemplation was that the Deputy Secretary-General would supervise the Secretariat’s operations with respect to Mr. Sevan’s management of the Programme. Mr. Sevan, accordingly, spoke to the Deputy Secretary-General about the Programme nearly every day and routinely provided her with notes and memoranda concerning significant Programme-related issues.⁴⁶⁵

As Chef de Cabinet, Mr. Riza headed the Executive Office of the Secretary-General. His responsibilities included assisting both the Secretary-General and the Deputy Secretary-General “in the exercise of executive direction in relation to the work of the Secretariat and of United Nations programmes and other entities within the Organization.” Both the Deputy Secretary-General and Mr. Riza served as members of the Secretary-General’s Senior Management Group, which was required to meet on a weekly basis “to ensure strategic coherence and direction in the work of the Organization” and, in part, to “advise the Secretary-General on all matters of policy that affect the Organization as a whole.” Mr. Riza explained that as Chef de Cabinet he had the discretion to determine which matters required the attention of and action by the Secretary-General and which matters could be addressed by the Chef de Cabinet on behalf of the Secretary-General. Although Mr. Riza routinely received information concerning the administration of the Programme, he was not directly responsible for the oversight of Mr. Sevan and OIP, nor did he directly report to the 661 Committee.⁴⁶⁶

⁴⁶⁵ Louise Fréchette interview (May 23, 2005); Benon Sevan note to Louise Fréchette (Mar. 5, 1998) (regarding “Supervision of the Iraq Programme”); Benon Sevan note to S. Iqbal Riza (Mar. 12, 1998) (attaching minutes of meeting between the Secretary-General and the Foreign Minister of Iraq, through which the Secretary-General introduced the Deputy Secretary-General as “now responsible for overseeing the Oil for Food programme”); Louise Fréchette statement to the Committee (Aug. 31, 2005); Benon Sevan note to Louise Fréchette (Nov. 19, 1998) (attaching notes regarding meeting with Iraqi officials on the subject of the regime’s oil spare parts program and the distribution plan); Benon Sevan memorandum to Louise Fréchette (June 16, 2000) (explaining status of contracts on hold); Benon Sevan note to Louise Fréchette (Nov. 21, 2000) (explaining reports from Saybolt concerning the Iraqi regime’s use of the Syrian pipeline to smuggle oil); Benon Sevan note to Louise Fréchette (Jan. 10, 2001) (explaining reports from oil overseers about Iraqi regime’s request for surcharge payments on oil sales); Benon Sevan note to Jayanta Dhanapala (Feb. 14, 2001) (copying the Deputy Secretary-General and attaching briefing notes that include reference to surcharges and kickbacks in preparation for discussion with the Iraqi delegation); Benon Sevan note to S. Iqbal Riza (Mar. 7, 2001) (copying the Deputy Secretary-General and discussing widespread reports of kickbacks and surcharges); OIP, Outgoing Correspondence Log (1998-2003) (listing more than two hundred documents forwarded from OIP to the Deputy Secretary-General).

⁴⁶⁶ “Organization of the Executive Office of the Secretary-General,” ST/SGB/1998/18, paras. 2.1(a), 2.2 (Dec. 3, 1998); “Senior Management Group,” ST/SGB/1997/3, paras. 2.1, 2.33.1, 3.2 (Sept. 8, 1997); S. Iqbal Riza interview (July 7, 2005); S. Iqbal Riza note to Benon Sevan (Mar. 4, 1998); Kofi Annan interview (July 26, 2005).

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Despite the 38th Floor's authority to oversee the activities of Mr. Sevan and OIP, it is apparent that there was little real oversight of Mr. Sevan's activities and, in particular, of his response to reports of Iraqi abuses of the Programme to obtain illicit income from oil surcharges and kickbacks on Programme-related contracts. Several aspects of this absence of oversight warrant discussion: (1) the Secretary-General's mistaken view that Mr. Sevan "worked for" the 661 Committee and was correspondingly not genuinely subject to further supervision within the Secretariat; (2) the failure of the Secretary-General and the Deputy Secretary-General to ensure that reports of Programme violations – especially reports made directly to OIP – were made known to the Security Council and the 661 Committee; (3) the failure to ensure that the Iraqi regime was confronted with evidence of its Programme violations; and (4) the Deputy Secretary-General's general inattention to supervising the activities of Mr. Sevan. Each of these aspects is addressed in turn below.

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II. RELUCTANCE TO RECOGNIZE RESPONSIBILITY FOR OIP

The documents reviewed by the Committee and witness accounts from OIP officials reveal that OIP acted on behalf of the Secretariat and that Mr. Sevan reported and was accountable to Secretary-General Annan and Deputy Secretary-General Fréchette. When interviewed by the Committee, however, the Secretary-General, the Deputy Secretary-General, and Mr. Riza each struggled to recognize the role of the 38th Floor in overseeing OIP.⁴⁶⁷ Instead, they offered conflicting views of their own responsibilities as well as the functions of Mr. Sevan vis-à-vis the Programme. These inconsistencies demonstrate a basic confusion within the highest offices of the Secretariat. Moreover, when interviewed by the Committee, the Secretary-General and the Deputy Secretary-General were reluctant to accept responsibility for oversight and supervision of Mr. Sevan. Mr. Riza attempted to distance himself from substantive involvement in the Programme.

In particular, the Secretary-General told the Committee that the Programme was managed by the 661 Committee. He went as far as to assert that Mr. Sevan *worked for* the 661 Committee. The following colloquy between Secretary-General Annan and his attorney during a recent interview with investigators illustrates his position:

Q Mr. Secretary-General, what entity or individual was in charge of the Oil-for-Food Programme?

A The 661 Committee.

Q And who was responsible for the day-to-day operations and management of the Oil-for-Food Programme?

A The 661 Committee would stay in contact with the director of the program.

Q Who was the director of the program?

A Benon Sevan.

Q Who did he work for directly?

A The 661 Committee.

⁴⁶⁷ S. Iqbal Riza note to Yasushi Akashi and Kieran Prendergast (Oct. 13, 1997) (explaining Secretary-General Annan's decision to consolidate management of activities under Resolutions 661 and 986); Kieran Prendergast and Benon Sevan agreement (Oct. 31, 1997) (agreement signed by Kieran Prendergast as Under-Secretary-General for Political Affairs and Benon Sevan as Executive Director of OIP); S. Iqbal Riza note to Benon Sevan (Mar. 4, 1998) (regarding the delegation of authority from the Secretary-General to the Deputy Secretary-General); Kofi Annan interviews (July 26-27, 2005); Louise Fréchette interview (May 23, 2005); S. Iqbal Riza interviews (July 7 and 25, 2005).

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Q And who gave Sevan his instructions and directions on a day-to-day basis?

A From the 661 Committee.⁴⁶⁸

The difficulty with the Secretary-General's view is that he appointed Mr. Sevan and he created OIP in the first place as the body responsible for managing "the activities of the United Nations Secretariat" relative to the Programme. Although the 661 Committee retained a large operational role under the Programme and interacted frequently with Mr. Sevan, there was no Security Council resolution authorizing the 661 Committee to exercise managerial control over the activities of Mr. Sevan.⁴⁶⁹ When Mr. Sevan was promoted to Under-Secretary-General, from Assistant Secretary-General, on March 5, 1998, it was Secretary-General Annan—not the 661 Committee—who made that decision and signed the authorizing documentation. The Secretary-General—not the 661 Committee—had authority to remove Mr. Sevan and otherwise to supervise his management of the Programme.⁴⁷⁰

The Secretary-General acknowledged that the 38th Floor had a role to play with respect to the Programme. He explained that the Deputy Secretary-General served as "an extra pair of eyes" for the Secretariat. The Secretary-General expected his Deputy to ensure that Mr. Sevan raised issues with the Iraqi regime and reported Programme-related matters to the 661 Committee. The Deputy Secretary-General was also charged with reviewing and clearing the 90 and 180-day reports for the Secretary-General's transmittal to the Security Council.⁴⁷¹

The Secretariat retained significant Programme management responsibilities apart from the 661 Committee. It was charged with monitoring and reporting on the implementation of the Programme. It had regular interaction with the Iraqi regime and thus ample opportunity to

⁴⁶⁸ Kofi Annan interview (July 27, 2005). At other times during his interview, the Secretary-General stressed the 661 Committee's oversight of the Programme. Kofi Annan interviews (July 26-27, 2005) (stating that "both Benon [Sevan] and Louise [Fréchette] reported directly also to the 661 Committee"; "the 661 Committee was in charge"; and that "[t]he Security Council runs – manages the program").

⁴⁶⁹ Kieran Prendergast and Benon Sevan agreement (Oct. 31, 1997); Kofi Annan interview (July 26, 2005) (agreeing that the October 31, 1997 note for the record fairly reflected the Secretary-General's intentions in the creation of OIP); S. Iqbal Riza note to Yasushi Akashi and Kieran Prendergast (Oct. 13, 1997). For a discussion of the 661 Committee's extensive operational role, see Chapters 1 and 3 of Volume II.

⁴⁷⁰ Kofi Annan letter to Benon Sevan (Mar. 5, 1998) (appointing Mr. Sevan as Under-Secretary-General and noting that the appointment "may be terminated prior to its expiration date in accordance with the relevant provisions of the Staff Regulations and Staff Rules"). Thereafter, the Secretary-General periodically extended Mr. Sevan's appointment. See, e.g., Kofi Annan letters to Benon Sevan (Oct. 7, 1999; Dec. 21, 2000; Dec. 11, 2001; Nov. 25, 2005).

⁴⁷¹ Kofi Annan interviews (July 26-27, 2005); S. Iqbal Riza note to Benon Sevan (Mar. 4, 1998).

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address difficulties that OIP was encountering. The Secretariat played an instrumental role, moreover, in scrutinizing the propriety of contracts for Programme-related goods.⁴⁷²

The Deputy Secretary-General also described a limited role for the 38th Floor in managing the Programme. She explained to the Committee that Mr. Sevan worked “very closely with the 661 Committee.” She noted that she was theoretically charged with overseeing the Programme. However, the Deputy Secretary-General told the Committee that it never actually worked that way. She stated that Mr. Sevan had an ongoing relationship with the Secretary-General and Mr. Riza and continued to report directly to the Secretary-General. More generally, according to Deputy Secretary-General Fréchette, “if the Secretariat is performing to the satisfaction of the member states, the 38th Floor does not get involved.” Because the Deputy Secretary-General did not receive any complaints about Mr. Sevan, she assumed that there were no issues and therefore left Mr. Sevan to handle matters with the 661 Committee. She saw the 38th Floor as becoming involved only if the future and viability of the Programme were threatened. In her view, the Programme was “well run;” therefore, there was no reason for her proactive supervision of OIP.⁴⁷³

The Deputy Secretary-General ultimately conceded that in hindsight she should have asked more questions and played a greater role in ensuring that sanctions violations such as kickbacks were addressed. But, throughout her interviews with the Committee, the Deputy Secretary-General maintained that she was not responsible for overseeing the Programme or supervising Mr. Sevan. Her description of her own role contrasts dramatically with the Secretary-General’s express delegation of supervisory authority. In fact, Mr. Sevan himself was well aware of the Deputy Secretary-General’s oversight role. Upon her appointment, Mr. Sevan acknowledged the delegation of supervisory authority to the Deputy Secretary-General. He routinely advised her on how the Programme was functioning and spoke with her nearly every day, usually about matters concerning the Programme. Nevertheless, in her interviews with the Committee, she maintained that despite the Secretary-General’s delegation of oversight authority, “[i]t never happened that way.”⁴⁷⁴

⁴⁷² S/RES/986, paras. 11, 13 (Apr. 14, 1995); Vladimir Grachev note to Kofi Annan (Nov. 6, 2000) (“Note to the Secretary-General (through Mr. Iqbal Riza)”); Notes of Kofi Annan’s meetings with the Iraqi delegation (Feb. 26-27, 2001); 661 Committee Procedures, paras. 33, 43.

⁴⁷³ Louise Fréchette interviews (May 23, 25, and 31, and June 1, 2005). Deputy Secretary-General Fréchette was not alone in her view that Mr. Sevan was running the Programme adequately. Representatives from the United States Permanent Mission regarded Mr. Sevan as an effective manager of a difficult program and a very dedicated worker. United States official #3 interview (Dec. 13, 2004); United States official #6 interview (June 27, 2005). Representatives from the Russian and Chinese Missions similarly regarded Mr. Sevan as a professional and effective leader of OIP. Russian official #4 interview (Oct. 13, 2004); Chinese official #3 interview (Jan. 20, 2005).

⁴⁷⁴ Louise Fréchette interviews (May 23, 25, and 31, 2005); S. Iqbal Riza note to Benon Sevan (Mar. 4, 1998); Benon Sevan note to Louise Fréchette (Mar. 5, 1998); Benon Sevan note to Louise Fréchette (Nov. 19, 1998) (attaching notes regarding meeting with Iraqi officials on the subject of the regime’s oil spare parts program and the distribution plan); Benon Sevan memorandum to Louise Fréchette (June 16, 2000)

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Mr. Riza similarly distanced himself from responsibility for OIP. Mr. Riza acknowledged the Secretary-General's delegation of authority to the Deputy Secretary-General. He stated in a recent interview that the Deputy Secretary-General was responsible for ensuring that Mr. Sevan carried out his responsibilities and was expected to offer Mr. Sevan guidance. Mr. Riza stated that Mr. Sevan formally reported to the Secretary-General. For example, Mr. Sevan was expected to brief the Secretary-General on important matters concerning the Programme, such as matters occurring before the Security Council and the 661 Committee. In addition, Mr. Sevan was expected to bring matters concerning sanctions violations to the attention of the Secretary-General. For his part, Mr. Riza told the Committee that he had minimal involvement with the Programme. He acknowledged involvement in the creation of OIP in October 1997 and discussions with the Secretary-General and the Iraqi Ambassador regarding the regime's intent to impose surcharges on oil sales in November 2000. Otherwise, Mr. Riza claimed to have "no substantive involvement" in the Programme and did not regard the Programme as high on his list of priorities.⁴⁷⁵

Mr. Riza played a greater role than he was willing to state. Mr. Riza, the primary point of access to the Secretary-General, routinely received copies of significant documents and memoranda concerning the Programme.⁴⁷⁶ His role was to screen for materials that warranted the Secretary-

(explaining status of contracts on hold); Benon Sevan note to Louise Fréchette (Nov. 21, 2000) (explaining reports from Saybolt concerning the Iraqi regime's use of the Syrian pipeline to smuggle oil); Benon Sevan note to Louise Fréchette (Jan. 10, 2001) (explaining reports from oil overseers about Iraqi regime's request for surcharge payments on oil sales); Benon Sevan note to Jayanta Dhanapala (Feb. 14, 2001); Benon Sevan note to S. Iqbal Riza (Mar. 7, 2001) (copying the Deputy Secretary-General and discussing widespread reports of kickbacks and surcharges). The discussion in Chapter 4, Part III of this Volume explains that there is no evidence that the detailed information concerning the kickback scheme, for example, as described in Mr. Elfverson's note to Mr. Sevan on December 5, 2000 and Felicity Johnston's note-to-file on October 22, 2001, was forwarded to the Deputy Secretary-General. Nevertheless, other documents and the Deputy Secretary-General's eventual concession during recent interviews confirm that she was aware of the kickback scheme as early as February 2001. See, e.g., *ibid.*; Benon Sevan note to Jayanta Dhanapala (Feb. 14, 2001); Benon Sevan note to Farid Zarif (Aug. 27, 2001) (advising of concerns about "illicit payments" and the need to "review the whole matter"; attaching a letter describing illicit payments in connection with Programme-related transactions; copying note and attachment to the Deputy Secretary-General).

⁴⁷⁵ S. Iqbal Riza interviews (July 7 and 25, 2005); Vladimir Grachev note to Kofi Annan (Nov. 6, 2000); S. Iqbal Riza note to Yasushi Akashi and Kieran Prendergast (Oct. 13, 1997).

⁴⁷⁶ See, e.g., Benon Sevan note to S. Iqbal Riza (Mar. 12, 1998) (attaching minutes of meeting between the Secretary-General and the Foreign Minister of Iraq, through which the Secretary-General introduced the Deputy Secretary-General as "now responsible for overseeing the Oil for Food programme"); Joseph Connor note to Kofi Annan (Nov. 8, 2000) (advising Secretary-General through Mr. Riza of illegality of Iraq's contemplated imposition of oil surcharges); Benon Sevan note to Louise Fréchette (Nov. 21, 2000) (explaining reports from Saybolt concerning the Iraqi regime's use of the Syrian pipeline to smuggle oil, with a copy to Mr. Riza); Benon Sevan note to S. Iqbal Riza (Mar. 7, 2001) (explaining nature of media reports concerning kickbacks and surcharges); Benon Sevan note to Farid Zarif (Mar. 10, 2001) (noting media reports "concerning humanitarian supplies to Iraq" and the need for tighter procedures, with a copy to Mr. Riza).

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General's attention. His own handwritten notes reveal that he closely reviewed the materials that Mr. Sevan forwarded. For example, Mr. Riza received and reviewed a memorandum dated March 7, 2001 regarding allegations of kickbacks and surcharges, which he forwarded to the Secretary-General. Mr. Riza frequently met with the Secretary-General and Mr. Sevan to discuss important matters concerning the Programme. With far greater frequency than the Deputy Secretary-General, Mr. Riza also participated in meetings with Iraqi officials relating to the Programme.⁴⁷⁷

In short, OIP was a division of the Secretariat and was subject to oversight by and reporting to the 38th Floor. Yet senior officials portrayed a "very complex structure" that "in practice was not clear." The structure, according to Secretary-General, was not "a vertical reporting line." The role of the Secretariat lacked clarity and "accountability," according to the Deputy Secretary-General.⁴⁷⁸ However, when viewed against the basic mechanics of OIP and its role in managing the Programme on behalf of the Secretariat, the competing descriptions of the role of the 38th Floor evince a reluctance to accept responsibility for the significant management failures that occurred within OIP during the life of the Programme.

⁴⁷⁷ Kofi Annan interviews (July 26-27, 2005); Louise Fréchette interviews (May 23 and 25, 2005); Benon Sevan note to S. Iqbal Riza (Mar. 7, 2001) (containing Mr. Riza's handwritten notes); S. Iqbal Riza interview (July 7, 2005); Vladimir Grachev note to Kofi Annan (Nov. 6, 2000); Notes of Kofi Annan's meeting with the Iraqi delegation (Feb. 26-27, 2001).

⁴⁷⁸ Kieran Prendergast and Benon Sevan agreement (Oct. 31, 1997); Kofi Annan interview (July 26, 2005) (agreeing that October 31, 1997 note for the record fairly reflected the Secretary-General's intentions in the creation of OIP); S. Iqbal Riza note to Yasushi Akashi and Kieran Prendergast (Oct. 13, 1997); S. Iqbal Riza note to Benon Sevan (Mar. 4, 1998); Louise Fréchette interview (May 23, 2005).

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III. LACK OF FULL DISCLOSURE OF REPORTS OF PROGRAMME VIOLATIONS TO THE SECURITY COUNCIL AND THE 661 COMMITTEE

One of the primary functions of the Secretariat in its administration of the Programme was to ensure that information gathered by OIP through its operations in the field and through its review of Programme-related contracts flowed to the Security Council and the 661 Committee. Mr. Riza, for example, told the Committee that transparency was paramount to an effective relationship between the Secretariat and the 661 Committee. In fact, as referenced throughout this Report, Resolution 986 set up a formal reporting structure on a quarterly basis, whereby the Secretary-General was required to report on the implementation of the Programme. This reporting structure provided a mechanism through which the Secretariat could ensure the transparency of OIP's operations and information to the Security Council and the 661 Committee. As the Secretary-General explained, the 90 and 180-day reports were designed to provide the Security Council with "a sense of how the programme is going on the ground, how effective it is" and "to share with [the Security Council] what has happened and what we're doing and what we're achieving or not achieving." The Secretary-General further regarded the reporting structure as an opportunity to raise issues and explain difficulties concerning the implementation of the Programme.⁴⁷⁹

Referring to the flow of information between the Secretariat and the 661 Committee, Secretary-General Annan insisted in a recent interview that the Programme was "a very transparent operation"—"one of the most transparent programs [he has] seen." As explained in detail in Chapter 4 of Volume III, however, significant information was withheld from the 661 Committee. Despite mounting evidence of a widespread kickback scheme, the Secretary-General's quarterly reports to the Security Council never mentioned the emerging problem. In hindsight, the Secretary-General told the Committee that detailed information concerning the Iraqi regime's receipt of kickbacks (for example, the evidence described in the Johnston Note, which Secretary-General Annan apparently never saw) should have been conveyed to the 661 Committee and should have been discussed in his quarterly reports or even a special report to the Security Council. The Deputy Secretary-General and Mr. Riza similarly acknowledged that such detailed information in the possession of OIP needed to be transmitted to the 661 Committee. The impression on the 38th Floor, in other words, was that OIP was transparent in its relationship with the Security Council and the 661 Committee. In fact, it was not.⁴⁸⁰

⁴⁷⁹ S. Iqbal Riza interview (July 25, 2005); S/RES/986, para. 11 (Apr. 14, 1995); Kofi Annan interview (July 26, 2005).

⁴⁸⁰ Kofi Annan interview (July 26, 2005). Chapter 4, Part III of this Volume, in particular, explains how information and evidence about which OIP officials were specifically aware was not imparted to the 661 Committee and explains the absence of information concerning kickbacks from the Secretary-General's reports to the Security Council. Louise Fréchette interview (May 25, 2005) (noting that information conveyed in a memorandum from Mr. Elfverson indicated a "rising level of concern within OIP" about

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Clearly, Mr. Sevan bears responsibility for withholding information concerning the kickback scheme. Yet, the 38th Floor, too, had an obligation to ensure that the Security Council and the 661 Committee were adequately informed. The Deputy Secretary-General's office was responsible for reviewing and approving the 90 and 180-day reports before transmitting them to the Secretary-General. The Deputy Secretary-General said that she was aware of the kickback scheme. It remains unclear why Deputy Secretary-General Fréchette did not insist that the reports include reference to the kickback scheme, and she offered no clear explanation for this omission in interviews with the Committee. The Deputy Secretary-General's views on reporting information to the 661 Committee, in fact, differed from the concept of pure transparency that the Secretary-General and Mr. Riza advanced in their respective interviews. Deputy Secretary-General Fréchette told the Committee that only a "pattern" of sanctions-busting activity supported by firm evidence would trigger an obligation to report to the 661 Committee.⁴⁸¹

The Secretary-General told the Committee that he orally instructed Mr. Sevan to report the kickback scheme in either the 90 or 180-day reports or a special report to the Security Council. The Secretary-General was not aware of any written directives that he gave to this effect, and the Committee has not located any documents confirming that the Secretary-General issued such a directive. The Secretary-General suggested that his instructions occurred in the course of "a dozen" conversations with Mr. Sevan about the Iraqi regime's sanctions-busting actions. In either case, it is apparent that Mr. Sevan never formally reported the kickback scheme to the Security Council.⁴⁸²

In short, the Secretary-General, Mr. Riza, and to a lesser extent the Deputy Secretary-General, each appreciated the importance of ensuring the transparency of OIP's operations and any difficulties that OIP encountered. Despite conflicting statements as to the responsibilities of the 38th Floor in their respective interviews with the Committee, there was relative clarity about the Secretariat's role in reporting issues concerning the Programme to the Security Council. Nonetheless, pertinent information was omitted from the reports, information that Secretary-General Annan, Deputy Secretary-General Fréchette, and Mr. Riza each knew about and that each agreed should have been communicated to the Security Council.⁴⁸³

kickbacks that the Deputy Secretary-General would have expected to be brought to the attention of the Security Council); S. Iqbal Riza interview (July 25, 2005).

⁴⁸¹ Kofi Annan interview (July 26, 2005); Louise Fréchette interviews (May 23, 25, and 31, 2005); S. Iqbal Riza note to Benon Sevan (Mar. 4, 1998). The Deputy Secretary-General initially told the Committee that she was not aware of the allegations of kickbacks until "very late in the day" "once the scandal started," after the outbreak of the war in March 2003. Louise Fréchette interview (May 25, 2005).

⁴⁸² Kofi Annan interviews (July 26-27, 2005). The Secretariat's response to the Iraqi regime's sanctions violations is discussed in Chapter 4 of Volume III.

⁴⁸³ Kofi Annan interview (July 26, 2005); S. Iqbal Riza interviews (July 7 and 25, 2005); Louise Fréchette interview (May 25, 2005); S. Iqbal Riza handwritten note to Kofi Annan (Mar. 7, 2001) (indicating review of article concerning kickbacks).

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The Secretary-General and the Deputy Secretary-General were apparently not aware of the full scope of evidence that OIP had accumulated. There is no indication, for example, that Mr. Sevan advised the Secretary-General or the Deputy Secretary-General of the detailed information concerning kickback payments that the director of OIP's Programme Management Division accumulated in December 2000 and the even clearer evidence that OIP's Chief Customs Expert documented in October 2001. But the Secretary-General and the Deputy Secretary-General (and Mr. Riza) were aware of the kickback scheme at least as early as February 2001. The Secretary-General discussed the kickback allegations and other sanctions violations with Mr. Sevan on numerous occasions. Indeed, from recent interviews, it is evident that the Secretary-General paid attention to the Programme and was familiar with many of the key issues, such as the expansion of the Programme and the need to eliminate barriers to processing humanitarian contracts. Furthermore, on one occasion, the Secretary-General reported to the Security Council the Iraqi regime's illicit receipt of oil surcharges, albeit in an abbreviated form. He further recalled discussing the kickback allegations with members of the Security Council on an informal basis. When asked to reflect on his handling of the Programme, Secretary-General Annan stated that he acted properly. The fact remains, however, that despite multiple opportunities, neither the Secretary-General, the Deputy Secretary-General, nor Mr. Sevan formally reported the kickback scheme to the Security Council through quarterly reports or otherwise.⁴⁸⁴

⁴⁸⁴ J. Christer Elfverson note to Benon Sevan (Dec. 5, 2000) (discussing evidence of Iraq's receipt of kickbacks, but not apparently circulated to the 38th Floor); Felicity Johnston note-to-file (Oct. 22, 2001) (same); Benon Sevan note to Jayanta Dhanapala (Feb. 14, 2001) (attaching briefing notes that include reference to surcharges and kickbacks as subjects for discussion with the Iraqi delegation; copying the Deputy Secretary-General on same); Benon Sevan note to S. Iqbal Riza (Mar. 7, 2001) (explaining nature of media reports concerning kickbacks and surcharges and copying the Deputy Secretary-General); Kofi Annan handwritten note to S. Iqbal Riza on Benon Sevan note to S. Iqbal Riza (Mar. 7, 2001) (indicating review of article concerning kickbacks); Benon Sevan note to Farid Zarif (Aug. 27, 2001) (advising of concerns about "illicit payments" and the need to "review the whole matter"; attaching a letter describing illicit payments in connection with Programme-related transactions; copying note and attachment to the Deputy Secretary-General); Kofi Annan interview (July 27, 2005) (estimating "a dozen" conversations with Mr. Sevan about "surcharges, the kickbacks, and the issue of overpricing"); "Report of the Secretary-General pursuant to paragraph 5 of resolution 1330 (2000)," S/2001/186, para. 11 (Mar. 2, 2001). The following colloquy occurred between the Committee and Secretary-General Annan:

Q Through the course of the Oil-for-Food Programme, do you feel that you discharged your duties as Secretary-General appropriately, that is, provided appropriate leadership, support and guidance to those responsible for the operation of the program?

A I believe I did.

Kofi Annan interview (July 27, 2005). Committee investigators have reviewed each of the 90 and 180-day reports from 1999 through 2003. Neither the reports nor any other formal reports to the Security Council ever reference the Iraqi government's receipt of kickbacks.

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IV. FAILURE TO CONFRONT IRAQ WITH EVIDENCE OF MANIPULATION OF THE PROGRAMME

The Secretary-General recognized concerns about the Iraqi regime taking unilateral action. He further told the Committee that “giving Saddam Hussein the right to select” contractors was a significant design flaw in the Programme. According to Secretary-General Annan, he bore responsibility for protecting the Programme and the United Nations from manipulation by the Iraqi regime.⁴⁸⁵ While recognizing the United Nations’ exposure to abusive practices by the Iraqi regime, the 38th Floor failed to take meaningful steps to ward off and minimize such threats to the Programme.

For example, the 38th Floor played virtually no role in confronting Iraqi officials when reports of Programme abuses surfaced. Secretary-General Annan specifically emphasized that the Secretariat should have played a role in raising issues that affected the Programme with the Iraqi officials. As discussed above, by February 2001, reports concerning kickbacks, surcharges and smuggling were well known. In anticipation of a meeting with an Iraqi delegation, briefing notes were prepared indicating the need to address the regime’s reported sanctions breaches, specifically payments to the regime through kickbacks and surcharges. The series of meetings took place in New York on February 26, 27, and 28, 2001, some involving the Secretary-General and some involving other officials, including Mr. Sevan. When asked by the Committee why he had not raised the issue of Programme violations with the Iraqi delegation as suggested in the briefing notes, the Secretary-General stated that his focus was on security and weapons issues; allegations of oil surcharges and humanitarian kickbacks were “technical” matters that he thought should be raised by Mr. Sevan. The “technical” matters concerning the Iraqi regime’s sanctions violations were, as Secretary-General Annan conceded, not “the primary issue in [his] mind.” There is no indication that Secretary-General Annan raised the issue with the Iraqi delegation, though he clearly had an opportunity and was indeed advised to do so. Instead, he expected Mr. Sevan to address the Iraqi delegation. But, Mr. Sevan apparently failed to mention any sanctions violations during the series of meetings in February and March 2001.⁴⁸⁶

The Secretary-General also expected the Deputy Secretary-General to ensure a proper communication line between Mr. Sevan and the Iraqi officials, through which Mr. Sevan would raise issues that threatened the Programme. The Deputy Secretary-General, however, played no

⁴⁸⁵ Kofi Annan interviews (July 26-27, 2005).

⁴⁸⁶ Kofi Annan interview (July 27, 2005). The Secretary-General also stated that sanctions monitoring and enforcement was ultimately a matter for the 661 Committee and the member states to address. Ibid. Notes of Kofi Annan’s meetings with the Iraqi delegation (Feb. 26-27, 2001); Benon Sevan note to Louise Fréchette (Mar. 3, 2001) (attaching notes of meeting with Iraqi Ambassador, Ministry of Foreign Affairs, and other Iraqi officials); Benon Sevan note to Jayanta Dhanapala (Feb. 14, 2001) (attaching briefing notes which include reference to surcharges and kickbacks as subjects for discussion with the Iraqi delegation); Kofi Annan interviews (July 26-27, 2005). Chapter 4, Part III of this Volume discusses the Secretariat’s response to the Iraqi regime’s kickback scheme in greater detail.

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apparent role in supervising Mr. Sevan's interactions with the Iraqi regime. She told the Committee that she was not involved in dealings with the Iraqi regime and had "no role" in meetings with Iraqi officials. Apart from Secretary-General Annan's introduction of Deputy Secretary-General to the Iraqi officials in March 1998, she "had no further contact" with the regime, but "may have seen the [Iraqi] ambassador a few times." During a recent interview, the Deputy Secretary-General stated that she did not offer guidance to Mr. Sevan on what issues to raise in his meetings with Ambassador Hasan.⁴⁸⁷

As another example, in the face of reports of the Iraqi regime's manipulation of pricing on Programme-related goods, the 38th Floor did little more than merely recognize the issue. The Secretary-General told the Committee that in hindsight one of the major deficiencies in the Programme concerned the lack of adequate resources in the Contracts Processing and Monitoring Division, particularly among the customs experts. He further explained that the customs experts served the important role of identifying potential fraud and deception on the part of the Iraqi regime. The Deputy Secretary-General similarly acknowledged that in hindsight, she would have ensured greater resources to ensure a "tighter grip" on the processing of contracts for Programme-related goods.⁴⁸⁸ Despite their knowledge of allegations of widespread abuse by the Iraqi regime, particularly with respect to Programme-related contracts, the Secretary-General and the Deputy Secretary-General did little to address the issue.

The Deputy Secretary-General explained that the Security Council wanted to keep down the costs of administering the Programme. "There was a desire to show great self-restraint" in using money generated through the Programme. Yet, had there been greater transparency of the kickback issue in the first place, the need for OIP to conduct more aggressive and meaningful pricing reviews may have been more apparent. In either case, there is no indication that either the Secretary-General or the Deputy Secretary-General relied upon the allegations of kickbacks to advocate increased staffing and resources in the Contracts Processing and Monitoring Division.⁴⁸⁹

⁴⁸⁷ Kofi Annan interview (July 27, 2005); Louise Fréchette interviews (May 23 and 31, 2005).

⁴⁸⁸ Kofi Annan interviews (July 26-27, 2005); Louise Fréchette interview (May 31, 2005).

⁴⁸⁹ Louise Fréchette interview (May 31, 2005).

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V. THE DEPUTY SECRETARY-GENERAL'S FAILURE TO SUPERVISE

The Deputy Secretary-General explained that her lack of involvement in the Programme and in overseeing Mr. Sevan reflected her sense that she “had no reason to be concerned about the way that [Mr. Sevan] was managing” Programme-related issues. Instead, she operated from a “position of trust.” The more experience she had with the Programme, the more confidence she had in Mr. Sevan’s reliability. The Deputy Secretary-General gave Mr. Sevan wide latitude in addressing issues such as allegations of kickbacks. Hearing no complaints from the 661 Committee or the Security Council, the Deputy Secretary-General assumed that no action on her part was required. The Deputy Secretary-General went as far as to claim that she was “not aware of any problems involving the Oil-for-Food Programme.”⁴⁹⁰

The Deputy Secretary-General’s claim that there were no issues requiring her attention conflicts with numerous witness accounts about the messy nature of the Programme. Her statement is at odds with her own concessions of knowledge of significant Programme-related issues. For example, the Deputy Secretary-General was well aware of the Iraqi regime’s smuggling of oil and stated to investigators that as of November 2000, the re-opening of the Syrian pipeline had diverted revenue streams away from the United Nations’ humanitarian effort. She admitted knowledge of the regime’s receipt of surcharge payments and, in fact, received numerous notes from Mr. Sevan on the subject of illicit payments to the regime generated from oil sales. Similarly, the Deputy Secretary-General eventually conceded that she was aware of the kickback scheme as of March 2001.⁴⁹¹

Apart from reports and evidence of sanctions violations, the Deputy Secretary-General further knew of disputes within OIP, for example, complaints that Mr. Elfverson raised about Mr. Sevan’s style of management and the deep resentment that existed between Mr. Sevan and Humanitarian Coordinator Hans von Sponeck. Still further, the Deputy Secretary-General knew of the Iraqi regime’s delays in issuing visas for United Nations personnel to operate in Iraq.⁴⁹²

⁴⁹⁰ Louise Fréchette interviews (May 23 and 25, 2005) (“I was happy to let Sevan deal with these issues and relations with the 661 Committee”).

⁴⁹¹ S. Iqbal Riza interview (July 25, 2005); Felicity Johnston interview (May 26, 2005); Louise Fréchette interviews (May 25 and 31, 2005). The Deputy Secretary-General’s concession of knowledge is consistent with, and indeed occurred after being presented with, various documents on the subject. See, e.g., Benon Sevan note to Jayanta Dhanapala (Feb. 14, 2001) (copying the Deputy Secretary-General on briefing notes in which references to kickbacks and surcharges are made); Benon Sevan note to S. Iqbal Riza (Mar. 7, 2001) (copying the Deputy Secretary-General and discussing widespread reports of kickbacks and surcharges); Benon Sevan note to Farid Zarif (Aug. 27, 2001) (copying the Deputy Secretary-General and explaining concerns about “illicit payments” to the regime). The Deputy Secretary-General acknowledged that she reviewed documents that Mr. Sevan forwarded her. Louise Fréchette interviews (May 25 and 31, 2005).

⁴⁹² Louise Fréchette interviews (May 23 and 31, 2005).

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In contrast to the Deputy Secretary-General's suggestion that there were no problems with the Programme, the Secretary-General observed that the Programme was "any manager's nightmare." The Deputy Secretary-General had many reasons to question Mr. Sevan and, in fact, eventually conceded that there "were a few signals" indicating that the Programme was amiss. The documents and witness accounts chronicled herein reveal more than just a "few signals." The Deputy Secretary-General knew about—but did not act upon—many reports of serious Programme violations.⁴⁹³

⁴⁹³ Ibid.; Kofi Annan interview (July 27, 2005). The Deputy Secretary-General's concession of knowledge is consistent with, and indeed occurred after being presented with, various documents on the subject as described herein. In addition to relying on Mr. Sevan to administer the Programme with minimal oversight, the Deputy Secretary-General further questioned whether there was even "a mandate" to report on wrongdoing. She explained: "If there was no specific mandate to report on wrongdoing, then don't report it." Louise Fréchette interviews (May 25 and 31, 2005).

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VI. RESPONSES TO ADVERSE FINDINGS

On August 22, 2005, the Committee advised the Secretary-General and the Deputy Secretary-General of its intent to enter adverse findings against each of them. Thereafter, the Secretary-General and the Deputy Secretary-General submitted written responses through their respective attorneys.⁴⁹⁴ On August 31 and September 1, 2005, the Committee met first with the Deputy Secretary-General and then with the Secretary-General. Several of the claims they now advance are already discussed in this Chapter. The primary positions taken by the Secretary-General and the Deputy Secretary-General are addressed in more detail below.

1. Secretary-General Kofi Annan

The Secretary-General emphasizes in his submission that the 661 Committee knew of the Iraqi regime's sanctions-busting activities. But, as the Secretary-General has acknowledged, the Secretariat had an obligation to report OIP's information on sanctions violations in any event. Furthermore, particularly with respect to the kickback scheme, the Secretariat had superior access to information through OIP's customs experts and their involvement in reviewing contracts and communicating with the various missions. In fact, as to the kickback scheme, it is clear that the Secretariat through OIP had accumulated substantial evidence concerning the scheme, evidence to which the 661 Committee was not privy. The Secretary-General knew about reports of kickbacks and other illicit payments to the Iraqi regime, although he was not apprised of all of OIP's information. Assuming knowledge by the 661 Committee, and thus failing to report, is not a legitimate excuse. In fact, on other matters, the Secretariat played a proactive role in addressing and reporting matters to the 661 Committee notwithstanding the 661 Committee's knowledge, e.g., funding for oil spare parts and alleviating the problems associated with contract holds.⁴⁹⁵

The claim that the 661 Committee members were pleased with Mr. Sevan is noted above. However, while the 661 Committee may have regarded Mr. Sevan's performance as adequate, the Secretary-General and the Deputy Secretary-General were each aware of numerous issues and red flags surrounding the Programme. As part of their oversight function, it was not enough to simply rely on the 661 Committee's performance evaluations (informal as they were) in the face of problematic implementation of the Programme. In fact, the 661 Committee's assessment of

⁴⁹⁴ Gregory Craig letter to the Committee (Sept. 3, 2005) (attached as annex to the Report).

⁴⁹⁵ Ibid.; Kofi Annan interviews (July 26-27, 2005); 661 Committee Procedures, para. 33; Felicity Johnston note-to-file (Oct. 22, 2001) (explaining OIP's detailed information concerning kickback scheme and forwarding note to Farid Zarif and Mr. Sevan, but not to the Secretary-General); Kofi Annan letter to the Security Council, S/1999/746 (July 2, 1999) (recommending funding for oil spare parts); Kofi Annan letter to the President of the Security Council, S/1999/1053 (Oct. 12, 1999) (urging the 661 Committee to address delays in the contract approval). Consistent with his claim that the 661 Committee knew about the kickback scheme, the Secretary-General asserted when interviewed by the Committee that OIP had identified seventy contracts as having potentially high prices. Kofi Annan interviews (July 26-27, 2005). This claim is flawed for the reasons set forth in Chapter 3, Part III of Volume II and Chapter 4, Part III of Volume III.

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Mr. Sevan was an uninformed one. Had the 661 Committee members known that Mr. Sevan was withholding material evidence concerning the kickback scheme – evidence that the 661 Committee expressly asked for – they likely would have held a different opinion.⁴⁹⁶

The Committee recognizes that the Secretary-General directed Mr. Sevan to report information concerning the kickback scheme to the Security Council and the 661 Committee. In this regard, he supervised Mr. Sevan more actively than did the Deputy Secretary-General. In the end, formal reports to the Security Council, many of which were transmitted by the Secretary-General, are devoid of reference to the Iraqi regime's illicit and lucrative kickback scheme.⁴⁹⁷

Finally, the Committee notes several areas of agreement with the Secretary-General. First, there is no evidence that the Secretary-General knew of Mr. Sevan's corrupt receipt of oil allocations from the Iraqi regime. Second, there is no evidence that the Secretary-General directed Mr. Sevan to withhold information from the 661 Committee. Third, the applicable resolutions did not direct the Secretary-General to manage the entire Programme. Rather, the Secretary-General managed certain responsibilities under the resolutions as well as important functions of the Secretariat that provided support for the Programme. As the Secretary-General explained in his meeting with the Committee, there was a shared responsibility between the 661 Committee and the Secretariat.⁴⁹⁸

2. Deputy Secretary-General Louise Fréchette

The Deputy Secretary-General has taken the position that the 661 Committee (1) had a prominent role to play in addressing sanctions violations, (2) was generally pleased with Mr. Sevan's performance, and (3) knew of reports of the Iraqi regime's efforts to evade the sanctions regime through the illicit receipt of kickbacks, surcharges, and oil smuggling.⁴⁹⁹ These claims have already been addressed in this Chapter.

In her meeting with the Committee, the Deputy Secretary-General additionally claimed that the Secretary-General's delegation to her of supervisory authority over OIP was not clearly articulated and that her role was thus unclear. There is no indication that the Deputy Secretary-General actually received the written directive to the effect that Mr. Sevan and OIP were subject to the Deputy Secretary-General's supervision. However, she knew of the delegation and understood that one of the important aspects of the delegation was her role in ensuring the

⁴⁹⁶ Gregory Craig letter to the Committee (Sept. 3, 2005); Kofi Annan interviews (July 26-27, 2005); Louise Fréchette interview (May 31, 2005); Felicity Johnston interview (May 26, 2005); OIP notes of informal 661 Committee meeting, p. 2 (Feb. 13, 2001).

⁴⁹⁷ Gregory Craig letter to the Committee (Sept. 3, 2005); Kofi Annan interviews (July 26-27, 2005); Louise Fréchette interview (May 31, 2005); Felicity Johnston interview (May 26, 2005).

⁴⁹⁸ Kofi Annan statement to the Committee (Sept. 1, 2005); Gregory Craig letter to the Committee (Sept. 3, 2005).

⁴⁹⁹ Louise Fréchette interviews (May 23, 25, and 31, and June 1, 2005).

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accuracy of the Secretary-General's 90 and 180-day reports. To the extent that the delegation was unclear, moreover, there is no indication that the Deputy Secretary-General took steps to seek clarification as to her supervisory authority.⁵⁰⁰

The Deputy Secretary-General also has asserted that the role of the Secretariat did not include responsibility for addressing sanctions violations.⁵⁰¹ As explained in Part I of this Chapter, the claim conflicts with Security Council resolutions, the 661 Committee Procedures and the very documents through which the Secretary-General established OIP. Moreover, as explained above, the Secretary-General and the Deputy Secretary-General's own statements to Committee investigators suggest otherwise.

⁵⁰⁰ Louise Fréchette statement to Committee (Aug. 31, 2005) (claiming that she was not copied on the note delegating authority and that her role was not well-defined); Louise Fréchette interview (May 23, 2005) (same); Louise Fréchette statement to Committee (Aug. 31, 2005) (noting responsibility for ensuring the accuracy of the 90 and 180-day reports).

⁵⁰¹ Louise Fréchette interviews (May 23, 25, and 31, and June 1, 2005); Louise Fréchette statement to the Committee (Aug. 31, 2005). The respective statements the Secretary-General and the Deputy Secretary-General are explained in Chapter 4, Part II of this Volume.

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VII. CONCLUSION

In the final analysis, Mr. Sevan ran a \$100 billion Programme with very little oversight from the supervisory authority that created his position and that created OIP. Through a combination of an unclear reporting structure, a lack of supervision by the 38th Floor, and a general reluctance to recognize and address significant issues on the part of the Secretary-General and the Deputy Secretary-General, Mr. Sevan had substantial autonomy to shape the direction of the Programme. He failed to properly resist and challenge the Iraqi regime's rampant sanctions violations through which the regime diverted billions of dollars away from the humanitarian effort. He failed to properly investigate and monitor sanctions violations. And he failed to disclose pertinent information to the 661 Committee about illicit actions by the Iraqi regime. These failures are all the more disturbing because Mr. Sevan was compromised throughout much of the Programme by virtue of his corrupt receipt of oil allocations from the Iraqi regime.

Mr. Sevan's failures should have been evident on the 38th Floor. The Secretary-General relied upon a mistaken notion that the 661 Committee shouldered responsibility for the conduct of Mr. Sevan, while the Deputy Secretary-General trusted Mr. Sevan and exercised virtually no oversight. The Deputy Secretary-General suggested that the Programme was "well run," but in the end acknowledged that "in retrospect there was a growing problem of kickbacks that should have been given greater prominence ... with respect to myself and the Secretary-General."⁵⁰²

This is not to say that had the 38th Floor more aggressively supervised Mr. Sevan, the failures of OIP would have been eliminated. Nor is it to overlook the significant role and authority of the 661 Committee in guiding the Programme's affairs. But Mr. Sevan and OIP retained an immensely important role in the day-to-day administration of the Programme and interaction with the Iraqi regime. The 38th Floor also had a significant role to play. A check on Mr. Sevan was clearly needed, but no meaningful control was exercised.

⁵⁰² Kofi Annan interviews (July 26-27, 2005); Louise Fréchette interviews (May 31 and June 1, 2005).

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THE SECRETARIAT: FINDINGS AND CONCLUSIONS

I. FINDINGS AND CONCLUSIONS

On August 22, 2005, the Committee advised Secretary-General Kofi Annan, Deputy Secretary-General Louise Fréchette, and Benon Sevan of its intent to enter adverse findings against each of them. Thereafter, the Secretary-General and the Deputy Secretary-General submitted written responses through their respective attorneys. On August 31 and September 1, 2005, the Committee met first with the Deputy Secretary-General and then with the Secretary-General. Mr. Sevan has neither submitted a written response to the Committee's advisement nor sought to meet with the Committee.

Based on the evidence set forth in Chapters 1 through 5 of Volume III concerning the Secretariat's administration and management of the Programme, the Committee finds as follows:

Secretary-General Kofi Annan

As the Chief Administrative Officer of the United Nations, the Secretary-General carried oversight and management responsibilities for the entire Secretariat. That particularly included auditing and controls functions that had demonstrable problems with respect to the Programme, as discussed elsewhere in this Report.

In terms of the Programme itself, the record amply demonstrates a number of instances where there was a lack of support for and oversight of the Programme by the Secretary-General. Some of the problems identified by the Committee are: (1) a delegation to Deputy Secretary-General Fréchette that was neither clear nor appropriately monitored; (2) an inadequate response to and investigation of reports of Iraqi abuses and corruption of the Programme, in part by failing to ensure that reports of Programme violations were brought to the attention of the 661 Committee and the Security Council; (3) a lack of adequately ensuring that the sanctions objective of the Programme received appropriate attention; and (4) a failure to provide adequate oversight of the Executive Director of the Programme, Mr. Sevan.

In sum, in light of these circumstances, the cumulative management performance of the Secretary-General fell short of the standards that the United Nations Organization should strive to maintain.

In making these findings, the Committee has recognized both the difficult administrative demands imposed upon the Secretariat and the Secretary-General both by the design of the Programme, and the overlapping Security Council responsibilities.

Deputy Secretary-General Louise Fréchette

With respect to Deputy Secretary-General Fréchette, the Committee finds that the Deputy Secretary-General, apparently uncertain of her role, did not provide the degree of leadership and oversight that the complex Programme required. The scope of the delegation by the Secretary-General to the Deputy Secretary-General was not a model of clarity, but the Deputy Secretary-General failed to seek clarification. Moreover, the

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Deputy Secretary-General knew that it was her role to oversee Mr. Sevan. The Deputy Secretary-General's oversight of Mr. Sevan was not adequate. The Deputy Secretary-General offered very little direction to Mr. Sevan, particularly on matters concerning the sanctions violations. The Deputy Secretary-General acknowledged that it was her role to ensure that the Secretary-General's quarterly reports to the Security Council were accurate and complete. Yet the Deputy Secretary-General failed to have included any reference to the kickback scheme in the many reports forwarded to the Security Council during the Programme.

Benon Sevan

Mr. Sevan failed to maintain and support OIP's responsibilities with respect to sanctions monitoring and to properly investigate and monitor sanctions violations, withheld critical evidence from the 661 Committee and the Security Council of reports of kickbacks on Programme-related contracts, marginalized the important role of the Programme Management Division, and did not ensure that the Contracts Processing and Monitoring Division possessed adequate resources and expertise to scrutinize Programme-related contracts.

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II. RESPONSES FROM THE 38TH FLOOR

As noted above, on September 3, 2005, the Secretary-General through counsel submitted a letter in response to the Committee's letter dated August 22, 2005 concerning its intent to make adverse findings. Mr. Riza, though not the subject of an adverse finding in this Report, also forwarded a letter to the Committee dated August 29, 2005. At their request, the respective letters are attached to the Report in the immediately following pages. The Deputy Secretary-General, as noted, also submitted a letter to the Committee. At the Deputy Secretary-General's request, her submission is not attached.

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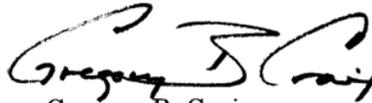
September 3, 2005

The Honorable Paul Volcker, Chairman
Justice Richard J. Goldstone
The Honorable Mark Pieth
Independent Inquiry Committee into
The United Nations Oil-For-Food Programme
825 Third Avenue – Fifteenth Floor
New York, NY 10022

Members of the Committee

I am in receipt of the Committee's findings that relate to the Secretary-General. We are grateful for an opportunity to submit the attached response. I would be grateful if the Committee would include this response in the Committee's Final Report.

Very truly yours,



Gregory B. Craig,
Counsel to the Secretary-General

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Response of Secretary-General Kofi Annan to the Findings of the Independent Inquiry Committee

The Oil-for-Food Programme was one of the biggest and most important projects -- certainly one of the most ambitious -- in the history of the UN organization. It engaged the Security Council, its 661 Committee and the Secretariat. Numerous other actors were involved. The Independent Inquiry Committee has pointed out certain inadequacies in the oversight and management of the Programme.

The Secretary-General takes responsibility on two levels. As Chief Administrative Officer, he is accountable for the operation and management of the Secretariat and readily accepts responsibility for inadequacies in the functioning of that institution. At a second level, however, he also accepts responsibility for certain inadequacies in the implementation of the Oil-for Food Programme. The Secretary-General acknowledges in hindsight that he could have been more vigorous in urging the members of the Security Council and the 661 Committee to take action dealing with Iraqi infractions, and that he could have been more creative and energetic in proposing solutions. There are many other reasons, however, for the fact that the Security Council and the 661 Committee, who had the main responsibility for the Programme, failed to take such action.

The IIC should not allow inadequacies in the oversight and management of the Programme to obscure the fact that the UN was largely successful in achieving the core objectives of the UN embargo and the aims of the Oil-for-Food Programme which fed a population of nearly 25 million people over several years.

Oversight and Management

The Committee finds that “there was a lack of support for and oversight of the Programme by the Secretary-General.”

The historical record is clear that the Secretary-General always provided unqualified and energetic support for the Oil-for-Food Programme throughout the life of the project. He was at all times aware that the success of the UN's disarmament efforts in Iraq depended, at least in part, on the success of the Oil-for-Food Programme's effort to distribute humanitarian relief – food and medicine in particular – to the Iraqi people. That the Programme was actually able to do so, despite all the obstacles and issues, should never be ignored or forgotten.

The historical record is also clear that the Security Council adopted Resolution 986 and established the Oil-for-Food Programme in 1995, many months before the Secretary-General took office in 1997. Thus, the Secretary-General simply cannot be held responsible for the design and structure of the Programme, which was so complex as to make it virtually impossible to monitor Iraqi efforts aimed at

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circumventing the embargo. Iraq's ability to select the oil companies to purchase the oil, for example, and Iraq's right to choose the vendors to sell humanitarian goods and services were elements of the program that invited corruption and undermined oversight. A former President of the 661 Committee expressed amazement that the Security Council would ever go along "with such an absurdity." The Secretary-General called the Programme "a nightmare."

Members of the 661 Committee were famously divided about how to deal with Iraqi infractions, making it impossible either to correct the design of the Programme or to address Iraqi misconduct. Another former President of the 661 Committee stated: "The 661 Committee worked on the basis of consensus. Without consensus, we could not take action. The Secretary-General could do nothing about it."

The members of the Security Council and the 661 Committee were responsible – not the Secretary-General – for managing the program, for enforcing the embargo and for taking action to deal with violations. One senior diplomat put it this way: "In all things involving Iraq, the Security Council wanted to be in charge. We never gave the buck to the Secretary-General, and it would be wrong to say that the buck stopped there."

"Some of the problems include a delegation to the Deputy Secretary-General that was neither clear nor appropriately monitored . . ."

The Secretary-General's decision to ask Deputy Secretary-General Louise Frechette to serve as "an extra set of eyes" and to advise him in the event his intervention or assistance was needed is, in itself, evidence that he was sensitive to the need for effective oversight. The position of Deputy Secretary-General was brand new, and this particular assignment was by far the most demanding and difficult. He deeply regrets any lack of clarity about the DSG's responsibilities or functions when it came to her assignment to oversee the Oil-for-Food Programme.

". . . inadequate response to and investigation of reports of Iraqi abuses . . ."

Throughout the life of the Oil-for-Food Programme, there were continual reports – in the media and from members of the 661 Committee – that the Iraqis were seeking to use the Programme to circumvent the embargo. From the earliest days of the Programme, members of the Security Council expressed concern about "kickbacks" – i.e., the Iraqi government practice of requiring companies to make special payments to secret Iraqi bank accounts – but the Council was unable to take action to address the problem. On the issue of oil surcharges, there is absolutely no doubt that the members of the 661 Committee were fully aware of Iraqi efforts to impose oil surcharges. The historical record is clear that, during 2000-2001, the members of the 661 Committee discussed this problem informally as well as formally, i.e., as an item on the Committee's meeting agenda.

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Whenever the Secretary-General himself learned about Iraqi violations of the embargo, he brought those reports to the attention of the Security Council and the 661 Committee. He repeatedly instructed Benon Sevan to provide members of the 661 Committee with details of any and all allegations relating to surcharges and kickbacks and to make further inquiry. He was unaware of any information ever being withheld from the 661 Committee, and he himself never instructed anyone to withhold information. Even today, he is unaware of any significant issue that was not put before the 661 Committee.

In his meetings with representatives of the Iraqi government, the Secretary-General focused on issues of disarmament, weapons of mass destruction and the work of UN weapons inspectors (UNSCOM and UNMOVIC). The members of the 661 Committee and the Secretary-General expected Benon Sevan to confront the Iraqis with evidence of Iraqi violations of the embargo. It was the Secretary-General's understanding and belief at the time that Sevan did so.

“ . . . failure to provide adequate oversight of the Executive Director of the Programme, Benon Sevan.”

The IIC has apparently uncovered evidence that Benon Sevan failed to provide the 661 Committee with information about surcharges and kickbacks. The Secretary-General did not know that Sevan was withholding such information, and the IIC does not dispute this was the case. The Secretary-General repeatedly urged Sevan to bring any such information to the 661 Committee and instructed him to do so.

One way of evaluating Sevan's performance at the time was to rely upon the judgment of those member states most familiar with the Oil-for-Food Programme and most concerned about Iraqi violations. Sevan's most vigorous and vociferous defenders – to the very end – were precisely those parties most heavily invested in maintaining the integrity of the embargo, the Americans and the British. The Secretary-General told the Committee: “I did not hear any complaints about Sevan's work from the members of the Security Council. They were all extremely pleased with his work.”

“The cumulative management performance of the Secretary-General fell short of the standards that the United Nations Organization should strive to maintain.”

The Secretary-General agrees that the United Nations should strive to maintain the highest possible standards of performance. The Secretary-General has always endeavored to maintain those standards in his own work. He is willing, however, to take responsibility for certain inadequacies, and he has done so. He respectfully

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declines to take responsibility for failures in performance that are not fairly attributable to him or to the Secretariat.

Cotecna Contract

With respect to evidence that Kojo Annan made telephone calls from Lagos to the UN procurement department during early November and early December in 1998, the record should reflect – and the IIC does not dispute – that the Secretary-General had absolutely no knowledge of this activity and was traveling in North Africa at the time these calls were apparently made.

September 3, 2005

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UNITED NATIONS  NATIONS UNIES
POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N. Y. 10017
CABLE ADDRESS—ADRESSE TELEGRAPHIQUE UNATIONS NEWYORK

REFERENCE:

RECEIVED
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29 August 2005

Dear Mr. Volcker,

Your courtesy in advising me (in your letter of 22 August 2005) of the relevant paragraph in the Committee's forthcoming report is appreciated. My comments for whatever they are worth, follow:

For the record, I do not recall being invited, in the meetings on 7 and 25 July 2005, to provide the Committee information and documents. Rather, the Committee's investigators produced voluminous selected documents on which they proceeded to interrogate me.

As the investigators were told, my tasks as Chef de Cabinet required me to deal with virtually all aspects of the United Nations' work which required, for one reason or another, the attention of the Secretary-General. This entailed coping with an unending stream of papers, phone calls and meetings. The purpose was to resolve problems and situations with senior colleagues in order to ensure that only those matters requiring the Secretary-General's personal attention reached him, in order to minimize the demands on his very limited time. I also provided advice when requested or required.

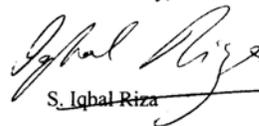
Accordingly, I dealt with a vast range of subjects, of course, including the extremely complex political and security situation prevailing in Iraq before and since 1997. This entailed dealing with papers and regularly participating in interdepartmental meetings (some including Iraqi officials) on the Iraq situation, usually chaired by the Secretary-General or Deputy Secretary-General. The Oil-for-Food Programme occasionally figured in these papers and meetings, but certainly was not a subject with which I dealt regularly or frequently.

I trust you would understand my expectation that any description of my role would reflect the factual context outlined above. For this reason, it is unclear what the intent is of the phrases "frequently involved himself" or "played a significant role in screening Programme information" (when this was a routine task for all papers reaching the Secretary-General's office).

Further, as far as I remember (I do not have the notes recorded by the Committee's investigators), I had said that, although I had no clear recall, I probably had seen papers (mostly press reports which were available to members of the Security Council) and participated in discussions where the "kickbacks" had come up, rather than stating this as a fact (as appears in the present formulation).

I note that the Committee's review of the performance of the normal tasks of my previous position in the United Nations has not led to any "adverse findings regarding (my) conduct".

Yours sincerely,


S. Iqbal Riza

Mr. Paul A. Volcker, Chairman,
Independent Inquiry Committee into the
United Nations Oil-for-Food Programme
New York

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VOLUME III - CHAPTER 7

THE SELECTION OF COTECNA INSPECTION S.A.

I. INTRODUCTION AND SUMMARY

In light of new evidence gathered since the release of the Committee's Second Interim Report, the Committee revisits several issues addressed in that report concerning the award of the Programme's goods inspection contract to Cotecna Inspection S.A. ("Cotecna").

The major points of new evidence discussed below include:

- *Evidence concerning Kojo Annan's involvement and intercession in the procurement process* – Memoranda and telephone records show that Kojo Annan used his contacts at the United Nations to assist Cotecna's effort to obtain the Iraq inspection contract—most significantly, that Kojo Annan placed several calls to the United Nations procurement department at critical times in the bidding process during the fall of 1998. This evidence is inconsistent with the prior claims of both Kojo Annan and Cotecna that he was not involved in Cotecna's effort to win the United Nations contract.
- *Evidence concerning whether the Secretary-General knew of Cotecna's contract bid during the bidding process in 1998* – On December 4, 1998, Michael Wilson of Cotecna wrote an e-mail memorandum advising Cotecna's principals, Elie Massey and Robert Massey, of "brief discussions with the SG [Secretary-General] and his entourage" about Cotecna's contract bid during an international conference in Paris in late November 1998. This memorandum was first disclosed to the Committee on June 13, 2005. It raised additional questions about the Secretary-General's position that he was not apprised of Cotecna's contract bid during 1998. These questions are especially apparent when viewed in combination with other evidence, namely telephone records and documents, provided by Kojo Annan that demonstrate Kojo Annan's active interest in advancing Cotecna's bid through his contacts at the United Nations. However, evidence that Kojo Annan was calling the procurement department does not suggest that Kojo Annan also was speaking with his father about these efforts or about Cotecna's general interest in the contract. The implication of Mr. Wilson's memorandum, that there were "discussions" about Cotecna's contract bid with not just the Secretary-General but "his entourage," is not plausible. All persons interviewed by the Committee (including the Secretary-General) have denied knowledge of such "discussions" as referenced in Mr. Wilson's memorandum. Serious questions persist about the character and credibility of Mr. Wilson, and the Committee has little assurance that he did not conjure an account of discussions with the Secretary-General in order to make himself appear more important to his principals at Cotecna. The Committee cannot rely on evidence from Mr. Wilson as the sole basis to reverse its conclusion that the evidence is not reasonably sufficient to show that the Secretary-General knew in 1998 that Cotecna had submitted a bid on the Iraq humanitarian inspection contract.
- *Kojo Annan's purchase of a car in the Secretary-General's name* – During the course of the Committee's renewed investigation of the award of the Cotecna contract, it

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THE SELECTION OF COTECNA INSPECTION S.A.

came across evidence that Kojo Annan purchased a Mercedes Benz in his father's name in the fall of 1998, which Kojo Annan enjoyed for his personal use in Africa. The car purchase was very near in time to when the United Nations awarded the inspection contract to Cotecna. This issue warranted the Committee's further investigation to consider the possibility that the car was offered as a benefit to Kojo Annan or the Secretary-General by Cotecna in connection with the award of the contract. The Committee's investigation has not found evidence to show that Cotecna purchased the car for Kojo Annan or the Secretary-General, and it has not found evidence that the purchase related to the award of the Iraq inspection contract to Cotecna. However, the investigation of this matter has disclosed evidence that Kojo Annan used false pretenses to arrange for the purchase and delivery of the car to Ghana in his father's name and that his efforts resulted in the misuse of authority of a United Nations official in Ghana.

- *Evidence concerning payments from Cotecna to Kojo Annan, Kojo Annan's relationship to Air Harbour Technologies, and allegations of Kojo Annan's involvement in contracts under the Programme* – The Committee presents further information concerning its identification of payments by Cotecna to Kojo Annan from 1999 to 2004. It also discusses the participation of Kojo Annan with Air Harbour Technologies and allegations that Kojo Annan participated in oil or humanitarian transactions under the Programme.

Part II below briefly reviews the evidence and findings of the Committee in its Second Interim Report. Part III presents new evidence showing Kojo Annan's involvement in Cotecna's effort to win the Iraq inspection contract, including his frequent calls to the United Nations procurement department. Part IV evaluates the newly disclosed memorandum of December 4, 1998, by Mr. Wilson suggesting that there were "discussions" with the Secretary-General and "his entourage" about Cotecna's contract bid during a conference in Paris in November 1998. Part V turns to an assessment of evidence concerning Kojo Annan's purchase of a car in the Secretary-General's name. Part VI discusses further information concerning the amounts paid by Cotecna to Kojo Annan; the relationship of Kojo Annan and Cotecna to another company, Air Harbour Technologies; and allegations that Kojo Annan participated in oil or humanitarian goods transactions under the Programme. Part VII discusses the responses from the parties concerned to the Committee's notices of proposed findings. Part VIII sets forth the Committee's findings and conclusions.

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THE SELECTION OF COTECNA INSPECTION S.A.

II. SUMMARY OF THE SECOND INTERIM REPORT

Cotecna is one of a small number of multinational companies specializing in the examination of goods in transit in international trade. Cotecna provides the service of trade inspectors to authenticate and certify the shipment, arrival, quantity, or quality of goods and commodities. Cotecna is a family-owned business started by Elie Massey, in 1975, who serves as the chairman of the company. Since 1993, Elie Massey's son, Robert, has served as Cotecna's Chief Executive Officer.⁵⁰³

After two unsuccessful bids to obtain the humanitarian goods inspections contract under the Programme in 1992 and 1996, respectively, Cotecna sought another opportunity to participate in the Programme. In 1996, when the Programme commenced, Lloyd's Register Inspection Ltd. ("Lloyd's") won out over Cotecna and other competitors in a bidding process for the humanitarian goods inspection contract and its contract was renewed several times without a new competitive bidding process. However, by 1998, as the United Nations, including its procurement department, became increasingly dissatisfied with Lloyd's price increases, it decided to terminate its contract with Lloyd's and put the humanitarian goods inspection contract up for bid.⁵⁰⁴

On October 9, 1998, the United Nations procurement department issued a Request for Proposal ("RFP") for the Programme's humanitarian goods inspection contract. The bids of the six companies that submitted proposals were opened on November 5, 1998. Cotecna was determined to be lowest bidder and was selected to a short list for consideration with two other companies, one of which was Lloyd's. In the midst of this selection process, Lloyd's, because of security concerns in Iraq, briefly withdrew its inspectors without prior notice to the United Nations on November 13, 1998. On December 1, 1998, Cotecna executives, along with those from the other companies, came to the United Nations in New York and met with the procurement department and OIP personnel in order to discuss questions about Cotecna's qualifications.⁵⁰⁵

Cotecna assembled a group of executives to address the specifics of the RFP and called it the "task force." The task force consisted of Robert Massey; André Pruniaux, Senior Vice President in Charge of Operations in Africa and the Middle East; John Broadhurst, Manager of Information Technology; and Michael Wilson, Vice President in Charge of Marketing for Africa. Mr. Pruniaux oversaw the preparation of the proposal. Mr. Broadhurst was assigned to cover information technology issues raised in the RFP, while Mr. Wilson was assigned to assemble documents necessary for response to the RFP. Mr. Wilson also was assigned to recruit inspectors in Africa.⁵⁰⁶

⁵⁰³ "Second Interim Report," p. 14.

⁵⁰⁴ *Ibid.*, pp. 14-15.

⁵⁰⁵ *Ibid.*, pp 15-23.

⁵⁰⁶ *Ibid.*, pp. 22-23; André Pruniaux interview (July 14, 2005); John Broadhurst interview (May 11, 2005).

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On December 3, 1998, OIP recommended that Cotecna be awarded the contract for the humanitarian goods inspections. On December 14, 1998, Cotecna was notified by a fax, dated December 11, 1998, that it had been awarded the contract. On December 31, 1998 Cotecna signed the humanitarian inspection contract with the United Nations which it retained until the end of the Programme in 2003.⁵⁰⁷

In its Second Interim Report, the Committee reviewed the circumstances concerning a possible conflict of interest arising from the United Nations' award of a contract in December 1998 to Cotecna. This contract was for the inspection of humanitarian goods entering Iraq under the Programme. Cotecna won the contract at a time when Kojo Annan—the son of Secretary-General Kofi Annan—worked as a consultant for the company. Kojo Annan's employment by Cotecna had not been formally disclosed by Cotecna to the relevant United Nations entities that were involved with the contract bidding process. Several weeks after Cotecna was awarded the contract, in mid-January 1999, a reporter from a British newspaper (the *Sunday Telegraph*) contacted the United Nations to inquire about the apparent conflict of interest.⁵⁰⁸

In response to this media query, a spokesman for the United Nations promptly responded that the Secretary-General “had no knowledge that this contract was being put out to tender or of Cotecna's interest.” Kojo Annan told the newspaper in categorical terms that “*I would never play any role in anything that involves the United Nations, for obvious reasons. I would appreciate if you would make that very clear. I never have done and I never will do.*” Similarly, Cotecna gave its assurance that “Mr. Kojo Annan has never been, directly or indirectly, involved in any UN project and therefore could not, in any way, have provided an ‘unfair advantage’ to our company in this regard.” A Cotecna official claimed in a letter to the newspaper reporter that Kojo Annan had resigned from the company at the start of the contract bidding process in October 1998. Mr. Wilson—a family friend of the Annans who worked as a vice president for marketing with Cotecna—also sent a copy of this letter to the United Nations.⁵⁰⁹

When interviewed by the Committee in connection with its preparation of the Second Interim Report, the Secretary-General stated that he had not known of a conflict of interest in 1998 during the contract bidding process. He acknowledged knowing that his son had worked at Cotecna in 1998, but he stated that he did not know that Cotecna had submitted a bid and had been chosen to receive the contract. According to the Secretary-General, he first learned that Cotecna had bid on and won the contract in mid-January 1999 when the British newspaper made its inquiry to the United Nations for more information. At that point, according to the Secretary-General, he

⁵⁰⁷ “Second Interim Report,” pp. 24-25; Nicholas Sardegna fax to Robert Massey (Dec. 14, 1998).

⁵⁰⁸ “Second Interim Report,” pp. 19-25, 50-51. As in the Second Interim Report, Kojo Annan is referred to by his full first and last name rather than “Mr. Annan” in order to distinguish him from Secretary-General Annan. Similarly, Robert and Elie Massey are referred to by their full names (rather than “Mr. Massey”) as necessary to distinguish them from one another.

⁵⁰⁹ *Ibid.*, pp. 50-51 (emphasis added); see also *ibid.*, p. 64 (noting a later statement by Cotecna to the United Nations that Kojo Annan's consultancy had terminated in “early December” of 1998 and that “since the end of his consultancy arrangement, he has not received any remuneration from Cotecna”).

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promptly spoke by telephone with his son and Mr. Wilson, respectively. They both told him that Kojo Annan did not have anything to do with the United Nations contract and that Kojo Annan had resigned from Cotecna as of the end of 1998, thereby eliminating any putative conflict of interest.⁵¹⁰

As demonstrated in the Second Interim Report, the claims that Kojo Annan had resigned from Cotecna in 1998 were false. In July 2004, Cotecna disclosed to the Committee evidence that it had made monthly payments to Kojo Annan from January 1999 to February 2004. Many of these payments were channeled through the names of other companies in order to conceal Kojo Annan's continuing relationship with Cotecna. Cotecna claimed that these additional payments were made pursuant to a newly disclosed non-competition agreement, dated January 11, 1999, that provided for Kojo Annan to receive \$2,500 per month in exchange for his agreement not to assist Cotecna's competitors in Ghana and Nigeria. But, as noted in the Second Interim Report, several of the payments through 1999 and early 2000 well exceeded the monthly amount of \$2,500 that was specified in the non-competition agreement. The underlying payment records from Cotecna showed that these payments were continuing consulting fees for Kojo Annan with respect to Cotecna's business in Africa.⁵¹¹

The Second Interim Report described how the United Nations conducted little in the way of an investigation of the circumstances leading to the award of the contract to Cotecna when it was advised of the potential conflict of interest involving Kojo Annan. It was the responsibility of the Secretary-General to ensure that an adequate and independent investigation of the matter be pursued. The Secretary-General was also aware of a pending investigation in Switzerland concerning allegedly illegal payments made by Cotecna in 1997 to benefit former Pakistani Prime Minister Benazir Bhutto. In the face of these questions about illegal conduct by Cotecna and a potential conflict of interest, the United Nations failed to take adequate steps to evaluate the propriety of the award of the contract to Cotecna.⁵¹²

With respect to the Secretary-General, the Committee's findings in the Second Interim Report focused on three questions: (1) whether the Secretary-General took any action to influence or affect the award of the contract to Cotecna; (2) whether the Secretary-General knew in 1998 of Cotecna's bid for the contract during the contract bidding process; and (3) whether the Secretary-General initiated an appropriate investigation of the award of the contract to Cotecna once it became publicly disclosed, in January 1999, that the contract had been awarded to that company.⁵¹³

As to the first question, the Second Interim Report concluded that there was no evidence that the selection of Cotecna was subject to any affirmative or improper influence by the Secretary-

⁵¹⁰ Ibid., pp. 52-53.

⁵¹¹ Ibid., pp. 64-73.

⁵¹² Ibid., pp. 16-19, 22, 49, 56-64.

⁵¹³ Ibid., pp. 77-78.

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General in the bidding or selection process. The Report further noted the absence of evidence that Kojo Annan “contacted or approached anyone at the procurement department ... at any time during the contract bidding process.” However, the Report described Kojo Annan’s acquaintance with various employees of the procurement department and noted that “[s]ignificant questions remain[ed] about the actions of Kojo Annan during the fall of 1998.”⁵¹⁴ The Committee returns to this issue in Part III of this Chapter below.

With respect to the question of whether the Secretary-General knew in 1998 about Cotecna’s submission of a bid for the United Nations contract, the Second Interim Report described the Secretary-General’s denial and the shifting statements made to the Committee’s investigators by Mr. Wilson. First, Mr. Wilson stated that he spoke about the contract with the Secretary-General in approximately November 1998. Mr. Wilson then promptly recanted this claim and insisted that he did not speak with the Secretary-General about the contract bid prior to January 1999. Noting the Secretary-General’s two prior meetings with Cotecna’s owner (Elie Massey) and his very frequent conversations with his son, the Committee noted that there were “several points during the relevant period [when] the Secretary-General *could* have been alerted to the potential conflict,” but that there was “an absence of documentary and reliable reports by disinterested persons on this point.” The Committee concluded that “the evidence is not reasonably sufficient to show that the Secretary-General knew that Cotecna had submitted a bid on the humanitarian inspection contract in 1998.”⁵¹⁵ The Committee revisits this issue in Part IV of this Chapter below.

With respect to the appropriateness of the United Nations investigation into the matter in January 1999, the Committee concluded that “the inquiry initiated by the Secretary-General was inadequate.” It further concluded that the Secretary-General “should have referred the matter to an appropriate United Nations department ... for a thorough and independent investigation,” and that, after an appropriate investigation, “it is unlikely that Cotecna would have been awarded renewals of its contract with the United Nations.”⁵¹⁶

The Committee also made adverse findings against Kojo Annan, Cotecna, and Elie Massey and Robert Massey. These findings centered on the various steps taken by Kojo Annan and Cotecna to conceal their continuing employment and financial relationship during the course of the time that Cotecna retained the United Nations inspection contract for Iraq. The findings also identified various ways in which Kojo Annan, Elie Massey, and Robert Massey were not forthcoming in their statements made to the Committee during the course of its investigation.⁵¹⁷

⁵¹⁴ Ibid., pp. 38, 77-79.

⁵¹⁵ Ibid., pp. 77-78.

⁵¹⁶ Ibid., p. 78.

⁵¹⁷ Ibid., p. 79-80. As noted in the Second Interim Report, the procurement officer assigned to the Cotecna bidding process was Alexander Yakovlev. As revealed in the Committee’s Third Interim Report, it has since been discovered that Mr. Yakovlev was corruptly receiving various payments from contractors doing business with the United Nations. When this illicit activity came to light, Mr. Yakovlev terminated his

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III. “MY PEOPLE IN NEW YORK”—EFFORTS OF KOJO ANNAN TO ASSIST COTECNA TO WIN THE CONTRACT

Since the Committee’s release of its Second Interim Report, Kojo Annan has resumed cooperation with the Committee and has produced, through his counsel, a large number of documents, including extensive amounts of correspondence and memoranda between him and personnel at Cotecna (including Elie Massey, Robert Massey, and Mr. Wilson). These disclosures include many documents that Cotecna previously failed to disclose to the Committee, despite the Committee’s repeated requests for such documents and Cotecna’s assurances more than a year ago that it had produced “the complete files on Kojo Annan.”⁵¹⁸ The Committee also has received from Kojo Annan approximately five years of billing records for a cell phone that he used in Nigeria from May 1998 to April 2003.⁵¹⁹ Moreover, Kojo Annan also agreed to be interviewed by the Committee’s investigators on July 2 and August 23, 2005.

The new documents and telephone billing records disclosed by Kojo Annan establish that he took an active part in Cotecna’s efforts to secure the United Nations inspection contract for Iraq. The records suggest that Kojo Annan’s efforts were conducted principally at the direction of Mr. Wilson, and with the knowledge of Elie Massey and Robert Massey. Kojo Annan’s efforts started in early 1998, months before the United Nations first solicited bids for the contract in October 1998.

On February 20, 1998, the Security Council adopted Resolution 1153 more than doubling the amount of oil that Iraq was allowed to sell under the Programme to a maximum of \$5.256 billion

employment with the United Nations. On the same day that the Committee issued its Third Interim Report, Mr. Yakovlev appeared in a United States federal court to plead guilty to various charges stemming from his corrupt activity. With respect to the selection of Cotecna in 1998 and its subsequent retention, the Committee does not have evidence that Mr. Yakovlev engaged in corrupt activities. However, the Committee has been unable to investigate this possibility because United States law enforcement authorities have refused the Committee’s request to conduct an interview of Mr. Yakovlev on this matter.

⁵¹⁸ Robert Massey letter to the Committee (June 29, 2004) (stating that “[f]ollowing up on our conversation today, we are hereby transmitting copies of Cotecna’s complete files on Kojo Annan” and that “Cotecna is confident that your review of these documents and the facts will reveal that no improprieties occurred in connection with the employment of Mr. Kojo Annan”; and emphasizing that “we share our complete file on [the Programme]”); Committee letter to Evelyn Suarez (July 12, 2004) (requesting all Cotecna documentation relating to the Programme, including payment information and records of communications); Evelyn Suarez letter to Committee (Aug. 23, 2004) (enclosing records concerning Kojo Annan and stating that “[t]his should complete our document production for Kojo Annan and address your questions relating to Kojo Annan’s employment relationship with Cotecna”). Evelyn Suarez is Cotecna’s legal counsel.

⁵¹⁹ A listing of all relevant calls made by Kojo Annan during the Cotecna contract bidding period from October to December 1998 (hereinafter Kojo Annan’s “cell telephone records” is attached as Annex 1 to this Chapter of the Report. Kojo Annan has provided the Committee with cell telephone records for one cell telephone covering the period of April 1998 through May 2003. Copies of some of the newly produced records of Kojo Annan are also attached as annexes to this Chapter of the Report.

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over a period of six months. This new resolution would, consequently, allow a greater volume of humanitarian goods to be imported into Iraq. On February 26, 1998, Mr. Wilson referred to Kojo Annan’s efforts on behalf of Cotecna in a fax to Kojo Annan at his Cotecna office in Lagos, Nigeria. In the fax, Mr. Wilson stated, “On Iraq, I am happy to note the progress you have made and I quite agree that we should position ourselves now. I will send you the various options we have discussed.” The fax was copied to both Elie Massey and Robert Massey.⁵²⁰

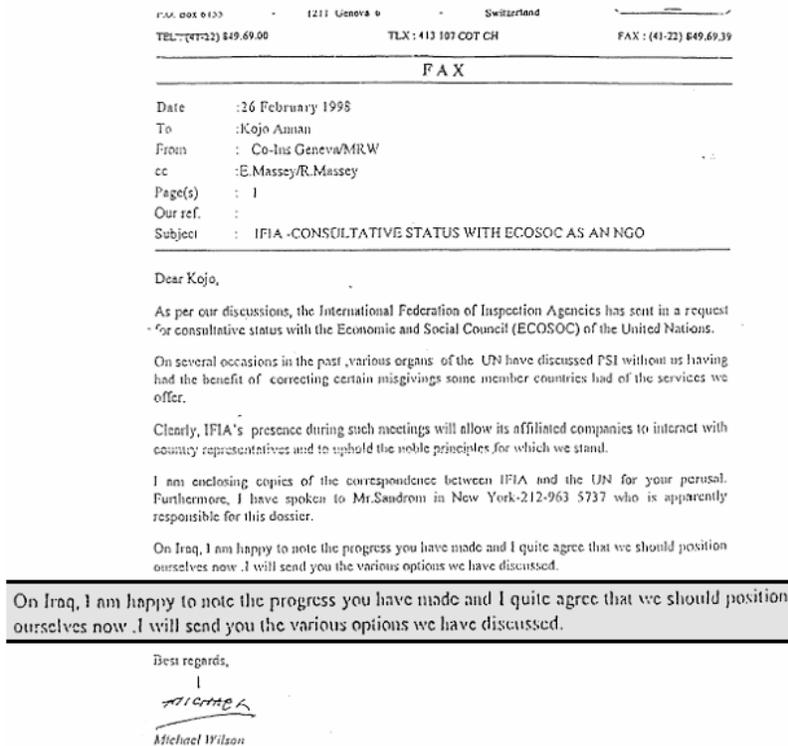


Figure: Michael Wilson fax to Kojo Annan (Feb. 26, 1998) (with excerpt enlargement).

When the Committee’s investigators asked Kojo Annan about this reference in the memorandum, he claimed that the reference to “progress” on “Iraq” concerned the possibility that Cotecna might participate as a *contractor* in the Programme, rather than as the United Nations’ *inspector* of

⁵²⁰ S/RES/1153 (Feb. 20, 1998); Kojo Annan record, Michael Wilson fax to Kojo Annan (Feb. 26, 1998); Cotecna documents (Feb. 19-20, 1998) (reflecting Kojo Annan’s assignment to Cotecna’s Nigerian office in February 1998).

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goods entering the country.⁵²¹ This claim is not convincing, because Cotecna is an inspection company, not a purveyor of humanitarian goods.⁵²²

Moreover, only ten days after Mr. Wilson sent the fax, Robert Massey wrote to Benon Sevan (the Executive Director of OIP) to state that Cotecna “would be happy to participate in any future tender for the provision of inspection services under the ‘Oil for Food Agreement.’” Robert Massey’s letter arrived two weeks after the Security Council had passed Resolution 1153 and specifically noted that “[w]e have taken cognizance of Security Council resolution 1153” and that “the future volume of humanitarian imports to Iraq will necessitate an increased number of inspection companies” for the Programme. The letter added that “H.E. Ambassador Monteiro, Chairman of Security Council Committee Established by Resolution 661 (1990) has been duly apprised of our suggestions, under separate cover.”⁵²³

From the documents newly produced by Kojo Annan, it is apparent that Robert Massey’s letter to Mr. Sevan was based on information that Kojo Annan had collected from the Secretary-General’s personal assistant, Wagaye Assebe, whom Kojo Annan described as one of the people in the United Nations he was close to. One of the documents produced from Kojo Annan to the Committee is a fax to Kojo Annan from Ms. Assebe that identifies the specific Security Council resolution “for the expansion of the oil sale.” Ms. Assebe’s fax uses virtually identical wording to that used by Robert Massey in his letter to Mr. Sevan describing the title and position of Ambassador Monteiro and format for address information for Mr. Sevan.⁵²⁴

⁵²¹ Kojo Annan interview (July 2, 2005).

⁵²² Cotecna, “Company History,” <http://www.cotecna.com/aboutus/history.asp>.

⁵²³ Cotecna record, Robert Massey letter to Benon Sevan (Mar. 6, 1998) (attached as Annex 2 to this Chapter); S/RES/1153 (Feb. 20, 1998); see also “Second Interim Report,” p. 18 (discussing Robert Massey’s letter and Mr. Sevan’s response noting that the contract was not up for bid, but that if there should be a “new round of competitive bidding, rest assured that Cotecna would be given every opportunity to participate in that process”). The Committee has no evidence that this letter was copied to Kojo Annan. Neither Kojo Annan nor Cotecna produced a copy of this letter to the Committee.

⁵²⁴ Kojo Annan record, Wagaye Assebe fax to Kojo Annan (undated) (attached as Annex 3 to this Chapter). The print on the copy produced to the Committee is faded and difficult to read. The cut-off fax ribbon mark at the top of the document appears to reflect that the document was sent on March 3, 1998—three days before Robert Massey’s letter to Mr. Sevan.

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SENT BY FAX 2000 AT 10:00 AM

Kojo,

Please find below the information you requested:

1. The name and address of the Chairman of 661 Committee is:

H.E. Mr. Antonio Monteiro
Chairman, Security Council Committee established
by resolution 661 (1990)
Permanent Mission of Portugal to the United Nations
866 Second Avenue, 9th Floor
New York, N.Y. 10017

2. The Security Council Resolution for the expansion of the oil sale is:
Resolution 1153 (1998)

3. Mr. Sevan's name and title:
Mr. Benon Sevan
Executive Director, Office of the
Iraq Programme
United Nations Secretariat
Room 2127B
42nd Street and First Avenue
New York, N.Y. 10017

I hope this is okay. Please call me as soon as you receive this fax.

With warm regards,

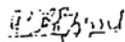

Wagaye

Figure: Wagaye Assebe fax to Kojo Annan (undated) (best copy possible).

Ms. Assebe was not prohibited from providing Kojo Annan with publicly available information. However, the significance is that contrary to suggestions that Kojo Annan had no involvement with respect to Cotecna's effort to obtain the Iraq inspection contract—it is clear that he obtained access from United Nations sources to information that he in turn passed on to Mr. Massey for the purposes of Cotecna's positioning itself to make a contract bid.

As discussed in the Second Interim Report, Kojo Annan had at least two contacts who worked at the United Nations procurement department—Diana Mills-Aryee (a longtime family friend of the Annans whom Kojo called “Aunty”) and Nora Dias (a friend of Ms. Mills-Aryee).⁵²⁵ At the end of March 1998, Kojo Annan sought information from Ms. Mills-Aryee, as reflected in a lengthy

⁵²⁵ “Second Interim Report,” pp. 38-39.

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memorandum from Kojo Annan to Mr. Wilson on March 25, 1998, outlining points about the inspection process for goods entering Iraq. In this memorandum, Kojo Annan promised that “[i]n the next few days I will furnish you with other points gathered by Aunty D.” Kojo Annan’s memorandum added that “I would suggest that you fax me a list of questions, etc. that will provide you with all the extra information that you need,” and “I can then forward this to my people in New York and see what they can get for us.”⁵²⁶



COTECNA INTERNATIONAL LIMITED

FAX

DATE : 25/03/98

TO : Mr. Michael Wilson

COPY :

FROM : Mr. Kojo Annan

REF :

SUBJECT: Topics discussed on recent visit to Geneva.

INSPECTIONS

In conjunction with the package I gave you, these are some extra points that I noted down. However, these points may be duplicating information that is already in the package. (In the next few days I will furnish you with other points gathered by Aunty D):-

....

After reviewing the above points and the information kit, and following Robert’s meetings in Paris, I would suggest that you fax me a list of questions; etc. that will

....

provide you with all the extra information that you need. I can then forward this to my people in New York and see what they can get for us.

....

SUPPLIES

Aunty D confirmed to me that any company that one uses must be big boys in their own particular field or an associated field (i.e. real estate company can’t do sugar).

Figure: Kojo Annan fax to Michael Wilson (Mar. 25, 1998) (excerpts of portions of fax referring to information from “Aunty D” and “my people in New York”).

When Kojo Annan was asked by the Committee’s investigators about his reference to “my people in New York,” he stated that this referred both to Ms. Mills-Aryee (“Aunty D”) in the procurement department and Ms. Assebe in the Secretary-General’s office. He claimed that he

⁵²⁶ Kojo Annan record, Kojo Annan fax to Michael Wilson (Mar. 25, 1998) (attached as Annex 4 to this Chapter). This memorandum is on Cotecna letterhead, but was not produced by Cotecna to the Committee.

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contacted Ms. Mills-Aryee to get general information about how to participate in the Programme. Kojo Annan insisted that Ms. Mills-Aryee shared only publicly available information, but his memorandum further states: “Aunty D confirmed to me that any company that one uses must be big boys in their own particular field or an associated field (i.e. real estate company can’t do sugar).” When asked about this statement, Kojo Annan stated that he had discussed this with Ms. Mills-Aryee about his and Mr. Wilson’s interest in getting involved in the Programme. Ms. Mills-Aryee suggested that “the UN would deal only with big companies, not little ones.”⁵²⁷

On October 9, 1998, the United Nations issued its RFP seeking bids for the Programme’s humanitarian goods inspection contract. Ten days later, Kojo Annan faxed Elie Massey a memorandum advising him about Nigerian business matters and then adding cryptically: “As regards the ‘other matters,’ a tender has been issued about which Robert and Michael can brief you fully.” The document was copied to Robert Massey and Mr. Wilson.⁵²⁸

When interviewed, Kojo Annan stated that the word “tender” probably referred to the RFP issued for the Programme’s humanitarian goods inspection contract. He added that Mr. Wilson and Robert Massey were handling this tender and that he had probably first learned of the RFP from Mr. Wilson.⁵²⁹

As regards the "other matters", a tender has been issued about which Robert and Michael can brief you fully.
With regards to your 'pet project', it has been confirmed that the letter has just been received on Thursday 15th October. "His" copy would have gone to filing at the council but our friend will ensure that he sees it personally and we await any further developments

iRegards,



Kojo Annan.

Figure: Kojo Annan fax to Elie Massey (Oct. 19, 1998) (excerpt).

However, the United Nations did not pursue Elie Massey’s proposal. In Kojo Annan’s fax of October 19, 1998 that is quoted above, he stated: ““His’ copy would have gone to filing at the council but our friend will ensure that he sees it personally and we await any further developments.” Kojo Annan confirmed to the Committee that the reference to “his copy” was to the copy sent to the Secretary-General and the reference to “our friend” was most likely to

⁵²⁷ Kojo Annan interview (July 2, 2005).

⁵²⁸ Kojo Annan record, Kojo Annan fax to Elie Massey (Oct. 19, 1998) (attached as Annex 5 to this Chapter).

⁵²⁹ Kojo Annan interview (July 2, 2005).

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Wagaye Assebe. Kojo Annan acknowledged that he received inside information from Ms. Assebe regarding the “pet project.”⁵³⁰

Within the first few days of November 1998, Cotecna submitted its formal bid proposal to the United Nations procurement department. On November 2, 1998, Kojo Annan’s records indicate that three calls were placed from his cell phone to Mr. Wilson’s telephone number. On November 5, 1998, the procurement department opened the bids from various companies, and on that same day Kojo Annan called a cell telephone number used by Mr. Wilson two more times; these calls lasted for a total of twenty-five minutes. While Mr. Wilson and Kojo Annan were friends, Mr. Wilson was also on the “task force” created by Cotecna to pursue the Iraq inspection contract.⁵³¹

Two days later, on the afternoon of November 6, 1998, Kojo Annan’s phone records reflect that he made three calls for a total of eight minutes to the United Nations procurement department, and that these calls were interspersed with two one-minute calls to Robert Massey. All of these calls took place within half an hour of each other. At the procurement department, Kojo Annan called a telephone number that was assigned at the time to Nora Dias. Ms. Dias was an acquaintance of Kojo Annan, and she served as secretary to both Sanjay Bahel, the supervisor of the procurement department, and Alexander Yakovlev, the main procurement officer involved with the bidding process for the Programme’s 1998 inspection contract.⁵³²

⁵³⁰ Ibid.; “Second Interim Report,” pp. 42-48 (discussing meeting between Elie Massey and the Secretary-General on September 18, 1998 and follow-up letter sent by Elie Massey on October 6, 1998 and stamped as “received” in the Executive Office of the Secretary-General on October 15, 1998). Kojo Annan stated that this reference to a “pet project” was to Elie Massey’s idea for a United Nations-sponsored fund-raising lottery for humanitarian purposes. As discussed in the Second Interim Report, Elie Massey met with the Secretary-General on September 18, 1998 to discuss this lottery proposal and then eventually sent a follow-up proposal letter to the Secretary-General and Under-Secretary-General Joseph Connor (with whom Elie Massey also met). “Second Interim Report,” pp. 45-47.

⁵³¹ Ibid., p. 20 (indicating that bids for the inspection contract were received on November 4 and 5, 1998); Cotecna record, Robert Massey letter to United Nations Procurement Division (dated in Geneva on November 2, 1998); “Second Interim Report,” pp. 22-26 (noting Mr. Wilson as friend of Kojo Annan and member of task force); Kojo Annan cell telephone records. The telephone calls detailed in this Report concern only calls placed from Kojo Annan’s Nigeria-based cell phone; Kojo Annan voluntarily disclosed these records to the Committee. The Committee does not have subscriber records for any other telephones that Kojo Annan may have used in the autumn of 1998. Nor does the Committee have telephone records of other parties who may have placed calls to Mr. Annan at other points in time. As such, this analysis only reflects calls placed by Kojo Annan. Because of the passage of time, the United Nations does not have telephone call records for calls made from the procurement department for the relevant period. Mr. Wilson has refused the Committee’s request for copies of his telephone records.

⁵³² Kojo Annan cell telephone records; Nora Dias interviews (June 29 and Aug. 25, 2005) (confirming that the number was her direct dial extension at the procurement department in November 1998). Ms. Dias’s telephone number appeared on the letterhead in later correspondence sent from the procurement department to Cotecna. Sanjaya Bahel fax to Robert Massey (Nov. 27, 1998). Mr. Bahel uses both “Sanjaya” and “Sanjay” for his first name.

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Table 1 – Calls from Kojo Annan’s Cell Telephone on November 6, 1998⁵³³

Time (New York)	Duration of Call	Telephone Number
3:09 p.m.	5 minutes	Nora Dias
3:16 p.m.	1 minute	Robert Massey
3:16 p.m.	1 minute	Unidentified Swiss COM mobile phone number
3:17 p.m.	4 minutes	Robert Massey
3:22 p.m.	1 minute	Nora Dias
3:38 p.m.	2 minutes	Nora Dias

Several days later, on November 11, 1998, Kojo Annan called Nora Dias’s telephone number in the procurement department again; this appears on the phone record as only a one-minute call. A one-minute call is consistent with no answer or a caller leaving a message. As noted above, the Committee does not have phone records from the procurement department from the applicable time period in order to determine whether any calls were placed from the procurement department to Kojo Annan’s number. However, although records reflect that Ms. Dias was absent from the office on the days the calls were placed in December, 1998 (discussed below), attendance records confirm that Ms. Dias was at work on November 6 and 11, 1998, on the days upon which the calls were placed to her extension at the procurement department.⁵³⁴ Five minutes after this call to Ms. Dias’s number, Kojo Annan called Ms. Mills-Aryee (“Aunty D”), who, by that point in time, had transferred from the procurement department to a temporary position in Iraq with the office of the Humanitarian Aid Coordinator. This call lasted four minutes.⁵³⁵ Approximately

⁵³³ Except as otherwise indicated, the dates and times of the telephone calls referenced in this Chapter have been converted to Eastern Standard Time or Eastern Standard Daylight Savings Time, as applicable.

⁵³⁴ Nora Dias interviews (Jan. 10, June 29, and Aug. 25, 2005); Kiyohiro Mitsui interview (Aug. 15, 2005). At the time, Mr. Mitsui was the Chief of the United Nations Support Services Section who conducted review of attendance records. *Ibid.* Ms. Dias acknowledged meeting Kojo Annan in the office on prior occasions when he came to visit Ms. Mills-Ayree, but stated that the extent of her interaction with him was only in the office. She did not socialize with him outside the office. Nora Dias interview (Jan. 10, 2005).

⁵³⁵ Although there is no way to tell what Kojo Annan discussed with Ms. Mills-Ayree, the close nature of their relationship and Ms. Mills-Ayree’s acquaintance with Mr. Wilson is made clear from an exchange of e-mails between Kojo Annan and Ms. Mills-Ayree in June 1999 that were recovered by the Committee from Ms. Mills-Ayree’s United Nations e-mail account. On June 1, 1999, Kojo Annan sent an e-mail to Ms. Mills-Ayree, addressing her as “Aunty” and writing that “Michael [Wilson] and I had been expecting you in Europe quite some time ago and it seems that you disappeared for a little while.” On the next day, Ms. Mills replied with a salutation: “Hello, Love.” Then she advised that she was “afraid to call Michael

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twenty-five minutes later, Kojo Annan called Mr. Wilson twice with a total duration of thirty-seven minutes.⁵³⁶

Kojo Annan's phone records reveal additional calls to Mr. Wilson on November 12, 13, 16 and 19. In the meantime, Cotecna learned that Lloyd's Register had temporarily pulled its inspectors out of Iraq because of rising tensions there. This incident prompted Elie Massey to send a letter on November 14, 1998 to Benon Sevan offering assistance with humanitarian goods inspection from Cotecna.⁵³⁷

On November 20, 1998, Robert Massey called the United Nations and spoke to Stephani Scheer, Mr. Sevan's Chief of Office at OIP. Robert Massey attempted to set up a meeting with Ms. Scheer but was told that contact with United Nations personnel during the bidding process was only permitted through the procurement department. Robert Massey summarized his conversation with Ms. Scheer in an e-mail that he sent to Elie Massey and Mr. Wilson that afternoon. Robert Massey's secretary, Natalie Rey, printed the e-mail out and faxed it to the attention of Kojo Annan in Nigeria at 4:16 p.m. Lagos time:⁵³⁸

'cause the last time I called him to tell him about decisions with negative implications for his company [Cotecna], he sounded irritated and was not listening. For example, I called to give him advance notice that Saybold [sic] is about to get another UN vehicle so they should request equal treatment, and offered advise [sic] on several areas to save the company money. Well I guess he is a big shot now so why should he listen to me?" United Nations e-mail account records for Diana Mills-Ayree (June 1-2, 1999).

⁵³⁶ Kojo Annan cell telephone records.

⁵³⁷ "Second Interim Report," pp. 21-22. On November 13, 1998, Benon Sevan, Executive Director of OIP, announced publicly that Lloyd's Register had withdrawn its personnel from Iraq. Benon Sevan statement (Nov. 13, 2005) (announcing that the inspection agents of Lloyd's were being withdrawn immediately from their posts); Kofi Annan press briefing (Nov. 16, 1998) (stating that some of the inspectors from Lloyd's, who had been withdrawn a few days earlier, had returned to three of the four entry points in Iraq).

⁵³⁸ Kojo Annan record, Robert Massey e-mail and fax copy to Kojo Annan (Nov. 20, 1998); Natalie Rey letter to Kojo Annan (Apr. 22, 1998) (enclosing consultancy agreement and identifying herself as "Natalie Rey, secretary to Mr. Robert M. Massey"); Natalie Rey letter to John Mills (Jan. 19, 1999) (attaching proposed press release sent to United Nations spokesman announcing the selection of Cotecna for Iraq inspection contract; letter signed in name of "Natalie Howard-Rey, secretary to Mr. Robert Massey").

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20:11 '98 16:10 FAX \$:06000

--- CIL LAGOS

49001-0

REY Natalie
From: MASSEY Robert M.
Sent: vendredi, 20 novembre 1998 14:52
To: POPPLETON William; WILSON Michael; MASSEY Elle Georges
Cc: REY Natalie
Subject: IRAQ

Cc : Kojo Annan (by fax to Cotecna Lagos)

For your information here below are the results of my calls to the UN this afternoon.

In trying to talk to Mr Bo Asplung (9632883), his secretary put me through to Mr Armstrong (9638793, chief of contract processing section) who very briefly explained that they were all expected to meet with the 661 committee in the coming minutes but he nonetheless gave me the name of Miss Stephanie Sheer (9636550) who I spoke to and was told the same thing about the 661 committee meeting.

On my request to organize a meeting for our SVP with them on Monday she said that it was impossible for them to meet with us at this time as it was against their internal rules because they were actually reviewing the proposals which should last a couple of weeks before they would come up with a decision. The only people we could meet were the ones from the procurement division.

She thanked me very much for our Saturday letter proposing our support to overcome their temporary problems related to Lloyds withdrawal.

It seems that they are nearing the final decision and we should keep the Swiss mission fully informed as we will need most probably their support.

Robert

Figure: Robert Massey e-mail (Nov. 20, 1998).

That same night, Kojo Annan called Robert Massey's number at 9:50 p.m. Lagos time. This call lasted for six minutes. Twelve minutes later, Kojo Annan called Mr. Wilson's phone number, and this call also lasted six minutes.⁵³⁹

The fact that Robert Massey sent Kojo Annan the summary of his telephone conversation with the United Nations—in conjunction with Kojo Annan's multiple phone calls to the procurement department—strongly suggests that Kojo Annan had become an active member of the working group at Cotecna seeking to win the United Nations contract. These circumstances severely undermine Robert Massey's sworn claim before a United States congressional committee that "Kojo Annan played no role in helping Cotecna obtain the U.N. contract." Robert Massey further stated that "Kojo Annan's work for Cotecna had nothing to do with the OFFP [the Programme]," and that "Cotecna's employment of Kojo Annan had nothing to do with Iraq and everything to do with West Africa."⁵⁴⁰

⁵³⁹ Kojo Annan cell telephone records.

⁵⁴⁰ Robert Massey statement to the United States Senate, Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigation (Feb. 15, 2005); see also Robert Massey testimony before the United States Senate, Committee on Homeland Security and Governmental Affairs,

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After the faxed message of November 20, 1998, Kojo Annan called Mr. Wilson's telephone numbers again on November 22, 23, and 24, 1998, days before they saw each other in Paris at the Francophonie summit in late November 1998. Kojo Annan confirmed that he was in Paris on November 28, 1998 with Mr. Wilson, André Pruniaux, Elie Massey and Robert Massey to meet with Nigeria's Finance Minister, Ismaila Usman, in an effort to promote Cotecna's interest in regaining a trade inspection contract in Nigeria.⁵⁴¹

The Secretary-General also attended the Francophonie summit. It was during the weekend of the Francophonie summit that, according to an e-mail memorandum later sent by Mr. Wilson, he allegedly held "discussions" with the "SG and his entourage" about the status of Cotecna's bid for the Iraq inspection contract. This memorandum sent by Mr. Wilson and other evidence surrounding it is discussed in the next section of this Chapter. Similarly, evidence of Kojo Annan's numerous telephone calls to the Secretary-General's telephone numbers during the contract bidding period are also discussed in the next section of this Chapter. These calls are included in the summary of calls attached to this Chapter as Annex 1.

By the end of November 1998, Cotecna had made the "short list" of the three finalist candidates for the United Nations contract. Sanjay Bahel of the procurement department sent Robert Massey a fax on November 27, 1998 inviting Cotecna representatives for a "Q&A [question and answer]" meeting in New York on December 1, 1998. As noted in the Second Interim Report, this session was attended by members of Cotecna's contract "task force," including Robert Massey, Mr. Pruniaux, and Mr. Wilson.⁵⁴²

Cotecna's meeting with the United Nations procurement department and OIP occurred at 4:45 p.m. on December 1, 1998 in New York. On that same date, at 6:24 p.m., Kojo Annan placed a one-minute call to Nora Dias's number at the procurement department. Half an hour later, Kojo Annan called Mr. Wilson's cell phone; this call lasted for five minutes. The next day, on December 2, 1998, Kojo Annan placed a call to a cell telephone number used by Mr. Wilson, then a one-minute call to the Office of Humanitarian Coordinator in Baghdad, where Ms. Mills-Ayree was stationed at the time.⁵⁴³

Permanent Subcommittee on Investigation (Feb. 15, 2005) (stating "that Kojo Annan played no role in helping Cotecna obtain the U.N. contract"). Robert Massey also submitted a sworn affidavit to Congress, with a copy sent to the Committee, on August 11, 2004, claiming that "Kojo Annan had absolutely no involvement in any of the company's operations relating to the U.N. or Iraq." Robert Massey affidavit, para. 16 (Aug. 11, 2004).

⁵⁴¹ Michael Wilson interview (June 17, 2005); Elie Massey interview (July 14, 2005); Kojo Annan interview (July 2, 2005). Mr. Pruniaux was the Senior Vice President in charge of operations in Africa and the Middle East. André Pruniaux interview (July 14, 2005).

⁵⁴² Sanjaya Bahel fax to Robert Massey (Nov. 27, 1998); "Second Interim Report," pp. 22-23.

⁵⁴³ Sanjaya Bahel fax to Robert Massey (Nov. 27, 1998); Kojo Annan cell telephone records; United Nations document, Office of Humanitarian Coordinator, Baghdad, Iraq (July 13, 1998) (providing a telephone number bearing a New York area code that routes directly to the office in Iraq).

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Immediately after his call to Ms. Mills-Aryee, Kojó Annan's phone records show that he made a phone call that lasted twenty-four minutes to the home telephone of Felix Downes-Thomas, who worked at that time in the United Nations Department of Humanitarian Affairs in New York. Mr. Downes-Thomas previously had assisted the United Nations delegation in negotiating the Iraq-UN MOU with Iraq. Mr. Downes-Thomas also had traveled to Baghdad for a few months to assist in opening the United Nations Humanitarian Coordinator's Office there.⁵⁴⁴

Later that evening, Kojó Annan again placed a series of calls to the number of Mr. Downes-Thomas. The calls to the telephone of Mr. Downes-Thomas on the evening of December 2, 1998, combined, amounted to a little more than one hour. In between this sequence of calls to Mr. Downes-Thomas, Kojó Annan had placed two calls to Mr. Wilson. Although Mr. Downes-Thomas no longer had Programme-related responsibilities and had returned to New York, this contact was potentially significant in the Committee's view because of the possibility that Kojó Annan may have sought to acquire more Programme-related information from Mr. Downes-Thomas. According to Mr. Downes-Thomas, he and Kojó Annan spoke frequently, and their families had long known one another. He stated that he did not recall what he had spoken about with Kojó Annan in December 1998, but Mr. Downes-Thomas assumed that their discussions were family related and could not recall any instance when he discussed the Programme with Kojó Annan.⁵⁴⁵

On December 3, 1998, Ms. Scheer wrote to Mr. Bahel in the procurement department to recommend the award of the inspection contract to Cotecna based upon her assessment that Cotecna was the "lowest acceptable bidder." On the afternoon of December 3, 1998, Kojó Annan placed a one-minute call to the procurement department number for Ms. Dias.

On the following day, December 4, 1998, Kojó Annan called a cell phone number used by Mr. Wilson. The call lasted for thirteen minutes. Then, later that same afternoon, Kojó Annan placed a one-minute call to Ms. Dias's extension at the procurement department.⁵⁴⁶ According to a review of the attendance records conducted by the Chief of the United Nations Support Services Section, however, Ms. Dias was not at work during the time of these calls. According to these records, Ms. Dias was absent after 2 p.m. on December 1, 1998 and she was absent from the

⁵⁴⁴ Felix Downes-Thomas interviews (July 8 and Aug. 18, 2005).

⁵⁴⁵ Ibid. Kojó Annan's telephone records show that he called the home of Mr. Downes-Thomas in May, June, July, and September 1998, and in January 1999. Kojó Annan cell telephone records. However, as indicated in the table attached as Annex 6, the volume of calls was not as great in other months as in December 1998. When asked about Mr. Downes-Thomas, the Secretary-General stated that Kojó Annan may also know the son of Mr. Downes-Thomas. Kofi Annan interview (Aug. 5, 2005). The Committee has not been able to determine if Kojó Annan spoke with Mr. Downes-Thomas's son rather than Mr. Downes-Thomas on this occasion. Felix Downes-Thomas interview (Aug. 19, 2005).

⁵⁴⁶ Sanjaya Bahel memorandum to Stephani Scheer (Dec. 3, 1998); "Second Interim Report," p. 23; Kojó Annan cell telephone records. The calls to the number of Mr. Downes-Thomas lasted more than an hour and consisted of three calls: two calls that lasted thirty minutes directly followed by one call that lasted two minutes. Ibid.

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office on December 2, 3, and 4, 1998. She was therefore not at her extension when these calls were placed. Both Mr. Bahel and Mr. Yakovlev, the procurement officer assigned to the Cotecna contract, were present at work on each of these days.⁵⁴⁷

Table 2 – Calls from Kojo Annan Cell Telephone from December 1-4, 1998

Time (New York)	Duration of Call	Telephone Number
Dec. 1 – 6:24 p.m.	1 minute	Nora Dias
Dec. 1 – 6:53 p.m.	5 minutes	Michael Wilson (cell)
Dec. 2 – 8:34 a.m.	1 minute	Diana Mills-Ayree (Iraq)
Dec. 2 – 8:34 a.m.	24 minutes	Felix Downes-Thomas
Dec. 2 – 8:48 a.m.	1 minute	Michael Wilson (cell)
Dec. 2 – 4:58 p.m.	1 minute	Michael Wilson (cell)
Dec. 2 – 8:37 p.m.	63 minutes	Felix Downes-Thomas
Dec. 3 – 4:26 p.m.	1 minute	Nora Dias
Dec. 4 – 2:20 p.m.	13 minutes	Michael Wilson (cell)
Dec. 4 – 4:18 p.m.	1 minute	Nora Dias

Significantly, even before Cotecna was officially awarded the contract on December 11, 1998, Mr. Pruniaux's actions demonstrate a surprising level of confidence that Cotecna would win the United Nations contract. Early in the morning of December 1, 1998, Mr. Pruniaux sent an e-mail to a person who he thought could assist Cotecna with setting up temporary housing for border inspectors in Iraq. In this e-mail, Mr. Pruniaux stated that “[w]e are about to be awarded the contract by the United Nations if we can start within a month.” Three days later, Mr. Pruniaux sent a similar e-mail to another logistics contact in Lebanon, stating: “[w]e now expect to be

⁵⁴⁷ Kiyohiro Mitsui interview (Aug. 15, 2005). Mr. Mitsui is Chief of the United Nations Support Services Section and conducted a review of attendance database records. Ibid. According to Mr. Bahel, if he had advance notice that Ms. Dias was going to be out of the office, he would have made arrangements to forward calls to another extension. Without advance notice, such arrangements would not have been made. Mr. Bahel could not recall what was done with respect to Ms. Dias's phone calls for early December 1998. Sanjaya Bahel interview (Aug. 26, 2005). Ms. Dias stated that she never received a call from Kojo Annan and she did not believe she had been in the office during that period as she was on maternity leave. Nora Dias interview (June 29, 2005).

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nominated by the UN before 10 December 1998.” He then added: “This is of course extremely confidential.”⁵⁴⁸

When asked about this latter e-mail, Mr. Pruniaux stated that he was merely being optimistic about Cotecna’s chances, but he claimed he did not have inside information. By contrast, according to Robert Massey, the United Nations gave no indication at the meeting in New York who it favored for the contract, and the later award of the contract to Cotecna was a surprise to him.⁵⁴⁹ It is not clear what caused Mr. Pruniaux’s strong optimism which he clearly set forth in his memorandum, and why he considered it so important to keep the matter confidential.⁵⁵⁰

According to United Nations records it was not until December 7, 1998 that Mr. Bahel of the procurement department issued a memorandum to the United Nations Headquarters Committee on Contracts (the “HCC”) joining in OIP’s recommendation that the contract be awarded to Cotecna. The HCC concurred with this recommendation the next day, and, on December 9, 1998, the Assistant Secretary-General for the Office of Central Support Services formally approved the award of the contract to Cotecna. On December 10, 1998, the Assistant Secretary-General’s approval form (dated December 9, 1998) was faxed to Mr. Yakovlev at 12:18 p.m. In the late afternoon of December 10, 1998, Kojó Annan placed a one-minute call to a cell telephone number used by Mr. Wilson. On December 11, 1998, Kojó Annan placed four calls to Mr. Wilson’s number for a combined total of thirty-five minutes. On December 11, 1998, the head of the procurement department signed a fax memorandum to Robert Massey advising that Cotecna had won the contract. The memorandum was faxed to Cotecna on the morning of Monday, December 14, 1998.⁵⁵¹

Witnesses could not recall whether Cotecna received oral notification of the official contract award at some point after it was formally approved by the Assistant Secretary-General on

⁵⁴⁸ Cotecna record, André Pruniaux e-mail to Don Stalker Nairobi (Dec. 1, 1998) (attached as Annex 7). This e-mail reflects that it was sent at 11:41 a.m. Geneva time and that it was printed out from Mr. Pruniaux’s computer and faxed by someone at Cotecna’s office in Geneva at 11:45 a.m. (New York is six hours behind Geneva time). André Pruniaux e-mail to George Madanat (Dec. 4, 1998) (attached as Annex 8).

⁵⁴⁹ André Pruniaux interview (July 14, 2005); Robert Massey interview (July 15, 2005).

⁵⁵⁰ Mr. Pruniaux suggested that the recipient of the memorandum previously had been unable to keep sensitive matters confidential, and Mr. Pruniaux thought it prudent to warn him openly in the memorandum about the inspection contract. André Pruniaux interview (July 14, 2005).

⁵⁵¹ Kojó Annan cell telephone records; “Second Interim Report,” p. 24. According to a record from the procurement department file, the award notice memorandum dated December 11, 1998, was not faxed to Cotecna until the morning of Monday, December 14, 1998. Transmission Report, Nicholas Sardegna fax to Robert Massey (9:18 a.m. Dec. 14, 1998).

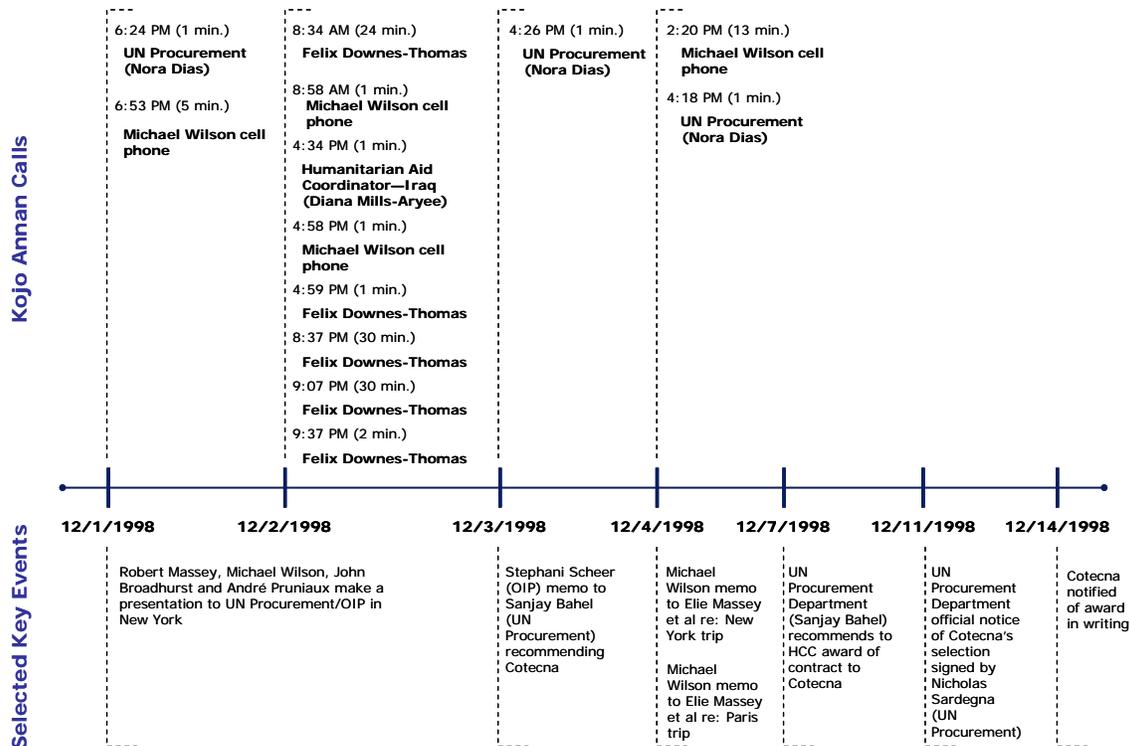
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December 9, 1998 and before formal notification on December 14, 1998. On December 14, Kojo Annan placed one more two-minute call to Mr. Wilson’s number.⁵⁵²

Chart A – Timeline of Kojo Annan Phone Calls and Procurement Department Events—Dec. 1998



When interviewed by the Committee and shown these telephone records, both Kojo Annan and Ms. Dias denied having spoken to each other about the Cotecna procurement. Kojo Annan did not have an explanation for his calls to Ms. Dias’s number, except to suggest that he may have been calling to try to reach Ms. Mills-Aryee (who was by then in Iraq). Kojo Annan stated that he did not know Ms. Dias very well and that he never discussed the Cotecna contract with her or anyone else in the procurement department. Kojo Annan claimed that he did not remember making the calls.⁵⁵³

Ms. Dias acknowledged that the number shown in the records was her extension at the procurement department, but she denied speaking with Kojo Annan. She said that she

⁵⁵² Kojo Annan cell telephone records. Kojo Annan’s cell telephone records indicate that he spoke to Mr. Wilson only once more in December 1998—on December 21—for ten minutes. Ibid.

⁵⁵³ Kojo Annan interview (July 2, 2005); Nora Dias interviews (Jan. 10, June 29, and Aug. 25, 2005).

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remembered having seen Kojo Annan in the office a few times, but their relationship was minimal. Ms. Dias denied having spoken to Kojo Annan about the inspection contract. She stated that she did not even know Kojo Annan worked for Cotecna until she learned about it more recently in the media.⁵⁵⁴

According to Mr. Bahel, because Ms. Dias was his assistant, any phone calls placed to Ms. Dias's work station would also ring at his desk. Sanjay Bahel stated to the Committee's investigators that he twice met Kojo Annan at the procurement department (once in 1996 and once in 2002), and that he never spoke to him by telephone. Kojo Annan told the Committee's investigators that he knows who Mr. Bahel is, but that he does not recall speaking to him on the telephone at any time.⁵⁵⁵

In short, Kojo Annan's telephone records show that he made numerous calls to Ms. Dias at the United Nations procurement department and to Ms. Mills-Aryee, a United Nations employee who had recently been transferred from the procurement department to take a position with the Programme in Iraq. These calls were during the several critical weeks in November and December 1998, when Cotecna's bid was under consideration. Although the duration of many of the calls lasted for only one minute, these were the only calls to Ms. Dias—all between November 6 and December 4, 1998—that appear on Kojo Annan's cell phone records for the several years of phone records that he produced for the period from April 1998 to May 2003. Kojo Annan spoke to Mr. Wilson on a regular basis well before and after the selection of Cotecna, but his calls to Mr. Wilson markedly increased in frequency between the critical dates in early November to mid-December 1998.⁵⁵⁶

⁵⁵⁴ Nora Dias interviews (Jan. 10, June 29, and Aug. 25, 2005).

⁵⁵⁵ Sanjay Bahel interviews (Aug. 9-10, 2005); Kojo Annan interview (Aug. 23, 2005).

⁵⁵⁶ Kojo Annan cell telephone records (Apr. 1998 to May 2003).

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Chart B – Kojo Annan calls to Michael Wilson’s cell phone

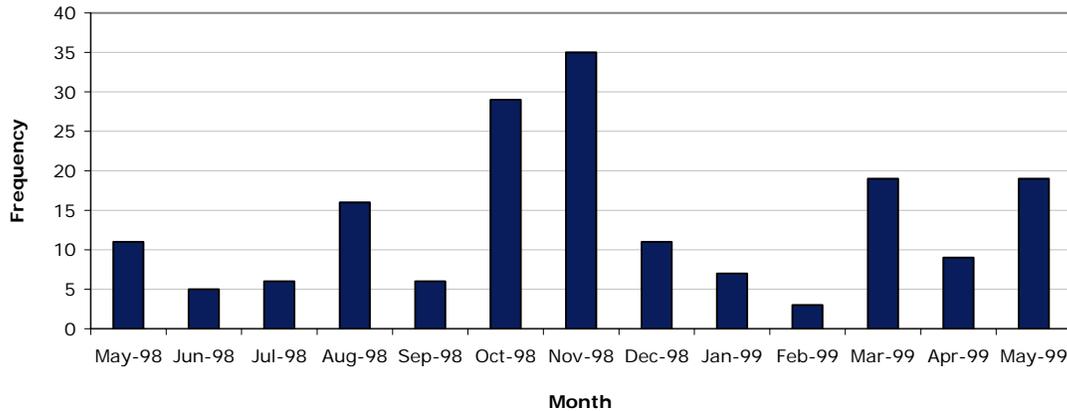
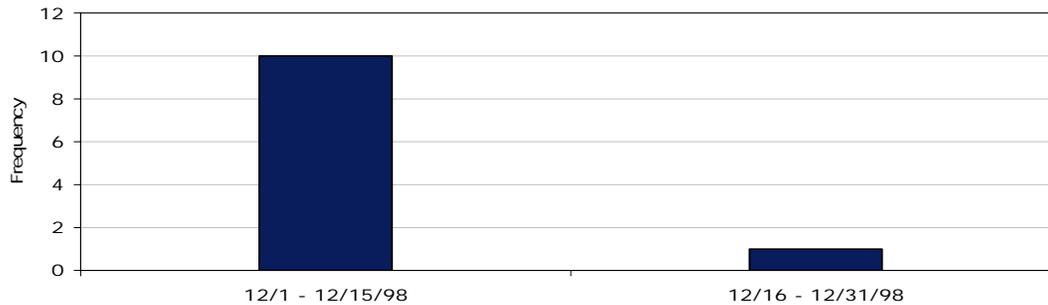


Chart C – Kojo Annan calls to Michael Wilson’s cell phone in December 1998



It is also now evident that Cotecna engaged in a furtive scheme to keep secret Kojo Annan’s continued work for Cotecna in 1999. After the award of the contract to Cotecna in 1998, it has become apparent that Kojo Annan continued to work for Cotecna as a consultant well into 1999. The new documents produced by Kojo Annan include a letter from Robert Massey to Kojo Annan, dated March 10, 1999, which includes Robert Massey’s agreement to extend Kojo Annan’s consulting arrangement. The letter contradicts Cotecna’s prior claim that its relationship

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with Kojo Annan in 1999 was governed only by a non-compete agreement. This letter is yet another highly significant document that Cotecna has failed to produce to the Committee.⁵⁵⁷

10:03 99 13.12 FAX --- CIL LAGOS @001:00

COTECNA INSPECTION S.A.
P.O. Box 6155 - 1211 Geneva 6 - Switzerland
TEL : (41-22) 849.69.00 TLX : 413 107 COT CH FAX : (41-22) 849.69.09

COINS

CONFIDENTIAL FAX

Date : 10th March 1999
To : COTECNA LAGOS
Attention : Mr Kojo ANNAN
Page(s) : 1
Our ref. : 086/RMM/nr
Subject : CONSULTANCY AGREEMENT

Dear Kojo,

I hereby confirm our last telephone conversation during which we agreed to stay with the former arrangement we had, with some minor modifications as specified here below, until we know what will happen in Nigeria :

- Cotecna will pay you a net monthly amount of USD 2'500.- (two thousand five hundred), for a maximum of 7 working days per month. Any additional day of work will be remunerated USD 500.- per day, only after having been agreed upon beforehand by both parties.
- Cotecna will cover communication expenses (telephone, faxes, DHL) only to an extent of USD 500.- per month.
- Cotecna will pay for your airfares and hotel/restaurant bills each time it is agreed upon beforehand by both parties that you are requested to undertake such trips.

Best regards,

COTECNA INSPECTION S.A.

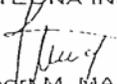

Robert M. MASSEY
Managing Director

Figure: Robert Massey fax to Kojo Annan (Mar. 10, 1999).

When interviewed about this letter, Kojo Annan acknowledged that he continued working for Cotecna in 1999. His work focused on Cotecna's effort to regain an inspection contract in Nigeria, and he stated that he unsuccessfully sought a \$200,000 bonus fee after Cotecna won the contract in Nigeria in August 1999.⁵⁵⁸ It is evident from information produced by Kojo Annan since the publication of the Second Interim Report that Kojo Annan engaged in a continuous

⁵⁵⁷ Kojo Annan record, Robert Massey fax to Kojo Annan (Mar. 10, 1999). Kojo Annan acknowledged receipt of the agreement in a letter back to Robert Massey on the same day. Kojo Annan record, Kojo Annan fax to Robert Massey (Mar. 10, 1999).

⁵⁵⁸ Kojo Annan interview (July 2, 2005).

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effort on behalf of Cotecna to regain the Nigerian inspection contract.⁵⁵⁹ This effort stands contrary to Cotecna's and Robert Massey's previous public claims that Kojo Annan did not engage in efforts on behalf of the company after December 31, 1998.⁵⁶⁰

The recent revelation of this March 10, 1999 consulting agreement sent by Robert Massey to Kojo Annan contradicts Robert Massey's recent statement in a letter to the *Financial Times* that Kojo Annan's consultancy ended in 1998:

Kojo Annan was not a consultant of Cotecna on June 1, 1999 – contrary to what he is reported to have said. His consultancy agreement ended on December 31, 1998, and at no time was he instructed to do any work related to the UN oil-for-food programme.⁵⁶¹

When the Committee's investigators confronted Elie Massey with the 1999 consulting agreement that had not been previously disclosed by Cotecna, he had no explanation for the agreement, and stated that he had never seen it before and had no knowledge of it. Robert Massey also told the Committee's investigators that he did not remember sending this consulting agreement to Kojo Annan.⁵⁶²

In short, additional evidence supplied by Kojo Annan establishes that he assisted Cotecna in its effort to win the Iraq inspection contract and that he continued to have an ongoing relationship with Cotecna after December 31, 1998. Kojo Annan collected general information about the humanitarian goods inspection process in Iraq from his "people in New York," and he called the procurement department multiple times in an apparent effort to obtain information about the contract bid status. However, it does appear that Cotecna was awarded the contract on the basis of its submission of the lowest bid—nearly \$1 million less than its nearest competitor. It is not known whether Kojo Annan's efforts made a difference to the award of the contract to Cotecna. Although Kojo Annan continued to work for Cotecna in 1999 and to receive payments from Cotecna until early 2004, the Committee does not have evidence that he had further contacts with the United Nations with respect to Cotecna's series of future contracts under the Programme.

⁵⁵⁹ Ibid.; Kojo Annan record, Robert Massey fax to Kojo Annan (Mar. 10, 1999) (consultancy agreement).

⁵⁶⁰ Robert Massey affidavit, para. 7 (Aug. 11, 2004).

⁵⁶¹ Robert Massey, "Letter to the Editor: Cotecna agreement was worth \$154,000," *Financial Times*, July 7, 2005, p. 18.

⁵⁶² Elie Massey interview (July 14, 2005); Robert Massey interview (July 15, 2005).

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IV. NEW EVIDENCE CONCERNING WHETHER THE SECRETARY-GENERAL HAD KNOWLEDGE OF COTECNA'S CONTRACT BID IN 1998

The Committee previously concluded that reasonably sufficient evidence did not show that the Secretary-General knew in 1998 of Cotecna's bid for the United Nations humanitarian goods inspection contract. In this part of the Chapter, the Committee reconsiders this issue in light of new information received concerning: (1) Kojo Annan's phone records and other faxes, memoranda, and correspondence disclosed by Kojo Annan to the Committee, and (2) the memorandum of Mr. Wilson of December 4, 1998, suggesting that "brief discussions" about Cotecna's contract bid took place with the Secretary-General "and his entourage" during a conference in Paris in late November 1998.

Prior to reviewing this evidence, it is important to note the context of the Secretary-General's competing professional obligations that vied for his time and attention in the fall of 1998 while the Cotecna bidding process was running its course. The Secretary-General's duties varied from routine meetings with foreign officials to extensive efforts to resolve various political and humanitarian crises in hotspots across the globe. In connection with these duties, the Secretary-General made three separate trips outside the United States through nine countries in Asia, Europe, and Africa between October and December 1998, spending approximately thirty days away from the United Nations Secretariat during that period. The Secretary-General's longest absence was a twelve-day trip to France, Northern Africa, and the Middle East between November 26 and December 9, a critical time period in the bidding and selection process for the inspection contract.⁵⁶³

As noted in the Second Interim Report, under procurement rules, the Secretary-General did not have a role in the review and approval of contractors selected to conduct inspections under the Programme. The Committee's investigation—including electronic text searches of a database of approximately twelve million pages of documents—has not encountered any documents that were given or sent to the Secretary-General to apprise him in 1998 that the Iraq inspection contract was put up for bid again, that Cotecna had submitted a bid, or that Cotecna had been awarded the contract.⁵⁶⁴

⁵⁶³ The Secretary-General's official travels between October and December 1998 included one day in Washington, D.C. (Oct. 16), two days in Florida (Oct. 18-19), three days in Japan (Oct. 20-22), four days in Korea (Oct. 23-26); one day in France (Nov. 6, 1998); two days in Mauritania (Nov. 7-8), five days in Morocco (Nov. 8-12), six days in France (Nov. 26-29 and Dec. 8-9), four days in Algeria (Nov. 29 to Dec. 2), three days in Tunisia (Dec. 2-4), one day in Libya (Dec. 5), and two days in the United Arab Emirates (Dec. 6-7). United Nations, "Summary of the Secretary-General's Official Travels," <http://157.150.195.47/News/oss/sgtrips.htm>.

⁵⁶⁴ "Second Interim Report," pp. 10, 49.

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A. KOJO ANNAN PHONE CALLS TO THE SECRETARY-GENERAL

The Committee has evaluated Kojo Annan's phone records with respect to his contacts with the Secretary-General. As reflected in the summary set forth in Annex 1 to this Chapter, the phone records show many calls between Kojo Annan and the Secretary-General, including those calls placed during the critical time periods of the contract bidding process.⁵⁶⁵ From the time that Cotecna submitted its bid on November 2, 1998 to the date that the formal contract award notice was sent to Cotecna on December 14, 1998, calls were exchanged between numbers associated with Kojo Annan and the Secretary-General at times when the Secretary-General was present in the residence of the Secretary-General, on November 5, 16, 21, 22, and December 12 and 13.⁵⁶⁶ However, the Secretary-General has previously acknowledged that he is close to his son and talks to him as often as every week.⁵⁶⁷ Accordingly, in the Committee's view, the cell phone records from Kojo Annan do not shed new light on the issue of the Secretary-General's possible knowledge of Cotecna's contract bid. Nor do the other faxes, memoranda, and correspondence disclosed by Kojo Annan of significance to this issue, because they do not reflect the content of any communications between Kojo Annan and the Secretary-General.

When interviewed recently, the Secretary-General was shown portions of Kojo Annan's cell phone records and asked if he was aware that his son had placed calls to the procurement department during the contract bidding process. The Secretary-General stated that he was unaware of these calls and that he was not aware of any efforts by his son to obtain information from the procurement department or other sources in the United Nations about the Programme.⁵⁶⁸

⁵⁶⁵ A list of calls between Kojo Annan and the Secretary-General's residence from October to December 1998 is attached as Annex 1A to this Chapter of the Report. The telephone logs at the Secretary-General's residence are maintained by security at the residence, who record by hand both incoming calls to the residence, and outgoing calls from the residence. The telephone logs of the Secretary-General identify calls placed by Kojo Annan as well as calls made to him, and at times identify the individual in the Secretary-General's residence participating in, placing, or receiving the call. Eliminated from consideration in this analysis are any calls placed from or received by the Secretary-General's residence when the Secretary-General's travel logs or schedule reflects that the Secretary-General was unavailable at the time of the call. The logs reflect a call placed by Nane Annan, the spouse of the Secretary-General, on December 11, 1998 at 9:14 am to a different cell telephone number, and note "Kojo," suggesting that Kojo Annan may have had an additional telephone number that he did not disclose to the Committee. Further, a Kojo Annan business card obtained by the Committee provides this same number for Kojo Annan. The Committee has no other information regarding this telephone number.

⁵⁶⁶ Kojo Annan cell telephone records (Nov. 6 to Dec. 14, 1998). The telephone logs reflect that the Secretary-General was participating in the call on three of these occasions: December 12, 13, and 20, 1998.

⁵⁶⁷ "Second Interim Report," p. 27.

⁵⁶⁸ Kofi Annan interview (Aug. 5, 2005).

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B. THE MICHAEL WILSON MEMORANDUM OF DECEMBER 4, 1998

On June 13, 2005, Cotecna disclosed to the Committee a new internal memorandum written by Mr. Wilson on December 4, 1998 that describes “brief discussions” with the “SG and his entourage” about Cotecna’s contract bid during the Francophonie summit in Paris in late November 1998. A full copy of this memorandum is attached as Annex 9 to this Chapter; the document is hereinafter referred to as the “Paris memorandum.”⁵⁶⁹ Styled as a summary of his business promotion work at the Francophonie summit, the Paris memorandum was sent as an attachment to an e-mail message by Mr. Wilson to Elie Massey, Robert Massey, and Mr. Pruniaux. The Paris memorandum describes in detail a meeting with the Nigerian finance minister. At the end of the memorandum is a statement describing in the following terms a contact with the Secretary-General concerning Cotecna’s contract bid:

UNITED NATIONS -IRAQ PROGRAMME
 We had brief discussions with the SG and his entourage .Their collec
 tive advise was that we should respond as best as we could to the Q&
 A session of the 1-12-98
 and that we could count on their support.
 COURTESIES
 KA paid courtesy greetings to the Presidents of Ghana, Mozambique, ~~and Niger~~
 MICHAEL

Figure: Michael Wilson memorandum to Elie Massey, *et al.* (Dec. 4, 1998) (excerpt).

According to Cotecna’s counsel, the Paris memorandum was located by an independent auditor hired by Cotecna during an additional search of a personal file in the office of Elie Massey, after Cotecna had already assured the Committee that its files had been reviewed completely, and had denied the Committee direct access to the files. The Paris memorandum has handwriting in the margins and highlighting, which Elie Massey stated to be from his review of the memorandum at the time he received it. The Paris memorandum states that “[w]e had brief discussions with the SG and his entourage. Their collective advise [sic] was that we should respond as best as we could to the Q&A session of the 1-12-98 and that we could count on their support.”⁵⁷⁰

Following the disclosure of the Paris memorandum, the Committee interviewed Mr. Wilson, Koj Annan, Cotecna officials, and the Secretary-General, as well as members of the Secretary-General’s staff who accompanied him to the Paris conference between November 26 and 28, 1998. As described below, none of the witnesses interviewed have confirmed that any of the

⁵⁶⁹ Michael Wilson memorandum to Elie Massey, *et al.* (Dec. 4, 1998) (attached as Annex 9).

⁵⁷⁰ Elie Massey interview (July 14, 2005); Cotecna counsel and auditors interview (June 14, 2005); Michael Wilson memorandum to Elie Massey, *et al.* (Dec. 4, 1998). In an interview with Committee investigators, Koj Annan stated that the reference to “KA” in the Paris memorandum is an abbreviation for his own name and not the Secretary-General. Koj Annan interview (July 2, 2005).

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“discussions” described in the Paris memorandum took place. Further, the Committee has not obtained evidence confirming Mr. Wilson’s representations set forth in the e-mail, or any evidence, apart from the e-mail itself, that the Secretary-General was made aware of Cotecna’s bid for the contract or that he was lobbied to support the contract.

1. Michael Wilson

When interviewed by the Committee, Mr. Wilson did not recall authoring the Paris memorandum. However, Mr. Wilson explained that, as was his practice, he would have dictated a memorandum about the Paris meeting over the telephone to a Cotecna employee. Mr. Wilson surmised that the employee must have misinterpreted what he had said, resulting in errors being typed in the memorandum. He claimed that he did not see the memorandum before it was sent to Cotecna executives. Alternatively, Mr. Wilson suggested that any of the secretaries or computer administrators at Cotecna, who had his log-in name and password, could have sent the Paris memorandum.⁵⁷¹

The timing, format and content of the Paris memorandum cast doubt on Mr. Wilson’s explanations. The Paris memorandum was sent on the same day—indeed, within minutes—as a second e-mail attaching a “trip report” that Mr. Wilson admits to both authoring and sending. This e-mail concerned the trip he took to New York a few days after the Paris trip and described Cotecna’s contract “task force” meeting with the United Nations about the contract bid. This “New York memorandum” bears a highly similar writing style and format with occasional misspellings to that of the Paris memorandum. Further, the substance of the Paris memorandum clearly suggests that someone with intimate knowledge of the events in Paris and expertise in Cotecna’s business issues at the time was responsible for the memorandum. Given the content of the Paris memorandum, it is unlikely that a Cotecna secretary or computer administrator would have been its author.⁵⁷²

Contrary to a previous claim that he was in Tanzania, Mr. Wilson has recently acknowledged for the first time to Committee investigators that he was in Paris for the Francophonie Summit in late November 1998. He has repeatedly asserted, however, that he did not have a meeting with the Secretary-General while he was there. He stated that he went to the Secretary-General’s hotel, Hotel de Crillon, one day while he was in Paris to meet Kofi Annan. When he arrived at the hotel, he called Kofi Annan on his cell phone. Kofi Annan answered and told Mr. Wilson that he was upstairs but would be down shortly to meet him. According to Mr. Wilson, a little while later he noticed the Secretary-General’s “entourage” making its way through the hotel to the exit. Mr. Wilson claims that he shouted a greeting to the Secretary-General, possibly in their native dialect, and the Secretary-General returned the greeting with a wave. Mr. Wilson stated that this was the only time he saw the Secretary-General while in Paris and that the greeting was the only interaction he had with the Secretary-General and entourage. Mr. Wilson could not remember if

⁵⁷¹ Michael Wilson interviews (June 17 and Aug. 24, 2005).

⁵⁷² The “New York memorandum” appears as Annex 10 to this Chapter of the Report. See also “Second Interim Report,” p. 23 (summarizing the contents of the “New York memorandum”).

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Kojo Annan was with him during this incident or whether he met him afterwards. Mr. Wilson also stated he did not ask Kojo Annan what he and his father spoke about while they were upstairs in the hotel.⁵⁷³

2. Kojo Annan

Although Kojo Annan confirmed that he was in Paris with the Cotecna contingent on November 28, 1998, he denied knowledge of any discussion with the Secretary-General about the Cotecna contract. Kojo Annan said his sole contact with his father during this trip was a lunch he had with him in the Secretary-General's hotel room. According to Kojo Annan, they had personal conversations and did not discuss Cotecna or the Programme. He recalled that he picked up a suit that he had left with his father. Mr. Wilson was not with Kojo Annan at the time he picked up his suit. After lunch, the Secretary-General left with his security team in order to receive an honorary degree. Kojo Annan could not recall whether Mr. Wilson was at the hotel at the same time as the Secretary-General.⁵⁷⁴

3. Cotecna Officials

The Committee's investigators questioned each of the recipients of the Paris memorandum—Elie Massey, Robert Massey, and Mr. Pruniaux. All three of these Cotecna executives were of the view that Mr. Wilson had been “bluffing” and had not been truthful when he represented that he had spoken to the Secretary-General and his entourage about the pending Cotecna bid for the inspection contract. Each Cotecna executive provided his own explanation as to why he thought Mr. Wilson had not been truthful when he made this representation, but none of them had ever confronted him. Elie Massey claimed that he discussed the memorandum's account at the time with Robert Massey, and they decided that such circumstances were impossible to have occurred. In Robert Massey's view, Mr. Wilson had the means to meet with the Secretary-General but, in this case, Robert Massey believed Mr. Wilson was “bluffing” based on the content of the message. Robert Massey did not raise his doubts about the memorandum with Mr. Wilson. The Masseys, in particular, were asked why they had continued to employ a person whom they believed exaggerated and was not trustworthy. Both Elie Massey and Robert Massey replied that Mr. Wilson had been too valuable to Cotecna's business in Africa to dismiss him over the content of the e-mail. In addition, the Masseys had expected that if they had confronted Mr. Wilson, he

⁵⁷³ Michael Wilson interview (June 17, 2005). When Mr. Wilson was first interviewed by the Committee's investigators in October 2004, he did not mention that he had been in Paris at the Francophonie summit in late November 1998. Instead, he claimed to have been in Dar Es Salaam, Tanzania, when the invitation from the United Nations arrived for the meeting in New York on December 1, 1998. Michael Wilson interview (Oct. 12, 2004).

⁵⁷⁴ Kojo Annan interview (July 2, 2005). After describing the “discussions” with the “SG and his entourage,” the Paris memorandum states that “KA paid courtesy greetings to the Presidents of Ghana, Mozambique, Mali and Niger.” Kojo Annan told the Committee's investigators that this latter statement was false. *Ibid.*

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would have reacted harshly. The Masseys did not want to damage irreparably their relationship with Mr. Wilson and, thus, potentially frustrate the company's efforts in Africa.⁵⁷⁵

Elie Massey did not question the authenticity of the document and confirmed it was from Mr. Wilson. Elie Massey further identified his handwriting in the margin of the Paris memorandum and stated that he normally marks up documents as he reads them. He stated that the memorandum had not been found earlier by Cotecna because it was in his "Nigeria file" and not subject to review.⁵⁷⁶

Elie Massey also confirmed his presence in Paris during the time of the Francophonie summit and confirmed the Paris memorandum's account of his meeting with Nigerian Finance Minister Usman. He recalled that the Cotecna contingent was received at the Finance Minister's salon in the Ritz Hotel, and that the meeting lasted about twenty minutes. Elie Massey did not recall Kojo Annan having any meetings with the Nigerian Finance Minister in Paris at this time. He doubted the veracity of the claim in the memorandum that Kojo Annan paid "courtesy greetings" to various heads of the African countries, but Elie Massey had made no efforts to verify the information.⁵⁷⁷

With respect to the Paris memorandum's statement concerning "brief discussions" with the Secretary-General, Elie Massey stated that he was not aware of any meeting between Cotecna staff and the Secretary-General in Paris during the Francophonie summit. He stated that Mr. Wilson would not have been permitted to have contact with United Nations personnel during the bidding process. Elie Massey stated that no company employees would have been allowed to have direct access with United Nations personnel without the express approval of Robert Massey or himself. However, Elie Massey could not provide an explanation as to why Mr. Wilson would have claimed that he had met with the Secretary-General without their prior approval.⁵⁷⁸

When interviewed, Robert Massey stated that he had no doubt that Mr. Wilson wrote the Paris memorandum. He confirmed that Cotecna's meeting with the Nigerian Finance Minister occurred as described in the memorandum and stated that he was present for the meeting along with Elie Massey and Mr. Wilson. Robert Massey could not recall if Kojo Annan was also present at the meeting. Robert Massey stated that, at the time, he did not believe Mr. Wilson's description of his meeting with the Secretary-General.⁵⁷⁹

Mr. Pruniaux, one of the recipients of the Paris memorandum, told the Committee's investigators that there was no doubt in his mind that Mr. Wilson was the author of the memorandum based on

⁵⁷⁵ Elie Massey interview (July 14, 2005); Robert Massey interview (July 15, 2005); Andre Pruniaux interview (July 15, 2005).

⁵⁷⁶ Elie Massey interview (July 14, 2005).

⁵⁷⁷ Ibid.

⁵⁷⁸ Ibid.

⁵⁷⁹ Robert Massey interview (July 15, 2005).

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its format and spelling errors. Mr. Pruniaux did not believe the portion of the Paris memorandum suggesting that Mr. Wilson had had discussions with the Secretary-General. Mr. Pruniaux was positive that Mr. Wilson had fabricated these discussions. In Mr. Pruniaux's view, Mr. Wilson promoted his friendship with Koko Annan to the Masseys—and frequently exaggerated the extent of their connections. Mr. Pruniaux stated that he had never received an oral report of the meeting with the Secretary-General described by Mr. Wilson in the Paris memorandum. He also stated that Mr. Wilson's claims did not generate any e-mails or conversations between Mr. Wilson and the Masseys.⁵⁸⁰

4. The Secretary-General and His “Entourage”

A review of the Secretary-General's schedule for the Paris trip does not list a meeting with either Koko Annan or Mr. Wilson.⁵⁸¹ This fact is of limited significance because the Secretary-General's schedule does not always denote meetings with family members, and the Paris memorandum does not make clear if the alleged “discussions” took place in a formal, scheduled meeting format or if they occurred informally.

Following disclosure of the Paris memorandum, the Secretary-General stated in an interview that the incident described in the Paris memorandum did not occur. The Secretary-General stated that he had not met with Mr. Wilson in Paris during the weekend of the Francophonie summit and he had absolutely no recollection of any kind of a casual encounter with him. The Secretary-General recalled that Koko Annan was in Paris that weekend and that he took a suit to give to his son. The Secretary-General stated that his son did not mention that Mr. Wilson or anyone else from Cotecna was in Paris, nor was he made aware of that fact by anyone else. The Secretary-General further stated that he was not aware that there was an upcoming meeting for Cotecna with the procurement department.⁵⁸²

The Secretary-General's traveling group (the alleged “entourage”) for the Paris trip consisted of eight persons, including aides, security personnel, a translator, a secretary, and the Secretary-General's spouse. Committee investigators interviewed each member of the Secretary-General's entourage to Paris. None of the people who accompanied the Secretary-General on this trip remember the Secretary-General meeting with Mr. Wilson. Despite the fact that Mr. Wilson's

⁵⁸⁰ André Pruniaux interview (July 14, 2005). Mr. Pruniaux stated that he was in Paris on November 28, 1998, for a meeting with representatives of Niger and Congo-Brazzaville, during the same weekend as the Francophonie summit. He was aware that Mr. Wilson was also in Paris at that time, but he did not see or speak with him; he did not know if Koko Annan had been in Paris at that time. *Ibid.* Another Cotecna employee, Jean-Paul Duperrex, Cotecna's contract manager for Nigeria, was copied on the Paris memorandum, but was not copied on the e-mail and never received it. Jean-Paul Duperrex interview (July 15, 2005).

⁵⁸¹ Secretary-General's travel logs (Nov. 26-29, 1998); see also United Nations, “Summary of the Secretary-General's Official Travels,” <http://www.un.org/News/oss/sgtrips.htm> (reflecting that Secretary-General was in France from November 26-29, 1998).

⁵⁸² Kofi Annan interview (Aug. 5, 2005).

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description suggests the presence of several people— “the SG and his entourage”—none of these individuals recalled having previously heard of Mr. Wilson before recent news accounts. However, most of these individuals have little, if any, recollection of the Paris trip, as they have traveled frequently with the Secretary-General, and the trip occurred seven years ago.⁵⁸³

Apart from the Paris memorandum, the Committee’s further investigation efforts have not disclosed other evidence that the Secretary-General was aware in 1998 of Cotecna’s bid for the Iraq inspection contract. The Committee has not been able to corroborate Mr. Wilson’s claim that he had a meeting with the Secretary-General about Cotecna’s bid for the inspection contract as set forth in the Paris memorandum. In addition, the Committee has uncovered evidence that seriously calls into question Mr. Wilson’s credibility, and therefore, the Committee cannot rely on the words of Mr. Wilson.

The emergence of the Paris memorandum initially raised new questions about the Secretary-General’s knowledge of Kojo Annan’s efforts to assist Cotecna in winning the inspection contract (especially when viewed in conjunction with Kojo Annan’s efforts to exploit his contacts at the United Nations for Cotecna’s benefit). The Paris memorandum, however, does not, in the final analysis, provide credible evidence to support a finding that the Secretary-General knew of or supported Cotecna’s efforts to win the Programme’s humanitarian goods inspection contract.

⁵⁸³ Mohamed Sahnoun interview (June 22, 2005) (stating that he did not recall the Paris trip of November 1998); Elisabeth Lindenmayer interview (June 15, 2005) (recalling the Paris trip, but stating that she did not recall seeing Kojo Annan with the Secretary-General on this trip and that she did not recall seeing Mr. Wilson); Anastasia Delenda interview (June 15, 2005) (stating that she did not recall if she had been on the Paris portion of the Secretary-General’s trip); Arnulfo Fareaux and Yassin Sallam interview (June 14, 2005) (stating that they did not recall Mr. Wilson, but acknowledging that the Secretary-General could have met with a family friend without their knowledge); Ann Fassotte interview (June 15, 2005) (stating that she did not recall Paris trip and does not know Kojo Annan or Mr. Wilson); Ibrahima Fall interview (Aug. 31, 2005) (stating that he did recall the trip to Paris, but that he does not know Mr. Wilson); Nane Annan interview (Aug. 5, 2005) (stating that she has only a vague recollection of the trip to Paris). Mr. Sahnoun worked as a consultant to the United Nations and accompanied the Secretary-General on numerous trips. Mohamed Sahnoun interview (June 22, 2005). Ms. Delenda is an administrative assistant to the Secretary-General who frequently travels with him. Anastasia Delenda interview (June 15, 2005). Mr. Fareaux and Lieutenant Sallam work in the United Nations Department of Management, Office of Central Support Services, Security and Safety Services. Mr. Fareaux was responsible for the Secretary-General’s personal security on the Paris trip in November 1998. Arnulfo Fareaux and Yassin Sallam interview (June 14, 2005). Ms. Fassotte is a translator at the United Nations who has traveled with the Secretary-General on several occasions. Ann Fassotte interview (June 15, 2005).

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V. KOJO ANNAN'S PURCHASE OF A CAR IN THE NAME OF THE SECRETARY-GENERAL

During the course of the Committee's renewed investigation of the award of the Cotecna contract, it came across evidence of the purchase of a car by Kojo Annan in his father's name in 1998. The purchase of the car occurred in November and December 1998, during the same months in which the United Nations considered bids and then awarded the humanitarian goods inspection contract to Cotecna. This issue warranted the Committee's further investigation to consider the possibility that the car had been offered as a benefit to Kojo Annan or to the Secretary-General by Cotecna in connection with the award of the contract. The investigation disclosed evidence that Kojo Annan used false pretenses in connection with the purchase and shipment of the car to Ghana and that he used false pretenses to enlist an officer from the United Nations Development Programme ("UNDP") in Ghana to assist in having the car imported into Ghana with diplomatic status and, therefore, without the assessment of duties. The Committee's investigation has not found evidence to show that Cotecna purchased the car for Kojo Annan or the Secretary-General; and it has not found that the transaction was in any way related to the award of the Iraq inspection contract to Cotecna. The Committee's review of the Secretary-General's financial records has not disclosed evidence that he received any payment or benefit from Cotecna.

A. KOJO ANNAN'S PURCHASE OF A CAR

According to Kojo Annan, he attended a car show in Geneva and saw a Mercedes Benz vehicle that he wished to buy for his personal use in Nigeria. He realized that United Nations employees may qualify for a fifteen percent discount, and so he set out to buy the car in his father's name. At some point in time, Mr. Wilson put down a deposit of \$3,000 for Kojo Annan to buy the car.⁵⁸⁴

On March 25, 1998, Kojo Annan faxed a memorandum to Mr. Wilson that first discussed matters concerning the Iraq inspection contract and then referenced his plans to buy a "vehicle" for which he would need to "confirm with my Dad whether I can use his name." He also wrote that "I have to try and work out whose name we can use to get it shipped."⁵⁸⁵

⁵⁸⁴ Kojo Annan interview (July 2, 2005).

⁵⁸⁵ Kojo Annan record, Kojo Annan fax to Michael Wilson (Mar. 25, 1998). This fax appears in Annex 4 to this Chapter and was discussed in Part II above. The last paragraph's discussion of the "vehicle" appears after an extended discussion of Iraq issues that Kojo Annan had learned from "Aunty D" (Ms. Mills-Ayree). Ibid.

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VEHICLE

When I go to Jamaica I will confirm with my Dad whether I can use his name. I am ready to put the deposit when I come. But I have to try and work out whose name we can use to get it shipped. I am going to phone the managers in Germany but I want to ask your advise of exactly what I should say.

Regards,



Kojo Annan

Figure: Kojo Annan fax to Michael Wilson (Mar. 25, 1998) (excerpt).

For reasons that are not clear, several months passed before Kojo Annan could pay for and arrange for the shipment of the car. On November 3, 1998, Kojo Annan contacted a Mercedes Benz representative to indicate “the specifications that will be required for the car before it is shipped to Ghana.”⁵⁸⁶ He told Mercedes Benz that the car needed to arrive in Ghana in time for Christmas for the Secretary-General’s use.⁵⁸⁷ However, the Secretary-General did not travel to Ghana in December 1998.⁵⁸⁸

On November 13, 1998, Kojo Annan called Ms. Assebe asking that someone from the United Nations sign a letter authorizing the use of his father’s name for the purchase of the car. Kojo Annan further requested that Ms. Assebe send the letter to the car company. It is not clear whether or not Kojo Annan asked Ms. Assebe to bring the matter to the Secretary-General’s attention, but she prepared the following note for the Secretary-General:⁵⁸⁹

⁵⁸⁶ Kojo Annan record, Kojo Annan fax to William Green (Nov. 3, 1998).

⁵⁸⁷ Gerhard Negrini interview (Aug. 16, 2005); Gerhard Negrini letter to Kojo Annan (Nov. 17, 1998) (noting that “[t]his car will be at the disposal of Mr. Kofi Annan during his stay in Ghana for a maximum of 4 weeks” and “[w]e will try our utmost to have this car ready by beginning of December 1998”).

⁵⁸⁸ Kofi Annan interview (Aug. 5, 2005) (stating that he did not travel to Ghana in December 1998). The Secretary-General’s travel records do not reflect any travel to Ghana in December 1998.

⁵⁸⁹ Wagaye Assebe note to Kofi Annan (Nov. 13, 1998). This document was recovered from Ms. Assebe’s computer hard drive, and a print-out of the electronic record is reproduced in the figure below. The Committee did not recover a hard copy of this note or any copy of the letter that is referenced in the note. The underlining of Kojo Annan’s name in the figure below reflects the use of his name as a computer search term; it would not have appeared underlined in Ms. Assebe’s original note.

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Sir,

Kojo asked me to send the attached letter re: the car he is trying to purchase under your name. The company is requesting a letter be sent from the UN. **Kojo** said it could be signed by anyone from your office. May I ask Lamin to sign it? Please advise.

Wagaye
13 Nov. 1998

Figure: Wagaye Assebe note to Secretary-General (Nov. 13, 1998).

According to Ms. Assebe, it would have been her practice to place such a note on the Secretary-General's desk, although she does not recall what she did in this particular case. She does not recall speaking with the Secretary-General at the time about this matter, nor does she recall if the Secretary-General directed her or anyone else to take any action with respect to the note.⁵⁹⁰

The Secretary-General stated that he did not recall this note and that he would not have permitted anyone in the United Nations to send a letter on his behalf authorizing the purchase of a car for his son in his name. The Secretary-General has stated that he knew Kojo Annan was intending to purchase a car and that he gave his son \$15,000 towards the purchase of a car. The Secretary-General, however, claimed he did not know that Kojo Annan was buying a Mercedes Benz in his name.⁵⁹¹

A sales representative from Mercedes Benz recalled discussing the car purchase with Kojo Annan, and he did not speak with the Secretary-General. The Committee's review of records from Mercedes Benz does not indicate the personal involvement of the Secretary-General in the purchase of the car; they reflect discussions with Kojo Annan and what appears to be Kojo Annan's signature on the purchase order invoice.⁵⁹²

Ms. Assebe's note refers to Lamin Sise, the Secretary-General's Director of Legal Affairs, Human Rights, and Special Assignments. When interviewed by the Committee's investigators, Mr. Sise did not recall being contacted about the purchase of a car for Kojo Annan. Kojo Annan's phone records reflect a call that lasted eight minutes to Mr. Sise's number on the

⁵⁹⁰ Wagaye Assebe interview (Aug. 12, 2005).

⁵⁹¹ Kofi Annan interview (Aug. 5, 2005). A review of the Secretary-General's financial records reflects his payment of \$15,000 to Kojo Annan on November 17, 1998. Kojo Annan's financial records reflect that this sum in turn was used toward Kojo Annan's purchase of the car. Kofi Annan financial records; Kojo Annan financial records; Kojo Annan interview (Aug. 23, 2005).

⁵⁹² Gerhard Negrini interview (Aug. 16 and 22, 2005) (Mercedes Benz sales representative who communicated with Kojo Annan); Mercedes Benz sales records.

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afternoon of November 23, 1998. Mr. Sise states, however, that this conversation did not concern Kojo Annan's purchase of a car.⁵⁹³

On approximately November 13, 1998, Kojo Annan contacted Abdoulie Janneh, a family acquaintance who was serving in Ghana as Resident Representative of UNDP. Mr. Janneh was responsible for arranging transportation for the Secretary-General and all high level United Nations officials who traveled to Ghana on business. Kojo Annan enlisted Mr. Janneh's assistance with having the car he had purchased admitted to Ghana duty-free. Kojo Annan knew that if the vehicle was in his father's name, the customs duties would be waived. However, Kojo Annan stated that he never mentioned the waiver of customs duties to his father. Mr. Janneh stated that no one other than the Secretary-General would have qualified for this exemption and that had the car been imported into Ghana under Kojo Annan's own name, it would not have been exempted from customs duties. Kojo Annan falsely represented to Mr. Janneh that the car was intended for the personal use of the Secretary-General. On this basis, Mr. Janneh called Ghana's Chief of Protocol of the Ministry of Foreign Affairs to request a diplomatic customs duty exemption. Mr. Janneh filed a formal certification under seal of UNDP claiming an exemption from customs duties by attesting that the car was being imported into Ghana "[f]or personal use by Mr. Kofi Annan, UN Secretary-General."⁵⁹⁴ Mr. Janneh stated that he had no reason to doubt Kojo Annan's representation and he relied on the bill of lading as a supporting document and confirmation that the car was for the Secretary-General. Mr. Janneh took Kojo Annan at his word and did not seek additional confirmation about the matter.⁵⁹⁵

Kojo Annan paid 65,521 in German Deutsche Marks ("DM") or \$39,056 for his Mercedes Benz. He received a 14.3 percent discount from the list purchase price as a result of his representation that the car was for his father, resulting in a savings of approximately \$6,541. When the car was shipped to Ghana, Kojo Annan saved \$14,103 in import duties because of the false attestation that the car was for the personal use of the Secretary-General. In total, Kojo Annan saved

⁵⁹³ Kojo Annan telephone records (Nov. 23, 2005); Lamin Sise interviews (Aug. 26 and 29, 2005). Mr. Sise could not recall a conversation with Kojo Annan on November 23, 1998. He said he spoke to Kojo Annan occasionally about upcoming trips of the Secretary-General. *Ibid.*

⁵⁹⁴ Ghanaian Ministry of Foreign Affairs record, Abdoulie Janneh request for diplomatic exemption for waiver of payment of customs duty (Dec. 8, 1998).

⁵⁹⁵ Kojo Annan fax to Abdoulie Janneh (Nov. 13, 1998); Abdoulie Janneh interview (Aug. 29, 2005); see also Kofi Annan interview (Aug. 5, 2005) (stating that he was neither aware of Mr. Janneh's application for a customs exemption nor did he authorize it). The bill of lading that Kojo Annan provided to Mr. Janneh reflected that Kofi Annan was the prospective owner of the car. Moreover, because the Secretary-General had in the past expressed concern about the burden of his travel arrangements on Ghana on Mr. Janneh, Mr. Janneh stated that he assumed that one of the reasons the Secretary-General was purchasing the car was to reduce this burden. Abdoulie Janneh interview (Aug. 29, 2005).

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approximately \$20,644 by purchasing and shipping the car to Ghana under false pretenses and by misleading a UNDP official to make a false representation on his behalf.⁵⁹⁶

Kojo Annan admitted that he used his father's name to purchase the car without obtaining the Secretary-General's consent. The Committee has not located any record of a response by the Secretary-General to Kojo Annan's request to purchase the car under his name.⁵⁹⁷

B. SOURCE OF PAYMENT FOR KOJO ANNAN'S CAR

The Committee's review of banking and payment records of Kofi Annan and Kojo Annan has not established that Kojo Annan's payment for the car was from any funds furnished to Kojo Annan by Cotecna for any services he performed relating to the Oil-for-Food Programme. However, Committee investigators have not had complete access to records to allow it to identify the source of all funds used by Kojo Annan to pay for the car. On September 14, 1998, Kojo Annan received \$5,000 into his bank account at the Lloyds Bank in London that was used as a repository of funds to pay for the car. The \$5,000 came from another bank account of Kojo Annan. The Committee does not know the source of these funds. Then on November 10, 1998, Kojo Annan received \$17,000 from Cotecna into the repository account at Lloyds Bank. This was for non-Programme-related consulting services for which he had submitted a payment justification form to Robert Massey on October 26, 1998.⁵⁹⁸

On November 17, 1998, Kojo Annan received \$15,000 by wire to this account from his father. On November 24, 1998, the full amount of accumulated funds in this Lloyds account was withdrawn toward the purchase of the car. Accordingly, although the Committee has not been able to identify all the sources of funds used for the purchase of the car, it is clear that at least \$32,000 of the total \$39,056 in purchase monies came from verified sources not relating to any benefit conferred upon Kojo Annan or the Secretary-General in connection with the Oil-for-Food Programme.⁵⁹⁹

⁵⁹⁶ Daimler-Chrysler invoices (Dec. 3, 1998); Chief Collector/Customs letter to Resident Representative of UNDP (Aug. 15, 2005) (calculating customs duties that would have been assessed on the car if not for diplomatic exemption). Mr. Jannah filed a document that was false with Ghanaian customs authorities because he relied on the representations of Kojo Annan. The Committee does *not* conclude that Mr. Jannah was aware of the falsity of Kojo Annan's claim.

⁵⁹⁷ Kojo Annan interview (July 2, 2005); Kofi Annan interview (Aug. 5, 2005). A review of the Secretary-General's financial records reflect his payment of \$15,000 to Kojo Annan on November 17, 1998. Kojo Annan's financial records reflect that this sum in turn was used toward Kojo Annan's purchase of the car. Kofi Annan financial records; Kojo Annan financial records; Kojo Annan interview (Aug. 23, 2005).

⁵⁹⁸ Cotecna document, Kojo Annan fax to Robert Massey (Oct. 26, 1998).

⁵⁹⁹ Kojo Annan banking statements; Kofi Annan banking records; Mercedes Benz transaction payment records (Nov. 26 and Dec. 31, 1998). The wired-in amounts from Cotecna and the Secretary-General were reduced for the cost of bank transaction fees. The total amount withdrawn from the account was

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As noted above, Mr. Wilson appears to have paid a \$3,000 deposit for the car. The source of these funds is unclear, and it is unknown whether Kojo Annan paid this money back to Mr. Wilson. It appears that the amount of money ultimately paid by Kojo Annan for the car was for the full purchase price (including the deposit, but with diplomatic discount).⁶⁰⁰

C. REVIEW OF THE SECRETARY-GENERAL'S FINANCIAL RECORDS

As part of its investigation of the circumstances surrounding the awarding of the humanitarian inspection contract to Cotecna in 1998, the Committee requested that the Secretary-General disclose certain financial records and information. The Committee was seeking to determine the financial status of the Secretary-General and determine whether there was any evidence of improper or suspect payments or transactions relating to Cotecna or the Oil-for-Food Programme.

The Committee forwarded a questionnaire to the Secretary-General seeking financial information for the time period of January 1, 1998, through December 31, 2004. The questionnaire sought among other things, records of bank accounts, loans, real property transactions, the receipt of any gifts or monies, and credit card transactions. In response to this questionnaire, the Secretary-General made records available for the Committee's review at his office at the United Nations. These records included account information from six banks and three credit card companies. The Committee reviewed these materials as well as a completed financial disclosure questionnaire submitted to the Committee. After review of the questionnaire and the submitted materials, the Committee questioned the Secretary-General about certain items contained in those materials.⁶⁰¹ Based on its analysis of these records as well as its questions of the Secretary-General, the Committee is satisfied that the Secretary-General has fully responded to its request for financial information.

The Secretary-General's financial records reflect that his primary source of income was his United Nations salary and rental income. He lives within his means and has accumulated a retirement fund through savings. The Secretary-General contributes heavily to charity and to the support of his extended family. For example, when he was awarded the Nobel Peace Prize in 2001, he donated all of his prize money—\$481,265—to the United Nations. The records produced do not raise concerns about the Secretary-General's financial stability nor do they reveal any payments or transactions that appear suspicious or improper.⁶⁰²

\$36,976.48 on November 24, 1998. Kojo Annan made two separate payments by wire transfer to Daimler-Chrysler for the purchase of the car. Ibid.

⁶⁰⁰ Kojo Annan interview (July 2, 2005); Kojo Annan fax to Michael Wilson (Nov. 19, 1998).

⁶⁰¹ Committee e-mail to Gregory Craig (June 9, 2005); Gregory Craig letters to Committee (July 22 and Aug. 2, 2005); Kofi Annan financial records (Jan. 1, 1998 to Dec. 31, 2004); Kofi Annan interview (Aug. 5, 2005).

⁶⁰² Kofi Annan financial records.

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VI. OTHER ACTIVITIES OF KOJO ANNAN

The Committee sets forth below the results of its further investigation concerning the financial dealings of Kojo Annan relating to Cotecna and allegations of his dealings relating to the Oil-for-Food Programme. These additional items complete the Committee's review of questions first raised on these subjects in the Second Interim Report.

A. PAYMENTS FROM COTECNA

In the Second Interim Report, the Committee estimated the amount of money paid by Cotecna to Kojo Annan from January 1999 until March 2004. The Committee calculated a total of \$178,187 in payments and another \$306,305 in "possible" but unexplained payments.⁶⁰³

After issuing its Second Interim Report, the Committee continued its efforts to clarify and confirm the total amount paid to, or on behalf of Kojo Annan, by either Cotecna, its affiliates, the Masseys, or Mr. Wilson. It has since obtained new information from both Cotecna and Kojo Annan, and now revises the amounts of confirmed and "possible" payments previously reported.

1. Confirmed Payments

Committee investigators requested permission to examine Cotecna's bank account information—Cotecna refused. Cotecna stated that it would only be willing to allow an independent third-party accounting firm to conduct a limited inspection of its bank disbursement records and to report its findings to the Committee. The inspection was limited to the disbursements made from Cotecna's Swiss-based bank accounts from 1996 to 2004, including the accounts of companies such as Meteor and Cofinter that were previously used by Cotecna to channel money to Kojo Annan, and to identify payments made either directly to Kojo Annan or to companies identified by the Committee. The review authorized by Cotecna did not include the inspection of Cotecna's non-Swiss and off-shore bank accounts. BDO Visura ("BDO"), a Swiss accounting firm and member firm of BDO International, was retained to conduct the inspection. Its work was completed after the release of the Second Interim Report.⁶⁰⁴

BDO reported its findings to the Committee in a report dated May 31, 2005. In that report, BDO provided the results of its inspection of the disbursements from thirty-two bank accounts of various currency denominations controlled by Cotecna, Meteor, or Cofinter at UBS, BNP, Credit Suisse and BCG. In addition to the payments previously reported in the Second Interim Report as being paid by Cotecna and its affiliates, BDO identified a small number of payments in 1999 and early 2000 paid to Kojo Annan and to American Express on his behalf, apparently for business-

⁶⁰³ "Second Interim Report," pp. 64-70.

⁶⁰⁴ Roland Rasi letter to the Committee (Feb. 25, 2005); BDO Visura Terms of Reference (Mar. 16, 2005). The terms of reference also provided for the search of payments that Cotecna made to a limited number of other individuals and companies of interest to the Committee.

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related expenses he incurred on Cotecna's behalf during 1999. These payments totaled \$2,791. BDO also identified an additional payment for Kojo Annan to Westexim Ltd. ("Westexim") for \$2,390 made on January 5, 2000. In total, BDO identified \$5,181 of additional payments to, or on behalf of, Kojo Annan from 1999 to 2004.⁶⁰⁵

In addition to the inspection by BDO, Cotecna retained a United States-based forensic investigation firm, Forensic Risk Alliance ("FRA"), to conduct a search of Cotecna's general ledger and related records for payments to Kojo Annan or one of his related entities. This effort identified more payments to American Express in 1999 for Kojo Annan, apparently also for expenses Kojo Annan incurred for Cotecna-related business purposes. Although acknowledging that the work was incomplete and narrow in scope, FRA disclosed to the Committee that this effort identified more payments to American Express. These additional payments to American Express totaled \$8,347. In addition, FRA disclosed that the search identified \$4,179 of payments either directly or indirectly attributable to or paid to Kojo Annan. In total, the search of the general ledger purportedly uncovered \$12,526 of additional payments to, or on behalf of, Kojo Annan.⁶⁰⁶

While the Committee appreciates Cotecna's limited efforts to identify and disclose payments it made to, or on behalf of, Kojo Annan, these efforts have significant limitations and inherent deficiencies. As a result, serious concerns are raised about the completeness and accuracy of Cotecna's disclosures. Therefore, this effort can not purport to represent the definitive total of all possible payments to Kojo Annan, either directly, indirectly or through an intermediary or shell company. The Committee maintains that it requires complete and unfettered access to all of Cotecna's bank accounts and disbursement records in order to come to a definitive conclusion on the matter.

In summary, additional payments to, or on behalf of, Kojo Annan disclosed to the Committee by Cotecna and BDO since the issuance of the Second Interim Report total \$17,707. The Committee therefore revises upward the amount of confirmed payments disclosed in the Second Interim Report from \$178,187 to \$195,894.⁶⁰⁷

⁶⁰⁵ BDO Visura Report on the Audit of Bank Accounts of Cotecna (and related entities) from 1996 to 2004 (May 31, 2005) (hereinafter "BDO Audit Report"). BDO also identified another payment made to American Express in 1999 for the benefit of Kojo Annan and someone identified as "RW" but did not provide the dollar amount attributable to Kojo Annan in its report as it was awaiting the underlying documentation. This dollar amount was subsequently provided to the Committee by Cotecna through its counsel. The additional payments to Kojo Annan and American Express were paid from a Swiss Franc-denominated account. However, for ease of reference, unless otherwise noted, all monetary figures are cited in United States dollars and without the notation of cents.

⁶⁰⁶ Evelyn Suarez letters to the Committee (May 27 and July 11, 2005); Greg Mason interview (July 5, 2005). The company names used in the firm's search for payments to Kojo Annan were Sutton Group, Sutton Investments Limited ("Sutton"), and Westexim. Ibid; Forensic Risk Alliance letter to Philippe Massey (May 31, 2005).

⁶⁰⁷ "Second Interim Report," p.70.

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2. “Possible” Payments

As disclosed in the Second Interim Report, Kojo Annan had previously provided information to the Committee regarding payments which his counsel characterized as “possibly” coming from Cotecna. The total of these payments was \$306,305. The Second Interim Report also noted that Cotecna denied making these payments.⁶⁰⁸

Since the issuance of the Second Interim Report, the Committee re-interviewed Kojo Annan, and he provided the Committee with revised information regarding those payments. During the interview, and in a subsequent letter from his attorneys, Kojo Annan clarified that \$229,057 of the \$306,305 in “possible” payments originally provided to the Committee was not related to Cotecna. This leaves \$77,248 of the original \$306,305 still unexplained. Kojo Annan’s counsel, during the interview, stated that some of the remaining amounts, based solely on their descriptions on the banking records, were likely transfers from one of Mr. Annan’s other bank accounts and not related to Cotecna.⁶⁰⁹

3. Undisclosed Transaction

The Committee’s further investigation has revealed a \$55,000 wire transfer on March 26, 2001 from Cotecna to Migson Ghana Ltd (“Migson Ghana”), an entity controlled by Mr. Wilson, located in Ghana.⁶¹⁰ The payment was made from Cotecna’s bank account located in the Jersey Islands to Migson Ghana’s account at Standard Charter Bank in Ghana.⁶¹¹ According to Mr. Wilson, Migson Ghana is a trade facilitation company in which Kojo Annan was also “involved.”⁶¹² Cotecna did not disclose to the Committee another possible payment to, or for the benefit of, Kojo Annan.

B. AIR HARBOUR TECHNOLOGIES

In response to the Committee’s request of Cotecna for records reflecting any and all payments by Cotecna to any entity associated with Kojo Annan, Cotecna, through its auditors, disclosed a \$20,000 payment on July 17, 2001, from Cotecna to an entity called Air Harbour Technologies

⁶⁰⁸ Ibid., pp. 64-70; William W. Taylor III letter to Committee (Feb. 14, 2005).

⁶⁰⁹ Kojo Annan interview (July 2, 2005); Adam L Rosman letter to the Committee (July 22, 2005).

⁶¹⁰ Michael Wilson interview (Oct. 12, 2004).

⁶¹¹ Bank record; Michael Wilson interview (Oct. 12, 2004).

⁶¹² Michael Wilson interviews (Oct. 12, 2004 and June 17, 2005). Mr. Wilson asserted that Migson Ghana shared office space with Sutton and Petroleum Projects International (“PPI”), which are entities operated by Kojo Annan.

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(“Air Harbour”).⁶¹³ The Committee’s investigation has determined that Air Harbour was a business principally established and run by Hani Yamani, the son of the former Oil Minister of Saudi Arabia. The Committee has interviewed Hani Yamani, and Mr. Yamani has cooperated with the Committee’s investigation, providing documents and access to other Air Harbour personnel.

The Committee’s investigation has determined that Mr. Yamani established Air Harbour to invest in areas dealing with the tourism trade.⁶¹⁴ Both Kojo Annan and Mr. Wilson, as well as Maurice Strong, were members of the Board of Directors of Air Harbour at points in time between 1998 and 2001. Air Harbour dissolved in 2001.⁶¹⁵ The Committee asked Cotecna to provide an explanation for the \$20,000 payment and any documents associated with the transaction (Cotecna heretofore had not provided any support for the payment despite knowledge of the Committee’s interest in the transaction). In June 2005, Cotecna provided three documents in support of its contention that Air Harbour provided travel related services to Cotecna in Africa. Cotecna further provided to the Committee a memorandum authored and signed by Robert Massey bearing the date of May 10, 2005.⁶¹⁶ In the memorandum, Robert Massey asserted that Cotecna’s efforts on behalf of Air Harbour were conducted by Mr. Wilson who initiated an effort through Air Harbour to introduce Cotecna to tourism-related business. According to Robert Massey, Air Harbour requested compensation for expenses incurred in pursuit of their activities on Cotecna’s behalf, and Robert Massey agreed to pay Air Harbour in the amount of \$20,000.⁶¹⁷

⁶¹³ BDO Audit Report, Attachment 4; Hani Yamani interview (June 17, 2005). Cotecna, in order to reply to the Committee’s request, had all of its bank records audited. The auditing firm identified a \$20,000 payment to Air Harbour Technologies from Cotecna’s UBS bank account on July 17, 2001.

⁶¹⁴ Hani Yamani interviews (June 17 and July 26, 2005); Michael Wilson interview (Oct. 12, 2004); Geoffrey Lipman interview (July 27, 2005).

⁶¹⁵ Hani Yamani interview (June 17, 2005); Michael Wilson interview (Oct. 12, 2004). Mr. Yamani placed Kojo Annan on the Board of Directors with an annual salary of \$30,000. Mr. Strong, who served as an adviser to Secretary-General Boutros-Ghali and Secretary-General Annan, is the subject of discussion in Chapter 2 of Volume II of this Report.

⁶¹⁶ Cotecna record, Robert Massey memorandum to Cotecna Steering Committee (May 10, 2005); Cotecna record, Michael Wilson e-mail (May 28, 2000).

⁶¹⁷ Cotecna provided three documents to the Committee relating to its purported business with Air Harbour. One was a copy of an e-mail describing information about Green Globe 21, a business involved in travel and tourism standards. Cotecna record, Michael Wilson e-mail to Robert Massey (Mar. 18, 2000). The second was an invoice sent to Cotecna to the attention of Robert Massey requesting payment of \$23,873 for work in La Cote D’Ivoire, Niger, and Sierra Leone. This invoice included fees and travel expenses and directed that the funds were to be wired to Air Harbour Technologies at Metropolitan and Allied Bank Ghana Ltd. The invoice was on the letterhead of Air Harbour Technologies Accra, Ghana. Robert Massey had crossed out the figure \$23,873 on the invoice and had agreed to pay Air Harbour Technologies \$20,000. Cotecna record, Air Harbour Technologies invoice to Cotecna (July 13, 2001). The third document was a wire transfer receipt of July 13, 2001, showing the payment of \$20,000 to Air Harbour Technologies at the Metropolitan & Allied Bank Ghana Ltd. Cotecna record, wire transfer receipt (July 13, 2001).

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After the discovery of the \$20,000 payment from Cotecna to Air Harbour, the Committee inquired whether the principal officers of Air Harbour knew of the payment, and whether the company engaged in any business activity for Cotecna for which Air Harbour billed Cotecna. Mr. Yamani denied any knowledge of the payment and asserted that he did not recall Air Harbour ever engaging in any business with Cotecna, and that he was not aware of any services performed by Air Harbour on behalf of Cotecna. Mr. Yamani stated that he had never issued an invoice to Cotecna or authorized the issuance of an invoice to Cotecna. Mr. Yamani further stated that no one else at Air Harbour sent an invoice to Cotecna, nor did Air Harbour receive any of the \$20,000 paid by Cotecna to an account in the name of Air Harbour. Furthermore, Air Harbour ceased operations in early 2001 before the payment of \$20,000.⁶¹⁸

Mr. Yamani was subsequently asked about the representations by Cotecna and the documents it provided. Mr. Yamani reiterated that Air Harbour had no knowledge of this payment, and stated that the \$20,000 payment appeared from the records to be directed to a bank company account in Ghana in the name of Air Harbour which was in the exclusive control of Mr. Wilson. Mr. Yamani continued to assert that, to his knowledge, Air Harbour did not perform any services for Cotecna, a statement confirmed by Geoffrey Lipman, the chief executive officer of Air Harbour between October 1999 and March 2001, and by George Hannadjas, the company's bookkeeper. These officers also disavow any awareness of the documents produced by Cotecna which Cotecna has asserted confirms the business transaction. Mr. Yamani further explained that at no time did Air Harbour provide services for Cotecna or request payment from Cotecna for itself or Mr. Wilson.⁶¹⁹

There is no evidence that payments from Air Harbour were directed to Kojo Annan. Nor is there evidence that Air Harbour's activities were connected to the Oil-for-Food Programme.

C. ALLEGATIONS OF PARTICIPATION IN THE PROGRAMME

Since the issuance of the Second Interim Report, the Committee has examined further the issue of whether Kojo Annan engaged in any business directly, or indirectly, with the Oil-for-Food Programme by himself or any other entity with which he was associated. Other than his participation with Cotecna in Cotecna's efforts on behalf of the 1998 humanitarian aid inspection

⁶¹⁸ Hani Yamani interview (July 26, 2005).

⁶¹⁹ Ibid.; Geoffrey Lipman interview (July 27, 2005); George Hannadjas interview (Aug. 1, 2005). Mr. Lipman stated that he recalls some negotiation with Cotecna about Air Harbour's efforts to establish a process to certify the quality of tourism facilities. Mr. Lipman met with Robert Massey informally and Mr. Lipman had his assistant send a letter to Robert Massey about his ideas. Mr. Lipman stated that this project never progressed beyond this stage. He was unaware of any billing by Air Harbour of Cotecna. Mr. Lipman knows of no work done by Air Harbour in Ghana for Cotecna. Further, any monies sent to Air Harbour should have been sent to the corporate bank account in Cyprus, not to Ghana. Geoffrey Lipman interview (July 27, 2005). George Hannadjas stated that he did not generate an invoice for Cotecna, nor was he aware of any money paid to Air Harbour by Cotecna. Mr. Hannadjas was not aware of a bank account for Air Harbour in Ghana. George Hannadjas interview (Aug. 1, 2005).

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contract, the Committee has not found any further evidence that Kojo Annan engaged in business with the Programme.

An article published in a British newspaper suggested that Kojo Annan was linked to a transaction for \$60 million worth of Iraqi oil negotiated through a company called Hazy Investments for sale to a Moroccan company, S.A.M.I.R. Oil (SAMIR). The article claimed that Hazy Investments, owned and operated by Hani Yamani, involved Kojo Annan.⁶²⁰ The Committee has investigated the allegation of this transaction and has not found that a transaction occurred. The Committee has not found any evidence of Kojo Annan's participation in the negotiation for an oil transaction with SAMIR through Hazy Investments. According to Mr. Yamani, the proposed transaction was contemplated, but never completed.⁶²¹ The Committee has not found any evidence rebutting this contention or confirming that such a transaction was consummated.

The Committee also contacted representatives of SAMIR in Morocco. According to SAMIR officials, SAMIR entered into a contract with Mr. Yamani in August 2001 to purchase oil in Iraq. However, in November 2001, SAMIR nullified the contract because Mr. Yamani could not produce the oil.⁶²² The Committee has found no evidence that contradicts these representations.

The only other instance of Kojo Annan's potential efforts to conduct business with the Programme uncovered by the Committee is his activity with Pierre Mouselli. Kojo Annan had established two companies with Pierre Mouselli. As part of their initial inquiry into selling goods under the Programme, Kojo Annan and Pierre Mouselli met with the Iraqi ambassador to Nigeria. Kojo Annan has stated that he later realized that this "would not be a good idea" and did not pursue the sale of goods to Iraq. In addition, Kojo Annan has stated that he realized as time progressed that few of Mr. Mouselli's business ideas materialized.⁶²³

⁶²⁰ Robert Winnett, "Kofi Annan's son faces probe in UN oil scandal," *Sunday Times*, June 13, 2004, p. 12.

⁶²¹ Hani Yamani interview (June 17, 2005).

⁶²² Mohammed Bennis interview (June 7, 2005).

⁶²³ Kojo Annan interview (July 2, 2005); "Second Interim Report," pp. 30-34.

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VII. RESPONSES TO FINDINGS

A. KOJO ANNAN

On August 22, 2005, the Committee advised Kojo Annan of its intent to make adverse findings concerning two issues: first, his failure to be forthcoming to the Committee about his involvement with Cotecna's 1998 bid for the humanitarian goods inspection contract under the Programme; and second, his use of his father's name to purchase a Mercedes Benz at a reduced price and with a waiver of customs duties for delivery to Ghana in 1998. In response to the Committee's notice of its intent to make adverse findings against him, Kojo Annan's attorney submitted a letter that is annexed to this Report.⁶²⁴ Kojo Annan's attorney also met with the Committee on September 2, 2005.

Kojo Annan's attorney argues that the telephone calls relied upon by the Committee do not support the assertion that Kojo Annan had contacts with persons in United Nations procurement department in order to discuss the humanitarian inspection contract; and that there is no basis to find that Kojo Annan was not forthcoming regarding his involvement with the Cotecna bid.

However, the evidence demonstrates that Kojo Annan had contacts with the United Nations procurement department during the bid process. This evidence consists of the pattern of telephone calls made and received by Kojo Annan during critical times in the selection process as well as Cotecna documents recently disclosed to the Committee by Kojo Annan. Further, this evidence refutes earlier claims by Kojo Annan that he had no involvement with Cotecna's bid for the humanitarian goods inspection contract. Kojo Annan made these claims in an interview with the Committee on October 22, 2004, as well as in a letter dated March 18, 2005, from his attorney to the Committee.

The Committee has reviewed all of the relevant evidence and information, including that provided by counsel, and adheres to its findings and conclusions concerning Kojo Annan.

B. COTECNA, ELIE MASSEY, AND ROBERT MASSEY

On August 22, 2005, the Committee advised Cotecna, Elie Massey, and Robert Massey of its intent to issue adverse findings against them in connection with their failure to produce certain key documents to the Committee and their failure to be forthcoming about both Kojo Annan's involvement in the contract selection process and his employment status with Cotecna in 1999. Cotecna and the Masseys, through their attorney, responded with two letters, dated August 29, 2005 and September 2, 2005, which are attached as an annex to this Report.⁶²⁵ Rather than raising objections to the substance of the Committee's findings, Cotecna and the Masseys instead

⁶²⁴ William W. Taylor letter to the Committee (Aug. 30, 2005) (attached as Annex 11).

⁶²⁵ Evelyn Suarez letters to the Committee (Aug. 29 and Sept. 2, 2005) (attached as Annex 12).

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attack the Committee's procedures in these letters. These complaints are without merit for the reasons set forth in the Committee's September 1, 2005 response.⁶²⁶ As a result of receiving notice letters from the Committee prior to its Second Interim Report, Cotecna and the Masseys were fully aware that they had the opportunity to review relevant documents at the Committee's offices before issuing a response to the Committee. They chose not to do so. Moreover, some of the very documents Cotecna and the Masseys complained were not provided to them, were in fact Cotecna documents

The Committee notes the failure of Cotecna and the Masseys to refute in any way the substance of the Committee's findings. Having fully considered the issues raised as well as the evidence and information relating to this matter, the Committee adheres to its findings and conclusions.

C. MICHAEL WILSON

On August 22, 2005, the Committee advised Mr. Wilson of its intent to make adverse findings against him concluding that he was not forthcoming about the role that he and Kojo Annan played in Cotecna's pursuit of the humanitarian goods inspection contract in 1998 and about his authorship of a memorandum of December 4, 1998, which alleged that he had met with the Secretary-General and discussed Cotecna's bid for the inspection contract. In response to the Committee's letter, Mr. Wilson's attorneys submitted a letter, dated August 31, 2005, which is attached as an annex to this Report.⁶²⁷

Mr. Wilson denies that he has not been forthcoming with the Committee. He maintains that his statements concerning his involvement, and Kojo Annan's lack of involvement, in Cotecna's bid for the United Nations humanitarian goods inspection contract in 1998 were true. Mr. Wilson's claim that he was "never involved in the bid process" with Kojo Annan is clearly contradicted by the documents and telephone records cited in the Report. This evidence demonstrates that Kojo Annan, at the direction of Mr. Wilson, engaged in a pattern of contacting United Nations procurement department staff to assist Cotecna in its pursuit of the inspection contract.

Mr. Wilson continues to deny that he was the author of the Paris memorandum and offers a series of implausible explanations about the genesis of the document and the information contained therein. The Committee notes that compelling evidence exists that Mr. Wilson did author the Paris memorandum.

The Committee has fully reviewed Mr. Wilson's submission and all of the evidence and information and adheres to its findings and conclusions concerning Mr. Wilson.

⁶²⁶ Committee letter to Evelyn Suarez (Sept. 1, 2005) (attached as Annex 13)

⁶²⁷ Daniele Falter letter to the Committee (Aug. 31, 2005) (attached as Annex 14).

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VIII. FINDINGS AND CONCLUSIONS

The Committee finds, with regard to the selection of Cotecna for the 1998 humanitarian inspection contract and the actions of the Secretary-General and various other persons:

Kofi Annan

Recent evidence raised further questions about whether the Secretary-General was aware of Cotecna's contract bid, leading the Committee to re-examine the issue. After careful examination, this new evidence does not change the Committee's prior finding on this issue.

The Committee carefully reviewed the additional Kojo Annan telephone billing records that make clear that in the autumn of 1998 Kojo Annan placed calls to the procurement department and that at other times he also called the Secretary-General. However, the pattern of calling times is not clearly suggestive that Kojo Annan discussed Cotecna's interest with the Secretary-General. The remaining records disclosed by Kojo Annan do not reflect communications between Kojo Annan and the Secretary-General about Cotecna's contract bid.

With respect to the memorandum of December 4, 1998, Mr. Wilson's description of "discussions" with the "SG and his entourage," the witnesses do not support Mr. Wilson's account, and he himself has refuted it. This supports the Secretary-General's denial that such a meeting occurred. Moreover, there is no evidence that Cotecna credited or acted upon the Wilson message. Serious questions persist about the character and credibility of Mr. Wilson. The Committee thus has little assurance that he did not conjure an account of discussions with the Secretary-General in order to make himself appear more important to his principals at Cotecna.

The Committee therefore affirms its prior finding that weighing all of the evidence and the credibility of witnesses, the evidence is not reasonably sufficient to conclude that the Secretary-General knew that Cotecna had submitted a bid on the humanitarian inspection contract in 1998.

The Committee also affirms its prior finding that no credible evidence exists that the Secretary-General influenced, or attempted to influence, the procurement process in 1998 leading to the selection of Cotecna.

As to the adequacy of the Secretary-General's response to press reports in January 1999 of a possible conflict of interest, the Committee reemphasizes its earlier conclusion that the Secretary-General was not diligent and effective in pursuing an investigation of the procurement of Cotecna. What is now known about Kojo Annan's efforts to intervene in the procurement process underscores the Committee's prior finding that a thorough and independent investigation of the allegations regarding Kojo Annan's relationship with Cotecna was required in 1999. A resolution of the questions much earlier would likely

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have resolved the issues arising from the Cotecna bid process and the consequent conflict of interest concerns.

Kojo Annan

Contrary to earlier statements by Kojo Annan to the Committee, the evidence now indicates that at relevant times Kojo Annan had contacts with the section of the United Nations procurement office directly concerned with the 1998 humanitarian inspection contract to be awarded under the Programme. Kojo Annan was not forthcoming to the Committee with respect to his statements to the Committee that he had no involvement with Cotecna's bid for the humanitarian inspection contract.

Also in 1998, Kojo Annan used his father's name and position in the purchase and delivery of a car, which resulted in a reduced price and a remission of duties. There is no record that his direct request to his father to permit him to purchase the car in the name of the Secretary-General was granted.

Cotecna, Elie Massey, Robert Massey

Despite numerous requests made by the Committee, Cotecna failed to timely disclose critical documents, including: (1) a November 1998 memorandum from Robert Massey to Elie Massey and Mr. Wilson, copied to Kojo Annan; (2) a December 4, 1998 memo from Mr. Wilson to Cotecna senior management; and (3) a Cotecna Consultancy Agreement with Kojo Annan effective March 1, 1999. The Committee further finds that Elie Massey was not forthcoming to the Committee regarding Kojo Annan's involvement in the inspection contract selection process. Finally, Robert Massey was not forthcoming to the Committee regarding Kojo Annan's involvement in the inspection contract selection process and his employment with Cotecna in 1999.

Michael Wilson

Mr. Wilson has not been forthcoming and has offered conflicting statements to the Committee with respect to: (1) his own involvement in the process by which Cotecna was awarded the humanitarian inspection contract; (2) whether Kojo Annan was involved in the contract process; and (3) whether he authored a December 4, 1998 memo of mission activities in Paris.

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IX. ANNEXES

This Chapter has referenced certain documents that have been identified as Annex 1 through Annex 14. These documents are attached on the immediately following pages.

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ANNEX 1

Date	Key Event or Phone Call by Kojo Annan	Call Details		
		Time of Call in Nigeria	Length of Call	Recipient
9-Oct-1998	RFP Issued by UN Procurement			
15-Oct-1998	<i>Cotecna responds to Procurement re: Intent to submit proposal & submits questions regarding RFP</i>			
15-Oct-1998	Call by Kojo Annan	10:21 PM	30	Michael Wilson
15-Oct-1998	Call by Kojo Annan	10:51 PM	30	Michael Wilson
15-Oct-1998	Call by Kojo Annan	11:21 PM	6	Michael Wilson
18-Oct-1998	Call by Kojo Annan	2:27 PM	1	Michael Wilson Cell
18-Oct-1998	Call by Kojo Annan	3:41 PM	1	Michael Wilson Cell
18-Oct-1998	Call by Kojo Annan	9:19 PM	18	Michael Wilson
19-Oct-1998	Call by Kojo Annan	10:39 AM	1	Cotecna
19-Oct-1998	Call by Kojo Annan	9:59 PM	30	Michael Wilson Cell
19-Oct-1998	Call by Kojo Annan	10:29 PM	3	Michael Wilson Cell
20-Oct-1998	<i>UN Procurement responds to questions submitted 10/15/1998</i>			
20-Oct-1998	Call by Kojo Annan	10:55 AM	1	Michael Wilson Cell
20-Oct-1998	Call by Kojo Annan	6:58 PM	1	Michael Wilson Cell
20-Oct-1998	Call by Kojo Annan	6:59 PM	1	Michael Wilson
20-Oct-1998	Call by Kojo Annan	8:29 PM	1	Michael Wilson Cell
20-Oct-1998	Call by Kojo Annan	8:30 PM	1	Michael Wilson
20-Oct-1998	Call by Kojo Annan	9:19 PM	1	Michael Wilson Cell
20-Oct-1998	Call by Kojo Annan	9:51 PM	1	Michael Wilson Cell
20-Oct-1998	Call by Kojo Annan	11:01 PM	1	Michael Wilson Cell
20-Oct-1998	Call by Kojo Annan	11:02 PM	1	Michael Wilson
21-Oct-1998	Call by Kojo Annan	12:01 AM	2	Michael Wilson Cell
23-Oct-1998	Call by Kojo Annan	10:31 PM	1	Michael Wilson Cell
23-Oct-1998	Call by Kojo Annan	10:32 PM	1	Michael Wilson Cell
24-Oct-1998	Call by Kojo Annan	5:44 PM	2	Humanitarian Aid - Iraq (Diana Mills-Aryee)
25-Oct-1998	Call by Kojo Annan	9:47 PM	25	Michael Wilson Cell
25-Oct-1998	Call by Kojo Annan	10:14 PM	16	Michael Wilson
27-Oct-1998	Call by Kojo Annan	9:35 AM	2	Humanitarian Aid - Iraq (Diana Mills-Aryee)
27-Oct-1998	Call by Kojo Annan	9:37 AM	1	Humanitarian Aid - Iraq (Diana Mills-Aryee)
27-Oct-1998	Call by Kojo Annan	9:38 AM	4	Humanitarian Aid - Iraq (Diana Mills-Aryee)
27-Oct-1998	Call by Kojo Annan	8:35 PM	30	Michael Wilson Cell
31-Oct-1998	Call by Kojo Annan	1:43 PM	1	Michael Wilson Cell
31-Oct-1998	Call by Kojo Annan	4:17 PM	1	Michael Wilson Cell
31-Oct-1998	Call by Kojo Annan	11:17 PM	30	Michael Wilson
31-Oct-1998	Call by Kojo Annan	11:47 PM	8	Michael Wilson
1-Nov-1998	Call by Kojo Annan	12:42 PM	2	Michael Wilson Cell
1-Nov-1998	Call by Kojo Annan	3:13 PM	1	Michael Wilson Cell
1-Nov-1998	Call by Kojo Annan	4:57 PM	1	Michael Wilson Cell
1-Nov-1998	Call by Kojo Annan	11:45 PM	1	Michael Wilson Cell
1-Nov-1998	Call by Kojo Annan	11:46 PM	9	Michael Wilson
2-Nov-1998	<i>Cotecna submits Proposal to UN Procurement</i>			
2-Nov-1998	Call by Kojo Annan	8:52 PM	1	Michael Wilson Cell
2-Nov-1998	Call by Kojo Annan	9:00 PM	7	Michael Wilson Cell
2-Nov-1998	Call by Kojo Annan	11:59 PM	2	Michael Wilson
3-Nov-1998	Call by Kojo Annan	12:01 AM	1	Michael Wilson Cell
3-Nov-1998	Call by Kojo Annan	9:23 AM	9	Cotecna
5-Nov-1998	<i>Proposals (Bids) opened at UN Procurement, NY</i>			
5-Nov-1998	Call by Kojo Annan	11:29 PM	1	Michael Wilson Cell
5-Nov-1998	Call by Kojo Annan	11:30 PM	24	Michael Wilson

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Date	Key Event or Phone Call by Kojó Annan	Call Details		
		Time of Call in Nigeria	Length of Call	Recipient
5-Nov-1998	Call by Kojó Annan	12:59 AM	2	Kofi Annan Residence - Kofi Annan between office and residence
5-Nov-1998	Call by Kojó Annan	1:38 AM	4	Kofi Annan Residence
6-Nov-1998	Call by Kojó Annan	9:09 PM	5	UN Procurement Dept. (Nora Dias)
6-Nov-1998	Call by Kojó Annan	9:16 PM	1	Robert Massey
6-Nov-1998	Call by Kojó Annan	9:17 PM	4	Robert Massey
6-Nov-1998	Call by Kojó Annan	9:22 PM	1	UN Procurement Dept. (Nora Dias)
6-Nov-1998	Call by Kojó Annan	9:38 PM	2	UN Procurement Dept. (Nora Dias)
8-Nov-1998	Call by Kojó Annan	10:35 PM	26	Michael Wilson
11-Nov-1998	Call by Kojó Annan	10:51 PM	1	UN Procurement Dept. (Nora Dias)
11-Nov-1998	Call by Kojó Annan	10:56 PM	4	Humanitarian Aid Coord - Iraq
11-Nov-1998	Call by Kojó Annan	11:22 PM	30	Michael Wilson
11-Nov-1998	Call by Kojó Annan	11:52 PM	7	Michael Wilson
12-Nov-1998	Call by Kojó Annan	8:42 PM	1	UN Procurement Dept. (Nora Dias)
12-Nov-1998	Call by Kojó Annan	10:39 PM	5	Michael Wilson
13-Nov-1998	Call by Kojó Annan	10:06 PM	1	Michael Wilson Cell
13-Nov-1998	Call by Kojó Annan	11:10 PM	1	Michael Wilson Cell
16-Nov-1998	Call by Kojó Annan	11:08 AM	1	Michael Wilson Cell
16-Nov-1998	Call by Kojó Annan	2:20 PM	4	Kofi Annan Residence
19-Nov-1998	Call by Kojó Annan	9:09 PM	1	Michael Wilson
20-Nov-1998	<i>Robert Massey fax to Kojó Annan re: conversation with Stephani Scheer (OIP)</i>			
20-Nov-1998	Call by Kojó Annan	9:50 PM	6	Robert Massey
20-Nov-1998	Call by Kojó Annan	10:08 PM	6	Michael Wilson
20-Nov-1998	Call by Kojó Annan	10:18 PM	1	Michael Wilson Cell
21-Nov-1998	Call by Kojó Annan	12:08 AM	27	Michael Wilson
21-Nov-1998	Call by Kojó Annan	10:48 PM	6	Kofi Annan Residence
21-Nov-1998	Call by Kojó Annan	11:05 PM	2	Michael Wilson Cell
21-Nov-1998	Call by Kojó Annan	11:07 PM	17	Michael Wilson
22-Nov-1998	Call by Kojó Annan	2:05 PM	1	Michael Wilson Cell
22-Nov-1998	Call by Kojó Annan	2:14 PM	1	Michael Wilson
22-Nov-1998	Call by Kojó Annan	8:38 PM	1	Michael Wilson Cell
22-Nov-1998	Call by Kojó Annan	11:23 PM	14	Michael Wilson
22-Nov-1998	Call by Kojó Annan	11:38 PM	2	Kofi Annan Residence - left message from Mrs. Annan
22-Nov-1998	Call by Kojó Annan	1:11 AM	9	Kofi Annan Residence - Mrs. Annan
23-Nov-1998	Call by Kojó Annan	8:54 PM	9	Michael Wilson Cell
24-Nov-1998	Call by Kojó Annan	11:12 AM	1	Michael Wilson Cell
24-Nov-1998	Call by Kojó Annan	9:33 PM	1	Michael Wilson cell
26-Nov-1998	<i>Kojó Annan travels to Paris from the UK</i>			
26-Nov-1998	<i>Kofi Annan travels to Paris from New York</i>			
27-Nov-1998	<i>UN Procurement sends out IT questions to short list vendors</i>			
28-Nov-1998	<i>Michael Wilson travels to Paris from Geneva</i>			
28-Nov-1998	<i>Elie and Robert Massey travel to Paris from Geneva</i>			
28-Nov-1998	<i>Kojó Annan meets with the Secretary General at the Hotel de Crillon, Paris</i>			

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Date	Key Event or Phone Call by Kojo Annan	Call Details		
		Time of Call in Nigeria	Length of Call	Recipient
28-Nov-1998	Michael Wilson, Elie and Robert Massey and Professor Ayensu meet with Nigerian Finance Minister Usman at the Ritz Hotel, Paris			
29-Nov-1998	Michael Wilson and Elie Massey return to Geneva			
1-Dec-1998	Robert Massey, Michael Wilson, John Broadhurst and André Pruniaux make a presentation to UN Procurement/OIP in New York			
1-Dec-1998	André Pruniaux e-mail to Don Stalker, Nairobi, re: expectation of contract award			
1-Dec-1998	Call by Kojo Annan	10:26 PM	1	UN Procurement Dept. (Nora Dias)
2-Dec-1998	Call by Kojo Annan	6:53 PM	5	Michael Wilson Cell
2-Dec-1998	Call by Kojo Annan	2:34 PM	24	Felix Downes-Thomas
2-Dec-1998	Call by Kojo Annan	2:34 PM	1	Humanitarian Aid Coord - Iraq
2-Dec-1998	Call by Kojo Annan	2:58 PM	1	Michael Wilson Cell
2-Dec-1998	Call by Kojo Annan	10:58 PM	1	Michael Wilson Cell
2-Dec-1998	Call by Kojo Annan	10:59 PM	1	Felix Downes-Thomas
2-Dec-1998	Call by Kojo Annan	2:37 AM	30	Felix Downes-Thomas
2-Dec-1998	Call by Kojo Annan	3:07 AM	30	Felix Downes-Thomas
2-Dec-1998	Call by Kojo Annan	3:37 AM	2	Felix Downes-Thomas
3-Dec-1998	Stephani Scheer(OIP) memo to Sanjay Bahel (UN Procurement) recommending Cotecna			
3-Dec-1998	Call by Kojo Annan	10:26 PM	1	UN Procurement Dept. (Nora Dias)
4-Dec-1998	Michael Wilson memos to Elie Massey et al. re: NY presentation and Paris trip			
4-Dec-1998	André Pruniaux e-mail to Madmat re: Awarding of Contract			
4-Dec-1998	Call by Kojo Annan	8:20 PM	13	Michael Wilson Cell
4-Dec-1998	Call by Kojo Annan	10:18 PM	1	UN Procurement Dept. (Nora Dias)
6-Dec-1998	Call by Kojo Annan	1:23 PM	4	Kofi Annan Residence
6-Dec-1998	Call by Kojo Annan	1:25 PM		S-G's Body Guard
7-Dec-1998	UN Procurement recommends Cotecna to Headquarters Committee on Contracts (HCC)			
10-Dec-1998	Call by Kojo Annan	11:35 PM	1	Michael Wilson Cell
10-Dec-1998	Call by Kojo Annan	12:31 AM	3	Felix Downes-Thomas
11-Dec-1998	UN Procurement official notice of Cotecna's selection signed by Nicholas Sardegna (UN Procurement)			
11-Dec-1998	Call by Kojo Annan	2:41 PM		Kofi Annan Residence - number called from unknown
11-Dec-1998	Call by Kojo Annan	3:14 PM		From Mrs. Annan
11-Dec-1998	Call by Kojo Annan	11:40 AM	2	Michael Wilson Cell
11-Dec-1998	Call by Kojo Annan	8:28 PM	1	Michael Wilson Cell
11-Dec-1998	Call by Kojo Annan	11:18 PM	23	Michael Wilson Cell
12-Dec-1998	Call by Kojo Annan	10:51 PM	10	Kofi Annan Residence
12-Dec-1998	Call by Kojo Annan			From Kofi Annan message
12-Dec-1998	Call by Kojo Annan	4:16 AM	1	Kofi Annan Residence
13-Dec-1998				From Kofi Annan
13-Dec-1998	Call by Kojo Annan	8:03 PM	4	Kofi Annan Residence

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Date	Key Event or Phone Call by Kojó Annan	Call Details		
		Time of Call in Nigeria	Length of Call	Recipient
14-Dec-1998	UN Procurement official notice of Cotecna's selection faxed to Robert Massey			
14-Dec-1998	Call by Kojó Annan	7:40 PM	2	Michael Wilson Cell
20-Dec-1998	Call by Kojó Annan	8:02 PM	6	Kofi Annan Residence
20-Dec-1998	Call by Kojó Annan			From Kofi Annan
21-Dec-1998	Call by Kojó Annan	9:09 PM	10	Michael Wilson Cell
25-Dec-1998	Call by Kojó Annan	8:16 PM	4	Kofi Annan Residence
29-Dec-1998	Call by Kojó Annan			Kofi Annan Residence - not on Kojó's telephone bill

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ANNEX 1A

Telephone Calls Between Telephones Used by Kojo Annan and the Secretary General Residence

Date Call Received	Time Call Received	Length of Call	Description	Secretary-General Available ²
10/10/1998	10:33 PM	2	Call from Kojo Annan to Secretary-General Residence	No
10/12/1998	2:58 PM	4	Call from Mrs. Annan to Kojo Annan	No
11/5/1998	6:59 PM	2	Call from Kojo Annan to Secretary-General Residence	No
11/5/1998	7:38 PM	4	Call from Kojo Annan to Secretary-General Residence	Yes
11/16/1998	8:17 AM	5	Call from Kojo Annan to Secretary-General Residence	Yes
11/21/1998	4:48 PM	6	Call from Kojo Annan to Secretary-General Residence	Yes
11/22/1998	5:38 PM	2	Call from Kojo Annan to Secretary-General Residence. Left message for Mrs. Annan	No
11/22/1998	7:10 PM	NA	Call from Mrs. Annan to telephone used by Kojo Annan	Unknown
11/22/1998	7:11 PM	9	Call from Kojo Annan to Secretary-General Residence. Mrs. Annan accepted call.	Yes
12/6/1998	7:23 AM	4	Call from Kojo Annan to Secretary-General Residence	No
12/6/1998	7:25 AM	2	Call from Kojo Annan to Secretary-General Residence	Unknown
12/11/1998	8:41 AM	1	Call from Kojo Annan to Secretary-General Residence	Yes
12/11/1998	9:14 AM	NA	Call from Mrs. Annan to telephone used by Kojo Annan	Unknown
12/12/1998	4:53 PM	10	Call from Kojo Annan to Secretary-General	Yes
12/12/1998	5:47 PM	NA	Call from Secretary-General to Kojo Annan. Left a message	Yes
12/12/1998	10:16 PM	1	Call from Kojo Annan to Secretary-General residence	No
12/13/1998	1:41 PM	1	Call from Secretary-General to Kojo Annan	Yes
12/13/1998	2:03 PM	4	Call from Kojo Annan to Secretary-General Residence	Yes
12/20/1998	2:02 PM	6	Call from Kojo Annan to Secretary-General Residence	Yes
12/20/1998	2:17 PM	NA	Call from Secretary General to Kojo Annan	Yes
12/25/1998	2:16 PM	4	Call from Kojo Annan to Secretary-General Residence	Unknown
12/29/1998	3:06 PM	NA	Call from Kojo Annan to Secretary-General Residence	Unknown

Information in this chart is based upon Kojo Annan cellular telephone records, the telephone logs from the Secretary-General residence, and travel itinerary records for Secretary-General

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ANNEX 2



→ Iraq / un
file

COTECNA INSPECTION S.A.

TEL: (41-22) 849 69 00
FAX: (41-22) 849 69 89
TELEX: 413107 COT CH
CABLES: COTECNA GENEVA

CORRESPONDENCE:
P. O. BOX 6199 - 1211 GENEVA 6
SWITZERLAND

Mr. BENÓN SEVAN
Executive Director Iraq Programme
Office of the Iraq Programme
UNITED NATIONS SECRETARIAT
Room 2127B
42 Street and 1st Avenue
New York, N.Y. 10017

YOUR REF.

OUR REF.

1892MWjr

GENEVA

6 March 1998

88, RUE DE LA TERRASSIÈRE

Dear Sir,

**PROVISION OF INDEPENDENT EXPERTS IN INTERNATIONAL
AUTHENTICATION OF GOODS**

We have taken cognisance of Security Council resolution 1153 adopted on 20/02/98 authorising the Government of Iraq to sell oil not exceeding USD 5.256 billion in order to purchase humanitarian supplies.

COTECNA INSPECTION S.A. is a Swiss based company specialised in providing professional inspection services internationally.

As you may recall in February 1992, our company was nominated to implement the first inspection contract by the United Nations represented by UNDP following the adoption of resolution 661.

It is our professionally considered opinion that the future volume of humanitarian imports to Iraq will necessitate an increased number of inspection companies to enhance the efficiency the superintendent scheme.

Indeed, introducing competition in the inspection field by providing a 2nd company should improve and stimulate the operational performance of the inspection companies with the benefit of streamlining the oil-for-food import verification procedures.

In this regard, we should be glad to have an opportunity to discuss our proposals with you at your earliest convenience. Furthermore, we would be happy to participate in any future tender for the provision of inspection services under the "Oil for Food Agreement".

H.E. Ambassador Monteiro, Chairman of Security Council Committee Established by Resolution 661 (1990) has been duly appraised of our suggestions, under separate cover.

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We look forward to hearing from you soon and hope to be given a fair chance to offer our services to the United Nations.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R. Massey', written over a vertical line that extends downwards to the typed name.

ROBERT M. MASSEY
Managing Director and
Chief Executive Officer

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ANNEX 3

SEN) BY/EN 2020 AT

10-0-00 10-00-0000 111 000 0000

Kirk:

Please find below the information you requested:

1. The name and address of the Chairman of 661 Committee is:

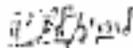
H.E. Mr. António Monteiro
Chairman, Security Council Committee established
by resolution 661 (1990)
Permanent Mission of Portugal to the United Nations
866 Second Avenue, 9th Floor
New York, N.Y. 10017

2. The Security Council Resolution for the expansion of the oil sale is:
Resolution 1153 (1998)

3. Mr. Sevan's name and title:
Mr. Benon Sevan
Executive Director, Office of the
Iraq Programme
United Nations Secretariat
Room 2127B
42nd Street and First Avenue
New York, N.Y. 10017

I hope this is okay. Please call me as soon as you receive this fax.

With warm regards,


Weeaye

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ANNEX 4



COTECNA INTERNATIONAL LIMITED

FAX

DATE :25/03/98

TO : Mr. Michael Wilson

COPY :

FROM : Mr. Kojo Annan

REF :

SUBJECT: Topics discussed on recent visit to Geneva.

INSPECTIONS

In conjunction with the package I gave you, these are some extra points that I noted down. However, these points may be duplicating information that is already in the package. (In the next few days I will furnish you with other points gathered by Auntie D):-

- Push policies with Iraqis as Iraqis set the policies.
- There is a pre-screening application and then you receive a COM No.
- COM No is very important as it is used by the secretariat and the Iraqis to trace the application and is an official document of the 661 Committee.
- COM No must be obtained within three weeks of signing contract otherwise contract is void.
- Govt. of Iraq does the distribution plan and not the secretariat.
- With all applications there is a sector item code and there is a set amount of money per sector which cannot be exceeded. Sometimes too many contracts are signed.
- With all applications there are price checks and if the price is too high then the application will not be circulated. These checks are done by both the UN and Iraq.
- The customs tariff code should be used to gain as much information as possible.
- In normal cases contracts expire after 6 months with the possibility of a 6 month renewal. However if your contract requires a longer time frame then you must illustrate this on your application.
- After application is approved, you receive a COM No and an OC No. However, the 661 committee can put an application on hold to avoid current situation, (65 application letters approved for a budget of \$0.5 billion, but there are no funds available).
- After the whole process the goods are approved and sent to the independent inspection agency, Lloyds registrar. Lloyds then authentify that the goods have arrived in Iraq and with Lloyds' document of authentication the UN releases payment.

After reviewing the above points and the information kit, and following Robert's meetings in Paris, I would suggest that you fax me a list of questions etc. that will

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provide you with all the extra information that you need. I can then forward this to my people in New York and see what they can get for us.

CONSULTATIVE STATUS

With regard to consultative status, please try and provide the following answers:-
When is IFIA up for consideration? There are different levels of consultative status, try to find out what level they require? The SG made a speech in Davos encouraging his organisation to work more with the private sector. Thus IFIA can add this speech, (which I believe is traceable on internet - if not let me know), to any application they want to submit making it clear that along this theme they want a participatory status.

SUPPLIES

Aunty D confirmed to me that any company that one uses must be big boys in their own particular field or an associated field (i.e. real estate company can't do sugar). With regard to the Germans for the other thing, if we can't use them would Greeks do? By the way, this our friend's brother, can't we use him to help with inspections as well? Possibly not because UN set agenda for that.
N.B. - I am coming on Friday April 3rd, please confirm meeting with our friend above and also with German if possible.

VEHICLE

When I go to Jamaica I will confirm with my Dad whether I can use his name. I am ready to put the deposit when I come. But I have to try and work out whose name we can use to get it shipped. I am going to phone the managers in Germany but I want to ask your advise of exactly what I should say.

Regards,



Kojo Annan

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ANNEX 5



COTECNA INTERNATIONAL LIMITED

FAX

DATE : 19/10/98

TO : Mr. Elie Massey COPY : Robert Massey, Michael Wilson

FROM : Mr. Kojo Annan REF :

SUBJECT: Export Inspection & Other Matters

Following our recent discussions in New York and Washington, I would like to remind you of the following :-

As outlined in our meeting with the Nigerian Minister of Finance, it has been made clear to me from various sources since my return to Nigeria that there is a clear need for a new company to do export inspection.

The inspections would concentrate primarily on the petroleum sector as this constitutes 85% of Nigeria's exports. However, there would also be a need for the inspection of agricultural products and solid minerals. The latter could be a very lucrative market to enter as the solid minerals sector is still in its infancy, (hence, the lack of interest from other inspection agents), yet is regarded by many seasoned observers as the new "goldmine" in Nigeria.

Therefore a proposal is required, with the utmost urgency, outlining our capabilities to provide inspection services particularly in the three aforementioned sectors.

As regards the "other matters", a tender has been issued about which Robert and Michael can brief you fully.

With regards to your 'pet project', it has been confirmed that the letter has just been received on Thursday 15th October. "His" copy would have gone to filing at the council but our friend will ensure that he sees it personally and we await any further developments

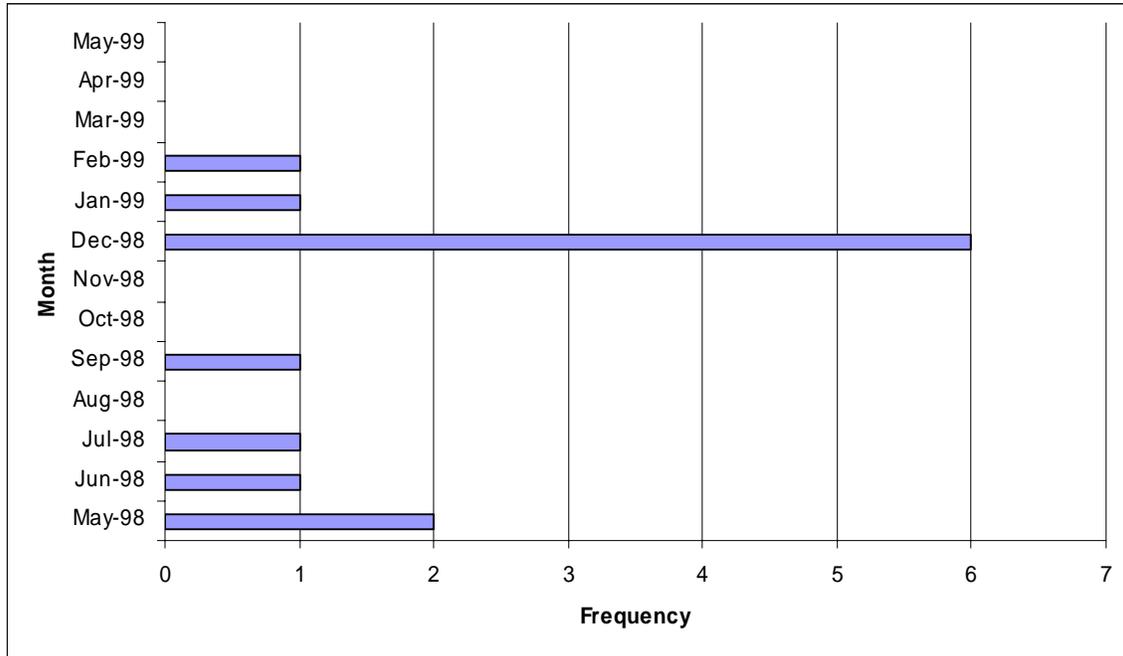
Regards,

Kojo Annan

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ANNEX 6

Kojo Annan's Calls to Downes-Thomas



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ANNEX 7

PRUNIAUX Andre

From: PRUNIAUX Andre
Sent: mardi, 1. décembre 1998 11:41
To: 'Stalker Don Nairobi'
Subject: UN / Iraq

Don,

We may have to install a provisory camp at the border between Jordan and Iraq within a short period of time (maximum one month).

We are about to be awarded the contract by the United Nations if we can start within a month. Before we have fully built offices and accommodation, I possibly envisage to set up some tents in a intrepids fashion.

Can you tell me if somebody somewhere will be willing to sell or rent or even install for us such a camp to accommodate some 25 to 30 inspectors in desert conditions.

Thank you very much for any recommendation and cost estimates.

I am in New York with Robert to negotiate with UN and it would be good to have some input by end of this week.

Best regards,

Andre E. Pruniaux

SPECIMEN

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ANNEX 8

PRUNIAUX Andre

From: PRUNIAUX Andre
Sent: vendredi, 4. décembre 1998 13:45
To: cotecna
Subject: CONFIDENTIAL

Dear Mr. Madanat,

We now expect to be nominated by the UN before 10 December 1998. This is of course extremely confidential

I am, therefore, putting together a task force to finalise several logistical arrangements including the accommodations at Al Walid and Trebil border posts.

Following the recent discussions with UN in New York, Cotecna's main base for this contract will have to be in Amman. Consequently and as soon as we have signed the contract with the UN (expected between 15 and 21 December), I will travel to Amman with the proposed expatriate resident to put together with your good assistance the Cotecna's office. Several equipment, cars, furniture, etc., will have to be purchased in Amman. I hope to be in a position to confirm my visit in the very next days. We will work out an agreement between Cotecna and you detailing your proposed scope of work in the frame of this contract.

In the meantime, could you please obtain a firm proposal and quotation for the construction (to last during the whole duration of the UN contract, therefore initially 6 months) of the residences in both Trebil and Al Walid including water, electricity, meal facilities, catering, etc.

Thank you for your urgent attention. If necessary, I can be reached during this week-end at my home (telephone No. 00 33 450 - 37.35.92).

Best regards,

André E. Pruniaux

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ANNEX 9

MASSEY Elie Georges

From: WILSON Michael
Sent: vendredi, 4. décembre 1998 15:12
To: MASSEY Elie Georges; MASSEY Robert M.; PRUNIAUX Andre
Subject: MISSION TO PARIS


MISSION TO PARIS
DURING THE 20th MEETING

MISSION TO PARIS DURING THE 20th MEETING OF FRANCOPHONE LEADERS

To: MASSEY Elie Georges; MASSEY Robert M.; PRUNIAUX Andre
Cc: DUPERRIX Jean-Paul
Subject: MISSION TO PARIS DURING THE 20th MEETING OF FRANCOPHONE LEADERS

INTRODUCTION

The French government organized the 20th summit of francophone leaders in Paris from 25-27 1998. Leaders of anglophone Africa were invited to this year's summit.

NIGERIA

Prof. E.S.A. had arranged for us to see Finance Minister Usman. essentially to discuss the re-entry of Coins into Nigeria's PSI program and to submit the export proposal for consideration

The Minister raised the following points

- Government was considering both PSI and destination inspection.
- Coins should submit proposals on both PSI and Destination Inspection based on Risk Management.
- The use of x-ray equipment had recently come up again at cabinet but had been held up by the Minister
- Port and customs reforms were under way with the computerization of customs using ASYCUDA .

At separate meetings on 28 November 1998 the Minister indicated to EGM and EAS that it was his desire to have ISC replaced by another company but with a new PSI scheme altogether.

However, the Minister's priority for the mean time is the completion of the 1999 budget after which, the Ministry will concentrate its efforts to the PSI scheme to enable him take firm decisions before the end of the year.

CONCLUSION

It is clear that the Minister would ideally wish to introduce a new scheme managed by an experienced company. An option which we should expand on is the proposal prepared by JPD and include the x ray machine as an independent variable.

~~attached a letter with the said proposal for the Minister.~~

CONGO BRAZAVILLE

We had several meetings with Lilly adopted daughter of President Sasu Nguesso. Regrettably, the President confirmed that BV had won the contract some two weeks back.

UNITED NATIONS -IRAQ PROGRAMME

We had brief discussions with the SG and his entourage. Their collective advice was that we should respond as best as we could to the Q&A session of the 1-12-98 and that we could count on their support.

COURTESIES

KA paid courtesy greetings to the Presidents of ~~Congo Brazaville and Nigeria~~

MICHAEL

NIGERIA

CONGO
BRAZAVILLE

✓

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ANNEX 10

PRUNIAUX Andre

From: WILSON Michael
Sent: vendredi, 4. décembre 1998 15:14
To: MASSEY Elie Georges; MASSEY Robert M.; PRUNIAUX Andre; FERNANDEZ Lucien;
BROADHURST John
Subject: REPORT ON MISSION TO UN NEW YORK



MISSION TO THE
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MISSION TO THE UN-IRAQ OIL FOR FOOD PROGRAMME-1-2 DECEMBER 1998

M 09/12/98

To: MASSEY Elie Georges; MASSEY Robert M.; PRUNIAUX Andre; BROADHURST John; FERNANDEZ Lucien
Subject: MISSION TO THE UN-IRAQ OIL FOR FOOD PROGRAMME-1-2 DECEMBER 1998
Importance: High
Sensitivity: Confidential

INTRODUCTION

Following the tender for authentication launched by the UN in October 1998, we were invited to attend a Q&A session in New York as one of the three short listed candidates. ITS and possibly Lloyds Register are the other two candidates to participate in similar but separate Q&A inter actions.

RMM AEP JAB and MRW constituted Cotecna's delegation.

THE Q&A MEETING

The UN was represented by:

Ms. Shear - Director OFFICE OF THE IRAQ PROGRAMME (OIP)
Mr. Armstrong - Legal counsel - Iraq programme
Mr. Owens - Information officer - Iraq programme
Mr. Seybroux - Committee 661 officer - Iraq programme
Mr. Absloom (Jay) - IT Specialist
Mr. Larsen - Customs adviser - Iraq programme
Mr. Yakovlev - Procurement Officer - Procurement division

The meeting began at 16.50 hrs. after a discussion with ITS which was represented by J-M Caffin alone.

Ms. Shear opened the meeting and thanked us for attending the session.

Mr. Armstrong gave the cardinal points of the programme in relation to the authentication inspectors.

He stressed on the sensitivity and international exposure of the programme, emphasizing that the Iraqi government would react immediately any time anything went wrong.

- Good and effective communication between Geneva HQ and UN HQ etc.
- A fair geographical balance of the inspectors
- Short chain of command within the inspectors organisation to ensure prompt implementation of decisions
- A seamless transfer of functions from the current inspectors to the new ones.
- An additional series of authenticating projects will be required of the new inspectors.

RMM briefly presented Cotecna, JAB and AEP went through the IT and procedural personnel questions respectively.

Written copies of the answers to the questions which had been addressed to us including a copy of the FIM were submitted to the UN delegation.

CONCLUSIONS

The interface between MS notes (UN-SYSTEM) and COINS proposed system based on SQL should be examined.

Direct data transfer links from the four sites directly to UN New York should be envisaged as opposed to going through Bagdad. Our attention was drawn to difficulties we could face with the Iraqi authorities in bringing in telecommunication equipment. For that matter, Amman would be a more convenient centre to base our operations.

PERSONNEL: A balanced geographical distribution of inspectors was an important feature of the selection procedure. The panel seemed to prefer national customs personnel as the ideal candidates for inspectors. T

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he final selection of the inspectors will be done jointly with the UN. The possibility of engaging staff currently working with Lloyds on the programme was to be considered. u ✓

The importance of dealing directly with UN New York was mentioned. The programme was run from New York with UN Bagdad acting as a field liaison office. In this regard, it would be desirable to have a senior executive based in New York in the initial stages of the contract to ensure effective communication on policy matters, treasury operations and programme procedures.

OPERATIONS: The flow of traffic: TREBIL - fairly busy until 11pm, AL WAL ID - all day long with one truck crossing the border every half hour on the average. ZAHKO - all day traffic until dusk. UN QASR - a ship a day. The shifts could be organised based on the traffic flow.

On laboratories, the UN is yet to obtain permission from the government to set up a lab. in Trebil. They naturally welcomed the idea of the mobile labs and lab equipment for basic tests at the outpost. The tests are intended to confirm 'fit for consumption' for drugs and food etc.

TRANSFER:

A seamless transfer of operations from Lloyds to new inspectors was key for the credibility of the oil for food programme. On the average a UN inspection order would take some 2 months to specialise. The UN had all the data regarding the orders thus, transferring them to a new company would not be a problem. They took our proposed timing of 1 month for mobilisation and 2 weeks for transfer of all operational activities.

NEXT STAGES:

The current contract with LLOYDS ends in December 1998. The OIP would make its recommendations to the procurement division within days to enable them present it to the contracts committee, after approval has been obtained from B. Sava and the SG. We imagine that at some point the Security Council committee will have to endorse the nomination of the new inspecting company.

SECURITY COUNCIL:

Contacts were established or consolidated to obtain the support of Kenya, Gambia, Bresil and Gabon on the security council.

CONCLUSION:

Our chances of getting the contract are very good. We presented a sound technical tender competitively priced. With the active backing of the Swiss Mission in New York and effective but quite lobbying within the diplomatic circles in New York, we can expect a positive outcome to our efforts.

MICHAEL

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ANNEX 11



ZUCKERMAN SPAEDER LLP

1800 M STREET, NW WASHINGTON, DC 20006-9302
202.778.1000 202.622.8100 fax www.zuckerman.com

William W. Taylor, III
202. 778.1810
FAX 202. 659.0014
wwtaylor@zuckerman.com

August 30, 2005

Via PDF e-mail and First Class Mail

Paul A. Volcker, Chairman
Independent Inquiry Committee
into The United Nations Oil-For-Food Programme
825 Third Avenue, 15th Floor
New York, NY 10022

Re: Kojo Annan

Dear Chairman Volcker:

We have received your August 22, 2005 letter regarding the Independent Inquiry Committee's (IIC) proposed findings regarding Mr. Kojo Annan. We submit this letter in response to your invitation to comment on those proposed findings

The first proposed finding is as follows:

Contrary to earlier statements by Kojo Annan to the Committee, the evidence now indicates that at relevant times Kojo Annan had contacts with the section of the U.N. procurement office directly concerned with the 1998 humanitarian inspection contract to be awarded under the Programme. Kojo Annan was not forthcoming to the Committee with respect to his statements to the Committee that he had no involvement with Cotecna's bid for the humanitarian inspection contract.

This "finding" is unclear. Does it mean to say he spoke to persons in the procurement office about Cotecna's bid? If not, what is the point? If so, it is wrong. To the extent it suggests that Mr. Annan knowingly made misstatements to the IIC, it is inaccurate and unfair.

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We do not know what the body of the report says about the evidence. We understand from Committee staff that the "finding" is based principally upon (a) documents produced by Mr. Annan which show that he obtained non-confidential information about the U.N. contracting process from Diana Mills and provided it to Cotecna in the spring of 1998 and (b) phone records which show calls from him to a number assigned to a Ms. Nora Diaz at the U.N. in November and December of 1998.

Mr. Annan has repeatedly acknowledged that Ms. Mills is a friend from childhood (he refers to her as "Auntie"). That Mr. Annan had conversations with Ms. Mills over the years should hardly be surprising. Mr. Annan had told you repeatedly that he never spoke to Ms. Mills about the inspection contract, and we understand that Ms. Mills has confirmed that fact.

The March 25th fax from Mr. Annan to Mr. Wilson, to which we assume the proposed finding refers, contains nothing not readily available to the public. It discusses generic procedures for selling products to Iraq and the process for setting prices and being paid. It is certainly not about competing for an inspection contract. It appears to relate to different business possibilities. On Page 2, there is a discussion of "SUPPLIES" and the importance of the status of the seller of goods. This is hardly confidential information about how to obtain the inspection contract.

Phone records that show Mr. Annan (or someone at his telephone) placed calls to Ms. Diaz do not establish a contact, much less the content of a contact. The records show that the calls were mostly less than one minute, consistent with no conversation at all. Mr. Annan does not recall talking to Nora Diaz. He has repeatedly denied that he contacted the U.N. procurement office in connection with the inspection contract and repeats that denial here. We know that Ms. Diaz has likewise informed the Committee that she has no recollection of the calls and that she did not talk to Kojo Annan about the inspection contract. Indeed, she advises that she would have had no information to give.

Under these circumstances, it would be grossly unfair and misleading to "find" that Mr. Annan had "contacts" with the U.N. and even more misleading if the finding does not clearly state that there is no evidence and no reason to believe there was any discussion of the inspection contract.

It is further unfair and misleading to "find" that Mr. Annan was not "forthcoming." We assume that "finding" refers to Mr. Annan's October 22, 2004 interview with the Committee.

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Independent Inquiry Committee
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We note that at that point Mr. Annan had not yet reviewed any Cotecna or personal documents. It is hardly surprising that he did not recall inconsequential events from six years earlier. More importantly, however, we dispute the notion that Mr. Annan was not forthcoming with the Committee about his "involvement" with Cotecna's bid. Your finding implies that Mr. Annan attempted to influence the bid – something for which there is no evidence. If Mr. Annan was "involved" in the bid at all, it was simply by gathering some publicly-available information for his employer. Your finding should make that point clear and, more importantly, make clear that the Committee does not believe he influenced the process in any way.

The second proposed "finding" relates to Mr. Annan's purchase of a car using his father's name in order to obtain a discount in the price. At the time, Mr. Annan was barely out of college. He can be forgiven for an indiscretion of this sort, if indeed it is one. The car has nothing to do with the subject matter of your investigation – the inspection contract – but including it in a "finding" implies that it does. It suggests that the Committee believes the two things are linked. We respectfully submit that including the car purchase as an adverse finding is unfair to Mr. Annan and to his father, and it should simply be deleted.

Mr. Annan has admitted that he used his father's name solely to obtain a reduced price when he purchased the car. But he has also established conclusively that he paid for the car with his own funds and purchased it for his own use. The Secretary General had no knowledge that Cotecna or any of its employees was involved in any way with the car. We also understand that the Secretary General was not aware that Mr. Annan was using his name to purchase the car. Given that evidence and Investigation Guideline E.1 (requiring "reasonable sufficient" evidence before making an adverse finding), the Committee cannot assert credibly that Mr. Annan's purchase of the car was in any way related to Cotecna's bid for the inspection contract.

In addition to making the changes we request, the Committee should in fairness report on Mr. Annan's extensive cooperation with the investigation. As you know, Mr. Annan has interviewed with IIC representatives three times and candidly answered questions about, among other things: the U.N.'s procurement process and the Oil-for-Food Programme; his positions at Cotecna and the company's payments to him during his period of full-time employment and thereafter; and his personal business affairs, including his involvement in several companies. Mr. Annan has also produced over 1,400 pages of documents to the Committee, including his personal bank records relevant to the IIC's inquiry, memoranda, telephone records, passports, travel records and calendar entries. He correctly declined to

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provide documents relating to his personal affairs which have nothing to do with the subject matter of this investigation.

We received a request for more documents as recently as Saturday, August 27th, for immediate production, and we are making efforts to comply with it.

I look forward to meeting with the Committee on Wednesday, August 31st, at 9:00 a.m.

Sincerely yours,

A handwritten signature in black ink that reads "William W. Taylor, III".

William W. Taylor, III

WWT/etw
c: Michael Cornacchia, Esq.

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ANNEX 12

08/29/2005 14:52 FAX 2022935939

WILLIAMS MULLEN DC

002/004



WILLIAMS MULLEN

Direct Dial: 202.293.8116
cuzzer@williamsmullen.com

August 29, 2005

VIA FACSIMILE

Paul A. Volcker
Chairman
Independent Inquiry Committee
Into The United Nations Oil-For-Food Programme
825 Third Avenue
Fifteenth Floor
New York, New York 10022

Re: Proposed Adverse Findings relating to Cotecna Inspection S.A., Elie Massey and Robert Massey

Dear Chairman Volcker:

On behalf of Cotecna Inspection S.A. ("Cotecna") and Messrs. Elie Massey and Robert Massey, we hereby acknowledge receipt of the Fourth Interim Report's proposed adverse findings, dated August 22, 2005. Once again,¹ however, the Independent Inquiry Committee into the United Nations Oil-For-Food Programme ("IIC") has not provided Cotecna with all information upon which the Committee bases its conclusions. We consider this to be a contradiction to Section C.2(g) of the Committee's Investigations Guidelines,² as well as its obligations under Swiss rules as detailed more fully herein.

The IIC's letter dated August 22, 2005 states only that the Committee has based its findings on: "the Committee's review of your statements, witness interviews, and a review of relevant documents, including UN records, Cotecna Inspection SA records, and financial records." This mere statement that "information" exists does not itself "inform" Cotecna of the

¹ In March of this year, the IIC similarly failed to provide Cotecna with the information on which the proposed findings in its Second Interim Report (Mar. 29, 2005) were based.

² "Before the Committee makes an adverse finding against any person or entity in a written report, such person or entity shall be informed of the proposed finding(s) and the information on which it is based, and may make representations thereon personally, or with a legal representative in place before the Committee relevant additional information or written submissions with regard to such finding(s)." *Investigations Guidelines*, Section C.2(g), posted at <http://www.iic-uffp.org/documents/Investigation%20Guidelines.pdf> (last visited 23 Aug. 2005). As with the findings of the Second Interim Report, the proposed findings of the Fourth Interim Report are relatively short. Depending on the other contents of the Fourth Interim Report, the IIC may have thus contradicted Section C.2(g) of its Guidelines also by construing the term "finding" so narrowly as to violate the plain intent of the rule to give persons and entities a fair advance opportunity to answer any proposed statement that might adversely affect them. We cannot tell, however, because the IIC has provided Cotecna with proposed findings only.

A Professional Corporation

VIRGINIA • WASHINGTON, D. C. • LONDON

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08/29/2005 14:52 FAX 2022935939

WILLIAMS MULLEN DC

003/004



WILLIAMS MULLEN

Paul A. Volcker
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proposed findings' basis, as Section C.2(g) requires. Indeed, your August 22 letter literally states that the basis of the proposed finding is "the Committee's review." Subsequently listing the various kinds of text reviewed by the IIC, the letter characterizes the forms that the purported evidence takes but says nothing—other than by means of the proposed findings themselves—about the content of that evidence. What the IIC purports to have reviewed, in reaching its findings, includes all the evidence produced by Cotecna and every other party. The Committee fails to identify any evidence. Cotecna cannot in any reasonable fashion respond to proposed findings at this point because the IIC has not provided a detailed statement of those findings and the specific evidence that purports to support them.

To cite but one example, the IIC's letter states that "the Committee's review of . . . witness interviews" served as a basis for the proposed findings. The IIC has thus far, however, submitted only one of four transcriptions of Cotecna July 2005 interviews. The IIC's failure to provide Cotecna with all transcriptions breaches the IIC's legal obligations under Swiss rules, as well as representations and commitments that the IIC expressly made to Switzerland's State Secretariat for Economic Affairs ("SECO"), before SECO approved the IIC's interview of witnesses in Geneva. May we remind you that in fulfillment of a precondition of SECO's approval, the IIC assured every witness as follows: "A transcript of the interview will be submitted to you for verification after its transcription, and for your signature." Contravening this assurance, the IIC appears to have formulated its Fourth Interim Report's findings before having submitted transcripts to all witnesses. Since July 15, 2005, SECO has asked for the transcripts of these interviews on several occasions. So far the IIC has not provided an answer to these requests and has not given any explanation for this shortcoming, either to SECO or to Cotecna's legal representation. This procedure recalls the circumstances in which the IIC released its Second Interim Report's findings—that is, without awaiting the results of an independent audit that the IIC had at that time engaged at Cotecna's expense.

Without these transcriptions or other documents that might provide a basis for the proposed findings, Cotecna is unable, before the Committee issues its Fourth Interim Report, to make a meaningful written submission of "additional relevant information" as proposed by the IIC in its Guidelines Section C.2(g). For this reason, we also respectfully decline the invitation to meet personally with the Committee to present such information. We nevertheless hereby formally request that the Committee include this letter in its Report, and we reserve the right to respond to the proposed findings at a later time.

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004/004



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Cotecna employees have participated in 26 IIC interviews, the company has produced tens of thousands of pages of documents, and on its own initiative the company has supported independent audits, at the company's own expense, of all Cotecna bank accounts, wherever located. Cotecna has provided this information voluntarily, even when the requested information has not related to the United Nations or the Oil-for-Food Programme. Accordingly, Cotecna reiterates that it is keen to support any proceedings that help the IIC in its duties.

Sincerely,

Evelyn M. Suarez/DAB *Roland Rasi/DAB*

Evelyn M. Suarez Williams Mullen A Professional Corporation 1666 K Street, N.W., Suite 1200 Washington, DC 20006 esuarez@williamsmullen.com Tel: 202.293-8116 Fax: 202.293-5939	Dr. Roland C. Rasi Mathys Schmid Partner Dufourstr. 5 CH-4052 Basel roland.rasi@msp-law.ch Tel.: +41(0)61 270 99 00 Fax: +41 (0)61 270 9905
--	---

Cc: Dr. Roland Vock, SECO
Dr. Othmar Wyss, SECO
Mr. Raymond V. Shepherd, III, Esq., Senate Permanent Subcommittee on Investigations
Ms. Elise Bean, Senate Permanent Subcommittee on Investigations
Mr. Lawrence J. Halloran, House Subcommittee on National Security, Emerging Threats
and International Relations
Mr. Jonathan R. Scharfen, House Committee on International Relations
Mr. Andrew Snowdon, House Committee on Energy and Commerce

Mr. Elie Massey, Cotecna
Mr. Robert Massey, Cotecna

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09/02/2005 13:03 FAX 2022935939

WILLIAMS MULLEN DC

002/005



WILLIAMS MULLEN

Direct Dial: 202.293.8116
couter@williamsmullen.com

September 2, 2005

VIA FACSIMILE

Susan M. Ringler
Independent Inquiry Committee
Into The United Nations Oil-For-Food Programme
825 Third Avenue
Fifteenth Floor
New York, New York 10022

Re: IIC's Notice Process

Dear Ms. Ringler:

On behalf of Cotecna Inspection S.A. ("Cotecna"), thank you for your letter dated August 31, 2005, faxed to us September 1, seeking to address our August 29 letter regarding the Independent Inquiry Committee's ("IIC") notice process, and agreeing to include our letter in the Committee's Fourth Interim Report. The purpose of this letter is to address and correct for the record assertions in your August 29 letter that are either incorrect or misleading.

First, the IIC's letter states that documents requested in our e-mail dated August 22, 2005 were subsequently "provided" to Cotecna by the IIC, and that the IIC also gave Cotecna an "invitation" to come to the Committee's offices to review further documents and evidence. In fact, an e-mail from you dated August 26, 2005 (four days after notice of the proposed adverse findings) forwarded us four pages of documents and stated that "[i]t is our practice to permit the review of documents at our offices. Please advise if you wish to do so." Our August 22 e-mail had expressly requested documents "including, but not limited to" the four pages that the IIC subsequently provided us by e-mail. The IIC therefore did not provide Cotecna with all requested documents. Moreover, the IIC did not, as required by its Investigations Guidelines,¹

¹ "Before the Committee makes an adverse finding against any person or entity in a written report, such person or entity shall be informed of the proposed finding(s) and the information on which it is based, and may make representations thereon personally, or with a legal representative to place before the Committee relevant additional information or written submissions with regard to such finding(s)." *Investigations Guidelines*, Section C.2(g), posted at <http://www.iic-offp.org/documents/Investigations%20Guidelines.pdf> (last visited 23 Aug. 2005).

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MANAGEMENT OF THE OIL-FOR-FOOD PROGRAMME

VOLUME III - CHAPTER 7

THE SELECTION OF COTECNA INSPECTION S.A.

09/02/2005 13:03 FAX 2022935939

WILLIAMS MULLEN DC

003/005



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Susan M. Ringler
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"inform" Cotecna as to what particular documents and evidence the Committee was "invit[ing]" Cotecna to "come to the Committee's offices to review." Perhaps the Committee intended to make available at its offices all the documents that the Committee reviewed during the course of its investigation. Paul A. Volcker's August 22 letters stating that the IIC had based its proposed adverse findings against Cotecna on "the Committee's review of your statements, witness interviews, and a review of relevant documents, including UN records, Cotecna Inspection S.A. records, and financial records" potentially includes all the evidence and documents produced by Cotecna and every other party. Other than by means of the word "relevant," the characterization in the August 22 letters excludes no document from the scope of what the Committee might have used purportedly to support its proposed adverse findings. Cotecna accordingly declined the IIC's "invitation" because its vagueness did not comport with traditional notions of fair play and substantial justice.

Second, the IIC's August 31/September 1 letter states that the Committee's provision on June 23, 2005 of four draft transcripts based on May 2005 interviews in Geneva, together with the Committee's August 2, 2005 provision of a fifth draft transcript from May, "complied with Swiss rules." We note, however, that between May 10-12, 2005, in Geneva, the IIC formally interviewed six Cotecna employees. We are still waiting to receive the sixth transcript, from one of the interviews on May 10, 2005.

Third, the IIC's letter states that Cotecna has corrected, signed and returned only one of the five draft May 2005 transcripts provided by the IIC and that the IIC received this one transcript on August 31, 2005. On Aug. 11, 2005, however, Cotecna returned to the IIC another signed transcript, from a May 11 interview. To be scrupulously accurate, therefore, Cotecna has returned two corrected, signed IIC transcripts, not one. It is also worth noting that, of the four remaining Cotecna witnesses from May 2005: one has not yet received a transcript from the IIC, as stated above; two, exercising their right to refuse to sign under Swiss law and rules agreed with Switzerland's State Secretariat for Economic Affairs ("SECO"), found the IIC's transcript so egregiously incomplete, inaccurate and often inscrutable as to make correction the equivalent of guessing what one might have said in answer to a question that the investigator might have asked;² and another witness, a former Cotecna employee, returned his signed transcript to us with a cover letter addressed directly to the IIC. The IIC has not yet responded to our prompt, subsequent inquiry into whether this witness had perhaps already returned a copy of his signed transcript and cover letter to you directly.

² We have not, until now, informed the IIC that these two witnesses have thus far exercised their right under Swiss rules not to sign the inadequate transcript provided, because we have not yet determined at what point their refusal to sign is "final."

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Fourth, regarding additional interviews in Geneva on July 14 and 15, the IIC's letter observes that the Committee provided one draft transcript on August 10, 2005 (Elie Massey's) and then states that Cotecna has neither acknowledged nor returned that transcript. The IIC letter then notes that the Committee was still in the process of creating a draft transcript for a second July interview (Robert Massey's). The IIC letter does not mention, however, that on July 14-15, 2005, the IIC formally interviewed not merely two but four Cotecna witnesses. The Committee's omission should probably not surprise us, because the Committee faxed us its August 31/September 1 letter at 8:52 a.m. on September 1 and did not until almost four hours later, at 12:35 p.m., e-mail us the three remaining draft transcripts from July 2005 interviews in Geneva. Notably, these three eleventh-hour transcripts included one for the IIC's July interview of Robert Massey, against whom the Committee had directed some of the proposed adverse findings. We wonder whether the IIC expects Cotecna to review, correct and sign these admittedly very rough transcripts before the IIC quotes them in its Fourth Interim Report. At least one of the three transcripts that we received on September 1, Robert Massey's, the IIC itself received from the Committee's transcribers on August 5, 2005, according to the IIC's letter. The IIC has thus held onto Robert Massey's July interview draft transcript for more than three weeks before forwarding it to Cotecna.

Fifth, in touting the IIC's compliance with Swiss rules, the Committee's letter neglects to mention that the IIC has denied Cotecna's repeated requests, in the absence of transcriptions, for copies of the IIC's notes on untaped interviews occurring before May 2005. We refer to 15 IIC interviews of Cotecna that came before the active presence of SECO forced the IIC to begin complying with Swiss rules. Today, for the first time, Cotecna counsel learned from SECO that the IIC did answer SECO's July 28 question regarding the IIC's May interview transcripts—two of which the IIC had still, at that time, not provided to Cotecna, even though the interviews themselves had taken place two and a half months earlier. More importantly, SECO's July 28 request seems not much to have hastened the IIC's delivery of its transcripts for July interviews, which transcripts (including Robert Massey's) Cotecna did not receive, as stated above, until September 1. Notably, September 1 falls more than a week after the IIC gave Cotecna notice of the Committee's proposed adverse findings and just days before the expected release of the Fourth Interim Report.

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We will not again recount the number of IIC interviews in which Cotecna employees have participated, the volume of documents that the company has produced or the initiative that it has demonstrated, facilitating independent audits of all Cotecna bank accounts, wherever located, and spontaneously waiving the Swiss banking secrecy rights on its bank accounts accordingly. Instead, we reiterate our request that the IIC delay release of its Fourth Interim Report until after the Committee has fully complied with Swiss rules and the Committee's own Guidelines regarding notice process. Please include this letter in the IIC's forthcoming Report.

Sincerely,

Evelyn M. Suarez Williams Mullen A Professional Corporation 1666 K Street, N.W., Suite 1200 Washington, DC 20006 esuarez@williamsmullen.com Tel: 202.293-8116 Fax: 202.293-5939	Dr. Roland C. Rasi Mathys Schmid Partner Dufourstr. 5 CH-4052 Basel roland.rasi@msp-law.ch Tel.: +41(0)61 270 99 00 Fax: +41 (0)61 270 9905
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Cc: Dr. Roland Vock, SECO
Dr. Othmar Wyss, SECO
Mr. Raymond V. Shepherd, III, Esq., Senate Permanent Subcommittee on Investigations
Ms. Elise Bean, Senate Permanent Subcommittee on Investigations
Mr. Lawrence J. Halloran, House Subcommittee on National Security, Emerging Threats
and International Relations
Mr. Jonathan R. Scharfen, House Committee on International Relations
Mr. Andrew Snowdon, House Committee on Energy and Commerce

Mr. Elie Massey, Cotecna
Mr. Robert Massey, Cotecna

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ANNEX 13

INDEPENDENT INQUIRY COMMITTEE
INTO
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PAUL A. VOLCKER
CHAIRMAN

RICHARD J. GOLDSTONE
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MEMBERS

August 31, 2005

Evelyn M. Suarez, Esquire
Williams Mullen
1666 K Street, NW
Suite 1200
Washington, D.C. 20006

Dr. Roland Rasi
Mathys Schmid Partner
Dufourstr 5
CH-4052 Basel

Dear Ms. Suarez and Dr. Rasi:

This is to acknowledge receipt of your letter of August 29, 2005, which has been provided to the Committee. In your letter you raise issues regarding the Committee's notice process which I would like to address. In addition you make a number of statements that are quite inaccurate.

As you are well aware from prior correspondence with the Committee, upon request the Committee will provide individuals who have received a notice letter with the opportunity to review the relevant information relied upon by the Committee in making its findings. In fact, knowing this Ms. Suarez' office sent an e-mail last week requesting certain Cotecna documents. These were provided to her along with an invitation to come to the Committee's offices to review documents and evidence. You chose not to do so.

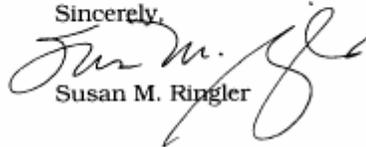
Contrary to your assertions, the Committee has complied with Swiss rules in providing your clients with copies of their interview transcripts for verification. Following interviews in May 2005 four draft transcripts were sent to you on June 23, 2005 for review by the Cotecna employees interviewed. When we received an e-mail from Mr. Vock requesting these draft transcripts on July 28, 2005, we advised Mr. Vock that they had been sent to you over a month ago and we had received no response, nor the signed transcripts. A fifth draft transcript was provided to you on August 2, 2005. On August 31, 2005 one of the signed transcripts was returned to the IIC. The four others have never been signed and returned to us.

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Your clients Elie and Robert Massey were interviewed in Switzerland on July 14 and 15, respectively. We received Elie Massey's draft transcript on August 5, 2005 and following our review, a Committee investigator e-mailed it to you on August 10, 2005 requesting that your client review the transcript, make any necessary changes and return it to the IIC. We never received any response from you nor the signed transcript from your client. Robert Massey's transcript was received on Monday August 29, 2005. It is currently being reviewed for any corrections and in accordance with our past practices will be provided to you for your client's review and signature.

As you have requested, a copy of your letter will be included in the Committee's upcoming report.

Sincerely,



Susan M. Ringler

cc: Paul Volcker
Richard Goldstone
Mark Pieth

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THE SELECTION OF COTECTNA INSPECTION S.A.

ANNEX 14

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ZIEGLER PONCET GRUMBACH

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Ziegler Poncet Grumbach Carrard Luscher

AUG 31 2005

August 31, 2005

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Master of Laws

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Chairman
INDEPENDENT INQUIRY
COMMITTEE
INTO THE UNITED NATIONS
OIL-FOR-FOOD PROGRAMME
825 Third Avenue
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VIA FAX N° 001 212 842 2555/4555 (2 pages)

Dear Chairman Volcker,

I refer to the letter you sent Mr. WILSON on August 22, 2005 by which you informed him of the findings the Committee proposes to release in an upcoming report. We thank you for asking Mr. WILSON's views which are the following:

Mr. WILSON strongly denies that he has not been forthcoming. He accepted to meet with representatives of your Committee on three occasions and answered their questions in details. He gave the Committee his best recollection of what happened.

Mr. WILSON offered consistent statements as to his involvement in the humanitarian inspection program tender when he was an employee of COTECTNA. Mr. WILSON was a member of the COTECTNA task force for this tender.

As to Kojo ANNAN, Mr. WILSON stated to the Committee that Kojo ANNAN was never involved in the bid process. His statements on this issue have never varied; they were truthful and they are accurate.

In other words, Mr. WILSON has been consistent and made no conflicting statements.

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ZIEGLER PONCET GRUMBACH

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Turning now to the memo, Mr. WILSON stated that he was not its author but acknowledged that he was probably the source of the information in a memorandum. He saw the memo for the first time in June 2005, when it was made public.

Yet, in view of the fact that the memo came from COTECNA and had allegedly been sent from his e-mail box, Mr. WILSON speculated that it might have been written by another employee of COTECNA, based on information from Mr. WILSON that was misinterpreted.

Mr WILSON's testimony was based on what he could recollect. These events took place almost seven years ago and it is quite normal that Mr WILSON cannot recall every detail.

Mr. WILSON could not access any of COTECNA's records. At the end of the meeting of June 17, 2005, Mr. WILSON asked for the Committee's assistance to allow him to check COTECNA's records. He was denied this opportunity.

Mr. WILSON clearly told the Committee that in several respects the description in the memo was not consistent with the events in Paris. In particular, he did not discuss the awarded contract with the UN Secretary-General in Paris, or with anyone else in his travelling party. Nor did he ever have conversations about the contract with the UN Secretary-General anywhere else or at any other time prior to January 1999.

There are substantial and important discrepancies between the findings the Committee plans to release, and Mr. WILSON's views. Our client collaborated with the Committee and accepted to meet with its representatives on three occasions. He is disappointed that his statements could have been misinterpreted so seriously.

As a way to compensate partially for what our client considered a biased presentation of the facts, we trust that a copy of this letter will be attached to your report. To the extent necessary, please treat this letter as a formal request in this respect.

Yours faithfully,

AUG 31 2005

Daniel FAJER
