
COMMITTEE ON INTERNATIONAL RELATIONS
SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS:
INVESTIGATIVE REPORT

THE OIL-FOR-FOOD PROGRAM: THE SYSTEMIC FAILURE OF
THE UNITED NATIONS

DECEMBER 7, 2005.

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INTRODUCTION

This report details management and leadership weaknesses in the United Nations. In parallel with its investigatory work on the UN, the Committee has pursued a legislative agenda in support of UN reform, namely, the “Henry J. Hyde United Nations Reform Act of 2005” (Hyde bill), a bill which twice has passed the House of Representatives.¹

¹The bill first passed the House of Representatives on June 17, 2005 as a free-standing bill H.R. 2745, by a vote of 221–184; and another vote on July 20, 2005 as an amendment to the State Department Authorization bill, H.R. 2601, by a vote of 226–195.

The earliest iteration of what would become the Oil-for-Food Program (OFFP) dates from 1991. The UN designed the program to feed and care for Iraqis suffering as a result of Saddam Hussein's continued non-compliance with provisions of the ceasefire that ended the First Gulf War the previous year. Humanitarian goods supplied to Iraq were paid for with proceeds from the controlled sale of its oil. Under UN auspices, the oil was to be sold, the proceeds would be deposited with Banque National de Paris-Paribas (BNP) and then humanitarian goods would be supplied to Iraq. Once the arrival of the goods was authenticated, the goods could be paid for.

The initial and ultimately fatal weakness of this arrangement was the exclusive authority it granted to Saddam Hussein to choose buyers for Iraq's oil as well as the suppliers of humanitarian goods. Once firmly ensconced as gatekeeper of contracts, Saddam Hussein's strategy of corrupting the program was relatively simple and was achieved by a number of means: fraudulent orders for humanitarian goods paid for, but never delivered; a partial delivery of humanitarian goods with proceeds shared among regime elements; goods shipments with obscure descriptions to hinder timely inspections; overpricing of humanitarian goods designed to hide kickbacks; after sale service fees of as much as 30 percent, a portion of which was paid as a kickback; overcharging for shipping costs and outright theft of goods destined for the Iraqi people.

Of the estimated \$65 billion in oil sales during the life of the program (1996–2003) at least as much as \$10 billion was siphoned off by Saddam Hussein in the form of illicit revenue from oil smuggling and contract kickbacks, all on the backs of the Iraqi people for whom this program was intended to benefit.

The program's principal banker is also implicated in the web of problems that plagued the program. On more than 400 occasions, and without approval of the UN, the New York office of BNP made unauthorized payments from the program to so-called third-parties that received payments for humanitarian contracts negotiated and agreed to by others. Under U.S. banking laws, BNP was required to undertake security background checks in accordance with U.S. "know-your-customer" rules that were strengthened after the September 11th attacks. Investigators still have not determined whether these third-parties were legitimate companies, front companies for Saddam Hussein's bribery machine, or worse.

Numerous investigations have exposed corruption within the UN and the OFFP. These investigations have aided Congress in understanding mismanagement and corruption within the UN and spurred the ongoing legislative debate on UN reform. None of these investigations has had greater access to information than the Independent Inquiry Committee (IIC) chaired by former Federal Reserve Chairman Paul A. Volcker. The IIC's investigation produced important ground-breaking reports, running into the thousands of pages, on mismanagement and corruption within the UN and its OFFP.

The UN's capacity to punish wrongdoing within its ranks also suffers from a lack of a functioning independent administrative justice system, allowing crimes or malfeasance to go unpunished, and when cases are brought up, they frequently are riddled with procedural errors such that many are overturned on appeal by the

United Nations' own supreme tribunal. Each of the deficiencies detailed in this report has individually and collectively contributed to the culture of impropriety and the lack of accountability that undergirded the oil-for-food era. The very fact that the IIC had to be created is a sign of the UN's inability to investigate and expose its own wrongdoing.

Problems associated with the OFFP are not isolated or unique to that particular UN-administered program. The OFFP, and the myriad of problems associated with it, are symptomatic of a pervasive mismanagement and failure of leadership at the UN.

Among the management and organizational weaknesses are a lack of appropriate and effective internal or external independent oversight (including both audit and investigations); the near absence of adequate internal controls within the Secretariat; and a lack of appropriate and modern accountability mechanisms, including a functioning whistleblower protection policy; a code of ethics; an ethics training and certification regime; a financial disclosure process and policy; and a freedom of information policy.

In addition to being decades behind other public institutions in its business processes, internal controls, and accountability mechanisms, the UN suffers from a lack of proper leadership and commitment to excellence by the organization's senior most leadership.

The UN plays a useful role by, among other things, facilitating diplomacy, mediating disputes, monitoring the peace, feeding the hungry and fostering sustainable economic growth in regions in need of assistance. Such work fulfills the core values embodied in the UN charter and enjoys broad public support. But there is growing criticism of the UN's poor management and corruption and a public consensus for reform of the UN. The UN itself has acknowledged the need for extensive measures and has put forward a number of useful proposals for consideration. But to be effective, the reform effort must come from UN Member States.

Both the Hyde bill and the Lantos alternative, which were considered by the House, set forth a number of reforms necessary to restore credibility to UN management practices. Among these reforms are: the establishment of complete investigatory and budgetary independence for the Office of Independent Oversight Services in order to avoid political interference in the operations of its duties; creation of an Independent Oversight Board through which direct oversight over all issues related to the audit and investigatory functions of the UN can be observed, regulated, and carried out; prompt establishment of an Ethics Office through which a proper Code of Conduct can be established for the operations of the UN, including a proper policy on financial disclosure for salaries, gift acceptance, travel allowances, and outside employment; the establishment of a whistleblower policy that both protects and encourages employees of the UN to come forward when they see actions committed within the UN system that violate the rules of procedure; and the establishment of a Chief Operation Officer.

THE FINDINGS OF THE COMMITTEE ON INTERNATIONAL RELATIONS RELATING TO THE UNITED NATIONS OIL-FOR-FOOD PROGRAM

The Committee on International Relations has after consideration made the following findings and recommendations as to the

performance of the UN, its employees, the IIC and others during and after its operation of the OFFP:

1. *Senior Management of the United Nations.*—The Committee finds that the senior management of the UN failed to: (1) ensure the ethical and proper conduct of themselves and their subordinates within the Secretariat; (2) keep the Security Council informed of allegations of kickbacks; (3) cooperate with internal and external oversight bodies; and (4) adhere to the UN's own staff rules and regulations governing conduct of officials of the UN.
2. *The oversight bodies of the United Nations.*—The Committee finds that,
 - The Office of Internal Oversight Services, because of political interference from the UN Senior Management, was prevented from providing an adequate degree of oversight of the OFFP, and failed to object when Benon Sevan denied OIOS the ability to deploy auditors in Iraq;
 - The Joint Inspection Unit of the UN failed to undertake a single audit report during the entire duration of the OFFP, bringing into question its effectiveness or added-value in the oversight structure of the UN;
 - The External Board of Auditors of the UN failed to undertake adequate audits of the Secretariat, funds, programs, or independent agencies of the UN system associated with the OFFP, bringing into question the effectiveness and utility of that entity.
 - There was no independent oversight authority within the UN capable of withstanding political interference from senior UN officials.
3. *The United Nations' Procurement Department.*—The Committee recommends that an independent body investigate corruption within the UN Procurement Department.
4. *IHC Services, Inc., Eurest Support Services, Inc., and Compass Group.*—The Committee finds that all three companies must be further investigated for the roles they played with respect to their work with the UN, particularly the UN Procurement Department.
5. *BNP-Paribas.*—The Committee finds that BNP failed to adequately monitor transactions within OFFP. Additionally, the Committee finds that BNP made at least 400 unauthorized payments to unapproved third-parties in the humanitarian side of the OFFP. The Committee recommends that an independent body examine the bank's role, and the role of its European branches and subsidiaries, in the OFFP.
6. *Final Disposition of the Files of the IIC.*—The Committee recommends that the IIC place all of its work papers, documents and records in public custody rather than turn them back to the UN. This work was paid for by the Iraqi people, with their oil revenues, not the UN. The Committee believes that these records be given to a public institution to allow further research and review. To the extent possible, the archives of the IIC should be accessible on the internet.

GLOSSARY

Kofi Annan:

Kofi Annan, the seventh Secretary-General of the UN, began his first term on January 1, 1997, and was appointed to a second term beginning January 1, 2002 and ending December 31, 2006. Prior to his role as Secretary-General, Kofi Annan served as Assistant Secretary-General for Peacekeeping Operations (March 1992–February 1993) and as Under-Secretary-General (March 1993–December 1996).

Kojo Annan:

The son of Secretary-General Kofi Annan, Kojo Annan was born in Geneva, Switzerland in June 1978. From 1995 to 1997, Kojo Annan was a marketing consultant for the Swiss-based inspection company, Cotecna.

BNP:

The Bank Nationale de Paris (BNP, now BNP-Paribas), is incorporated in France but has branch offices in New York. The UN awarded the escrow account in the OFFP to BNP.

Boutros Boutros-Ghali:

Boutros Boutros-Ghali served as Secretary-General from 1992 to 1996. He previously held a number of high positions in the Egyptian government. Boutros-Ghali faced significant controversy during his term because peacekeeping missions in Cambodia, Somalia, Rwanda, and Bosnia required considerable resources but yielded only mixed results. His efforts at UN reform were mostly ineffectual. After initially expressing an intent to serve one term, Boutros-Ghali sought a second term but was blocked, largely because of objections from the United States.

Cotecna:

Cotecna Inspection, SA, is a Geneva-based inspection company that began a contract in February 1999 with the UN to inspect food and medicine imported into Iraq via the OFFP. Cotecna won its contract with the lowest bid after the UN terminated its earlier contract with Lloyd's Register. The firm's founder and president is Eli Georges Massey, who transformed his company from salt-extraction in Iran in the early 1970s, to a major pre-shipment inspection company. At the time of Cotecna's bid for the U.N inspection contract, Cotecna's reputation was in decline. CEO Robert Massey was indicted by a Swiss magistrate in a bribery and money laundering scandal involving Pakistan's former Prime Minister, Benazir Bhutto. A former employee of Societe Generale de Surveillance (SGS), which at the time owned a majority stake in Cotecna, was also indicted. Cotecna was subsequently sold back to the Massey family. After winning the UN inspection contract, London's *Daily Telegraph* questioned Cotecna's employment of the Secretary-General's son, Kojo Annan². Cotecna employed Kojo Annan in Nigeria from 1995 to December 1997, and as a consultant until the end of

²Andrew Alderson, "Fury at Annan son's link to £6m UN deal," *Daily Telegraph*, January 24, 1999.

1998 (when Cotecna secured the OFFP contract). Kojo Annan remained on Cotecna's payroll until 2004.

The Committee:

The Committee on International Relations of the United States House of Representatives.

CPA:

The Coalition Provisional Authority (CPA) was the transitional government in Iraq from April 21, 2003 to June 28, 2004. According to UN Security Council Resolution 1483 and the laws of war, the CPA assumed executive, legislative, and judicial authority over the Iraqi government. Retired United States Army Lieutenant General Jay Garner was the first chief executive of the CPA. Garner was replaced on May 11, 2003 by L. Paul Bremer because of his refusal to remove members of the Ba'ath Party from the Iraqi government and military. The CPA was responsible for managing the Development Fund for Iraq, which took the place of the OFFP and provided funding for the wheat purchase program, the currency exchange program, the electricity and oil infrastructure programs, equipment for Iraq's security forces, Iraqi civil service salaries, and various government ministries. The CPA also formed the Iraqi Governing Council on July 22, 2003, which was responsible for appointing representatives to the UN, appointing interim ministers to vacant cabinet positions, and drafting a temporary constitution. Due to rising tensions and conflict in Iraq, the CPA was disbanded three days before power was transferred to the Iraqi Interim Government.

Richard Goldstone:

Richard Goldstone served nine years as a justice on the Constitutional Court of South Africa. While serving as a Justice, Goldstone oversaw the nation's democratic progress and interpreted the new South African Constitution. Prior to this position, Goldstone was chairperson of the Standing Commission of Inquiry Regarding Public Violence and Intimidation. From 1994 to 1996, he was the chief prosecutor of the United Nations International War Crimes Tribunals for the former Yugoslavia and Rwanda. When Argentina began investigating Nazi activity, Goldstone was appointed a member of the international panel created in 1997. In 1999, Goldstone became chairman of the International Independent Inquiry on Kosovo.

Hyde Bill

"The Henry J. Hyde United Nations Reform Act of 2005"—twice passed by the U.S. House of Representatives—the legislation links payment of U.S. dues to the UN with the modernization of UN management practices.

Independent Inquiry Committee:

The Independent Inquiry Committee (IIC) was appointed by Secretary-General Annan in 2004 to investigate the management of the OFFP. Paul Volcker was the Chairman of the IIC. Justice Richard Goldstone and Mark Pieth were Members of the committee. The IIC's mandate was to gather and assess information on the ad-

ministration of the OFFP, including alleged corruption by UN officials and contractors.

Lloyd's Register:

Lloyd's Register Inspection, Ltd. is a London-based company that was contracted by the UN in 1996 to inspect and monitor humanitarian goods imported into Iraq under the OFFP. A UN audit found evidence of possible over-payments of \$3 million. The company also billed the UN for agents deployed in December 1996, two months before the first contracts for humanitarian supplies were issued. Lloyd's Register was also able to negotiate inflated renewals of its contract because the UN failed to consider competitors. In 1998, the UN terminated its contract and replaced Lloyd's with Cotecna.

Pierre Mouselli:

Pierre Mouselli was a business partner of Kojo Annan. Mr. Mouselli formed a series of partnerships with Kojo Annan to do business in the fields of inspection, oil, and trade.

Oil-for-Food Program:

A UN-run program designed to provide humanitarian goods to the people of Iraq. The OFFP was paid for through the sale of Iraqi oil and administered at UN headquarters by the Office of the Iraq Program (OIP). The OFFP grew out of the sanctions imposed against Iraq for their invasion of Kuwait in August 1990. It ran from December 1996 through March 2003, ending with the United States invasion of Iraq.

Parton Documents:

Documents obtained by the Committee through subpoena from Robert Parton, former IIC investigator.

Saybolt:

Saybolt Eastern Hemisphere B.V. is a Dutch engineering company that was awarded a UN contract in 1996 to oversee the export of oil and oil products through approved export points at Zakho in Northern Iraq and Umm Qasr in the Persian Gulf.

Secretariat

The UN Secretariat is headed by Secretary-General Kofi Annan. The Secretariat is the executive office within the UN responsible for day-to-day management of the portion of the UN budget funded with assessed contributions from member states. The Secretariat was directly responsible for oversight of the OFFP.

Benon Sevan:

Benon V. Sevan was appointed by Secretary-General Annan as the Executive Director of the Iraq Programme on October 15, 1997. He was responsible for the management and oversight of the UN OFFP until its end in November, 2003. Prior to that, he served as Assistant Secretary-General for Conference and Support Services and the United Nations Security Coordinator, and he continued the latter job until July 2002. From 1992 until his recent resignation, he served as the Special Envoy to the Secretary-General for issues related to missing persons in the Middle East. Until recently,

Sevan remained on the UN payroll as a \$1 a year “adviser” to the OFFP inquiry. He resigned from the UN on August 7, 2005, one day before the IIC published its *Third Interim Report* investigating the OFF scandal. The report found that Sevan took \$147,184 in cash bribes from December 1998 to January 2002—money Sevan claimed he had received from his late aunt.

Joseph Stephanides:

Joseph Stephanides was a Field Division Director in Namibia for the UN. Before his termination by Secretary-General Annan in June 2005, Stephanides was a senior official in the OFFP. Stephanides, the head of the Security Council Affairs Division, was the first UN employee to be fired in wake of the scandal. The IIC accused Stephanides of aiding Lloyd’s in obtaining its contract. Secretary-General Annan said Stephanides violated UN rules and committed “serious misconduct” while at his post. Stephanides, however, maintains his innocence. The former official continues to claim that he was only following orders issued to him by the Security Council and UN executives.

USUN:

The Permanent Mission of the United States to the UN in New York.

Paul Volcker:

Paul A. Volcker was appointed by Kofi Annan in April 2004 to chair the IIC. He is also the current Chairman of the Board of Trustees of the Washington-based Group of Thirty. He is perhaps best known as Chairman of the Federal Reserve from August 1979 to August 1987 under Presidents Carter and Reagan. Volcker was also president of the New York Federal Reserve Bank from 1975 to 1979. Prior to this, Volcker served as the Undersecretary of the Treasury for international monetary affairs.

Alexander Yakovlev:

Yakovlev was a Russian procurement officer at the UN and was the first UN official to be criminally charged in the OFFP. Yakovlev was charged with wire fraud and money laundering and was accused of accepting \$1 million in bribes from different UN contractors while working outside the OFFP.

BACKGROUND TO CORRUPTION WITHIN THE OIL-FOR-FOOD PROGRAM

The Oil-for-Food Programme (OFFP) was intended to alleviate a humanitarian crisis engendered by economic sanctions on Iraq. Four days after Iraq’s invasion of Kuwait on August 2, 1990, the United Nations Security Council passed Resolution 661, which imposed economic sanctions designed to contain the Government of Iraq. A later embargo provided for an end to sanctions once Iraq fully complied with international efforts to end its weapons of mass destruction (WMD) program.³ WMD inspections, however, proceeded slowly. Without oil revenues, Iraq was unable to import suf-

³U.N.S.C.R. 687 (April 3, 1991).

ficient quantities of food and medical supplies and living conditions in Iraq deteriorated.

In July, 1991, Sadruddin Aga Khan led a humanitarian team of experts from UNICEF, the World Health Organization, the World Food Program, and other UN agencies, to Iraq. The delegation issued a report to the UN that documented widespread starvation. The delegation recommended that Iraq be allowed to sell oil to address humanitarian needs.⁴ This recommendation led to Security Council Resolutions 706 (August 15, 1991) and 712 (September 19, 1991), which would have established an early oil-for-food plan allowing Iraq to export \$1.6 billion in oil every six months. Iraq, however, rejected this plan as too limited in scope and as an infringement of Iraqi sovereignty.

From 1991 to 1995, there were dramatic declines in living standards in Iraq. On April 15, 1995, the UN Security Council adopted Resolution 986, which allowed the export of \$2 billion in oil every six months. On May 20, 1996, Iraq accepted this proposal and entered a Memorandum of Understanding with the UN, creating the OFFP⁵.

THE UNITED NATIONS OUTMATCHED

The OFFP was supposed to help Iraq meet its international obligations and ensure equitable distribution of imports to the Iraqi people, but Saddam Hussein was able to exploit the suffering in his country to negotiate a sanction-relief program that he could easily manipulate. Vic Comras led the State Department's foreign policy trade control and sanctions programs, and testified at a hearing before the Oversight and Investigations subcommittee on July 27, 2005 that:

When the oil for food program was first proposed in Security Council resolution 706 of August 15, 1991 it laid out a simple and direct control mechanism. Iraq would be allowed to export up to \$1.5 billion worth of oil during a six-month period. Further allotments would be accorded for additional six month periods as warranted. Saddam Hussein rejected this program outright. He chose to hold his own people hostage and use their deteriorating humanitarian situation as a bargaining chip to press for sanctions removal. And this gambit led, in time, resulted in increased international pressure on the US and other Security Council members to loosen the sanctions.⁶

Charles Duelfer, the advisor to the Director of Central Intelligence on Iraq's WMD went further, concluding:

The introduction of the Oil-For-Food program (OFF) in late 1996 was a key turning point for the regime. OFF rescued Baghdad's economy from a terminal decline created by sanctions. The regime quickly came to see that OFF could be corrupted to acquire foreign exchange both to further undermine

⁴Report of the Executive Delegate for the United Nations Inter-Agency Humanitarian Programme for Iraq, Kuwait and the Iraq/Turkey and Iraq/Iran Border Areas, Sadruddin Aga Khan to the Security Council, S/22799, July 17, 1991.

⁵Report of the Executive Delegate for the United Nations Inter-Agency Humanitarian Programme for Iraq, Kuwait and the Iraq/Turkey and Iraq/Iran Border Areas, Sadruddin Aga Khan to the Security Council, S/22799, July 17, 1991.

⁶Testimony of Vic Comras before the International Relations Committee Subcommittee on Oversight and Investigations, July 27, 2005.

*sanctions and to provide the means to enhance dual-use infrastructure and potential WMD-related development.*⁷

The OFFP was a complex operation that was vulnerable to corruption given the scope of the operation and the nature of the Iraqi regime. Consequently, the OFFP required modern management practices and effective diplomatic skills, neither of which the UN possessed or demonstrated during the OFFP.⁸ As one former 661 Committee diplomat said, “the UN didn’t stand a chance against the Iraqis.” Iraq, he said, “outmaneuvered the UN at every point.” The UN, he continued, “had no authority to tell the Iraqis what to do. The Iraqis would only cooperate to the extent it would benefit them.”⁹

From the start, the OFFP was compromised in favor of Saddam Hussein’s sovereignty. Officials at the U.S. Mission to the UN maintained that there were real battles conducted within the UN over sovereignty. “Short of taking over a country, how do you tell Saddam Hussein what to do?” suggested one U.S. official.¹⁰ A former Treasury Department official said that the U.S. wanted an inspection regime similar to one used in Yugoslavia a few years before.¹¹ The UN, however, did not institute such a system.¹² The compromise was “the best political deal that could be gotten,” suggested our diplomats in New York.¹³

Saddam Hussein was allowed to choose the bank, BNP,¹⁴ which was awarded the escrow account into which the proceeds of the sale of Iraqi oil were deposited. Iraqi Bank officials told the Committee that one reason the bank was chosen was that BNP was a major holder of Iraqi government accounts overseas.¹⁵ BNP maintains that it won the contract in a fair bid, a point that the IIC disputes.¹⁶ According to the IIC, former Secretary-General Boutros Boutros Ghali unfairly awarded the contract to BNP.¹⁷

As the program was devised and accepted in 1995 in United Nations Security Council Resolution 986, Iraq was authorized to sell up to \$1 billion of oil every 90 days and use the proceeds from these sales to finance the purchase of humanitarian supplies to the country. These supplies were to be procured in a controlled manner, under the inspection of UN-contracted inspectors stationed on the borders and in the ports of Iraq. Contracting, however, was to

⁷ Comprehensive Report of the Special Adviser to the DCI on Iraq’s WMD, Section on Regime Intent, 2004, p. 1.

⁸ In an interview with the BBC, Secretary-General Kofi Annan regretted that the UN had ever accepted the charge of taking on the program in the first place. “Oil-for-food was an extra programme we were asked to undertake. Honestly, I wish we had never been given that programme, and I wish the UN will never be asked to undertake that kind of a programme again.” See “Full text: Kofi Annan’s BBC interview with Lyse Doucet, BBC News,” *BBC News*, September 6, 2005, available online at <http://news.bbc.co.uk/1/hi/world/americas/4217694.stm>.

⁹ HIRC Interview with a former 661 Committee diplomat, June 24, 2005.

¹⁰ HIRC Interview with U.S. State Department official, Amman, Jordan, June 4–5, 2004.

¹¹ Discussions with former a former official of the United States Treasury Department; also see David Hughes, “SATCOM Network Helps UN Spot Sanctions Violations,” *Aviation Week & Space Technology*, May 30, 1994, Vol. 140, No. 22, p. 70.

¹² HIRC Interview with a former official of the United States Treasury Department, Washington, D.C., June 15, 2004.

¹³ HIRC Interview with members of the United States Mission to the United Nations, New York, April 15, 2004.

¹⁴ BNP merged with Paribas Bank in 2000–2001.

¹⁵ HIRC Interviews with Iraqi Bank officials, Dubai, UAE, June 29, 2004.

¹⁶ Robert Winnett and Mark Hollingsworth, “MI6 probes French links to Iraq scam,” *London Times*, August 1, 2004. Committee staff have attempted on two occasions to interview Mr. Auchin in London, but were unable due to scheduling conflicts.

¹⁷ IIC First Interim Report, pp. 16–18.

be done directly between the various Iraqi ministries and suppliers, giving Saddam Hussein and his regime the opportunity to corrupt the program in the absence of effective oversight from the UN.

As Victor Comras, a former State Department sanctions expert told the Oversight and Investigations Subcommittee:

*By the spring of 2000 UN sanctions on Iraq were unraveling. The sanctions were being violated openly and on a regular basis. The United States was under enormous international pressure to scrap or restructure them.*¹⁸

U.S. diplomats feared this result from the start of the program. Wolfgang Weisbrod-Weber, then an assistant to Under-Secretary-General for Political Affairs Chinmaya Gharekhan, in May 1996 when he wrote in a “Note for the File”:

*The main concern of the US was that Iraq might use its right to negotiate directly with the purchasers and the present oversupply on the oil market to give preferential rates to purchasers in return for hidden payments.*¹⁹

Paul Conlon, a former deputy secretary of the Iraq Sanctions Committee at the UN, was forced out of the UN after he identified inadequacies in the UN’s initial attempts to alleviate the effects of sanctions. At the outset of the program, Conlon indicated that the UN was not properly staffed to implement the program.²⁰ Conlon stated that “In view of the . . . general lack of expertise in the UN Secretariat . . . assessments of the effectiveness of sanctions cannot be done with any degree of sophistication and accuracy.”²¹ Conlon commented, “In 1991, for example, when plans for the oil-for-food scheme in Resolution 712 were drawn up, the UN Secretariat in New York had only three officials and one Assistant Secretary-General with expertise in the oil industry (out of some 5,000 employees).” Eight years later, none of these people were with the UN.²²

In addition to the lack of personnel and expertise, the UN’s basic initial strategy was flawed. As a former 661 Committee diplomat explained, obtaining the cooperation of the Iraqi government was the problem but also the key to the program. Saddam Hussein, he said, had the advantage from the start.²³ Mr. Conlon explained that former Secretary-General Boutros Boutros-Ghali, under whose tenure the program began, was interested in “the humanitarian mitigation of sanctions, not the[ir] enforcement.”²⁴ Another 661 Committee diplomat said that it was, “. . . assumed from the beginning that Iraq would corrupt it [the oil-for-food program] from the start.”²⁵

¹⁸Testimony of Vic Comras before the International Relations Committee Subcommittee on Oversight and Investigations, July 27, 2005.

¹⁹Wolfgang Weisbrod-Weber, “Note for the File, re: Mr. Gharekhan’s meeting with the Ambassador of France on res. 986 (31 May 1996).

²⁰HIRC Telephone discussion with Paul Conlon, October 4, 2004. Mr. Conlon was forced out of the United Nations due to his complaints about the inadequacies of the precursor sanctions program at the UN.

²¹Paul Conlon, *United Nations Sanctions Management: A Case Study of the Iraq Sanctions Committee, 1990–1994* (Ardsley, New York: Transnational Publishers, Inc. 2000), p. 14.

²²Ibid, p. 155.

²³HIRC Interview with 661 Committee diplomat, February 14, 2005.

²⁴HIRC Discussion with Conlon.

²⁵HIRC Interview with 661 Committee diplomat, June 24, 2005.

Mr. Conlon also noted the UN's abject failure to plan for evasive efforts by the Iraqi regime to circumvent sanctions. According to Mr. Conlon, the UN did not consider Saddam Hussein's past evasions of sanctions. In the 1980s, when Iraq attempted to rearm itself after the eight-year war with Iraq, it did so in part with U.S. financing. The architects of the OFFP did not heed previous examples of the regimes corrupt handling of credits extended to it by the United States and others. These corrupt practices were repeated in the OFFP.

Mr. Conlon also stated that UN staff were "not interested in any accountability." When he approached them about the problems encountered with the early sanctions enforcement at the UN, UN staff responded that "no one will ever ask us." In short, Mr. Conlon concluded, there was "no fear of ever being asked to explain their actions."²⁶

Mr. Conlon commented further on the time Iraq needed to corrupt the program. "On average, a target state needed about one year to evolve effective sanctions busting strategies, but the process could be speeded up by the many small professional sanctions busting firms."²⁷ Former 661 Committee diplomats were more generous, estimating that it would take the Iraqis two years.²⁸

FORMS OF CORRUPTION

Dr. Hans Blix, formerly the Executive Chairman of the UN Monitoring, Verification and Inspection Commission (UNMOVIC) in Iraq wrote that "revenues from the Oil-for-Food Program provided many billions of dollars and huge purchase orders were so placed as to produce maximum political benefit—or punishment."²⁹

According to the Committee's findings and those of former officials with the Coalitional Provisional Authority in Iraq, as well Iraqi officials, numerous illicit financial schemes prevailed during the program:

- *A purely paper transaction in which humanitarian goods were never delivered.* According to a CPA official, this type of transaction involved the active participation of the inspection team, who was bribed, and the Iraqi Ministry, who was ordered to sign for the receipt of non-existing goods. Proceeds of the sale were shared among regime officials.³⁰
- *A partial delivery of the goods.* This also required the participation of UN inspection firms who wittingly or unwittingly provided only a partial inspection of the incoming goods. An inaccurate or exaggerated delivery note would cover the shortage of goods.³¹

²⁶HIRC Discussion with Conlon.

²⁷Paul Conlon, "Statement On The Background To The Oil-For-Food Scandal: Sanctions Committee Experiences With Fraud And Manipulation Prior To The Actual Start Of The Program," Released March 2, 2005 by the Subcommittee on Oversight and Investigations, International Relations Committee, submitted February 14, 2005.

²⁸HIRC Telephone interview with 661 Committee Diplomat, June 23, 2005; HIRC Telephone interview with 661 Committee Diplomat, June 24, 2005.

²⁹Hans Blix, *Disarming Iraq* (New York: Pantheon Books, 2004), p. 54.

³⁰HIRC Interview with former CPA official, Washington, D.C, September 21, 2005.

³¹Ibid.

- *Shipping goods with obscure descriptions.* This technique was designed to tie up inspections, forcing Saybolt inspectors to perform a cursory inspection of the delivery.³²
- *Overpricing of the delivered goods.* The program was rife with overpricing, as confirmed in 2003 by the Defense Contracting Audit Agency.³³
- *The shipment of inferior goods to Iraq despite contractual obligations to ship goods.* Iraqi officials consistently told the Committee that regime officials told Iraqi officials that they did not care what was done with the materials imported into Iraq, inferior or otherwise, and that they could “throw them in the river.”³⁴
- *“Service fees”.* An after sales service fee of at least 10 percent, and sometimes as much as 30 percent, or additional shipping costs, port fees, storage fees, or other last minute costs.³⁵
- *Theft.* Theft of goods occurred en route during delivery.³⁶
- *Overcharged Shipping Costs.* Overcharging of transportation costs as a way of paying the kickbacks to the regime.³⁷

Under this system, Saddam Hussein and his lieutenants rewarded friends and supporters of the regime with preferential contracts both for oil deals and humanitarian aid contracts. Bribes were another facet of the program. The widespread nature of bribery on the part of the Iraqi Regime, its officials, and others seeking to profit from the program offered many opportunities to earn money by illicit means.

INSTITUTIONALIZED BRIBERY

Creation of a voucher system was described by Iraqi officials as “a daring move by Saddam Hussein who saw that he could get away with many things . . . to make more money.”³⁸ Saddam Hussein’s regime, given its ability to choose with whom it would do business and with whom it would not, was afforded an extraordinary power to profit through the extraction of kickbacks from favored customers and contractors alike. Because there was never an agreement on standards for companies applying to participate in the program, the Iraqi regime had a much easier time manipulating the companies and the program.³⁹

Vouchers enabled companies that publicly supported Saddam Hussein and criticized the United States to obtain business from an immensely profitable enterprise. The billions of dollars made

³² Ibid.

³³ Joint Defense Contract audit Agency and Defense Contract Management Agency OFF Pricing Evaluation Team, “Report on the Pricing Evaluation of Contracts Awarded Under the Iraq Oil for Food Program, September 12, 2003.

³⁴ Comments of an Iraqi Oil Ministry official made in a series of interviews conducted in Amman, Jordan, July 24–25, 2004; HIRC Interview with former member of the Iraqi Interim Government, Washington, D.C., April 22, 2004.

³⁵ Joint Defense Contract audit Agency and Defense Contract Management Agency OFF Pricing Evaluation Team, “Report on the Pricing Evaluation of Contracts Awarded Under the Iraq Oil for Food Program, September 12, 2003.

³⁶ HIRC Interview with former CPA official, Washington, D.C, September 21, 2005.

³⁷ Ibid.

³⁸ Comments of an Iraqi official made in a series of interviews conducted in Amman, Jordan, July 24–25, 2004.

³⁹ HIRC Interview with Pascal Texiera, Deputy Director of UN Affairs in the French Ministry of Foreign Affairs, Washington, D.C., December 16, 2004.

available through the sale of oil created ample opportunity for Saddam Hussein and his lieutenants to steal and bribe at the expense of the Iraqi people.

VOUCHERS

There appear to have been two types of vouchers, one for oil purchases and the other for humanitarian aid provisions.

Oil Vouchers

According to Iraqi officials in the Oil Ministry, the voucher program was initiated in 1998. A voucher entitled the recipient to the privilege of purchasing barrels of oil in specified quantities. Most recipients were unable to dispose of perhaps millions of barrels of oil, and many were left to arrange for companies or even brokers of oil to purchase the oil and to sell it on the open market, if not directly through the official OFFP. According to Iraqi officials familiar with the program, the contract would be written as if it was directly negotiated between the oil company or broker and the Iraqi Ministry of Oil. In the margin of the contract would be typed or written the name of the recipient of the voucher. As required under rules of the OFFP, a clean copy of the oil contract, without the voucher recipient's name, would be forwarded to the UN for clearance and processing. On four occasions (one company doing it twice), the side agreements were forwarded on to the UN for processing.⁴⁰ It is not clear what happened to these contracts.

Humanitarian Trade Vouchers

Iraq's Ministry of Trade manipulated every aspect of the OFFP, and chose its contracting parties.⁴¹ According to personnel from this ministry, Iraq rewarded those companies from countries supporting Iraq with contracts in its fight against international isolation and UN sanctions.

According to personnel from this and other Iraqi ministries, Iraq developed an "exemption list" of countries and companies that were viewed favorably by the regime:

These "privileged" companies obtained their exempt status from higher up authority in the old regime (usually from the office of former Vice President Taha Yasin Ramadhan) for a variety of reasons most are unknown to us. Those companies used to get contracts for commodities, products or goods regardless of origin or trading area.⁴²

Iraq restricted contracting to favored countries including Russia, France, and China. According to an Iraqi SOMO official, contracts with favored countries could only be made through traders subject to the approval of Taha Ramadan.⁴³ Some Iraqi ministry officials warned of the poor level of quality coming from these transactions. They were put off by senior ministry officials who told them "you

⁴⁰ According to an Iraqi Oil Ministry official interviewed in Amman, Jordan in July 2004.

⁴¹ Description provided by an official of the Iraqi Foreign Trade Ministry, HIRC Interview, Amman, Jordan, June 4-5, 2004.

⁴² Description provided by an official of the Iraqi Foreign Trade Ministry, HIRC Interview, Amman, Jordan, June 4-5, 2004.

⁴³ HIRC interview with Iraqi Oil Ministry official, Amman, Jordan, July 25, 2004.

can buy even bad medicine from Russia, say, then dump it in the river.”⁴⁴

As the sanctions situation eased by 2000, it became easier to flaunt. As Dr. Blix wrote, “More foreign airplanes were landing. Business people came to Baghdad.”⁴⁵ Ministry officials said the same thing, “many delegations were coming to Baghdad by plane. They had businessmen, artists breaking the sanctions laws by coming to Iraq. They spread propaganda.”

Officials from the Central Bank were also notified of the identities of those on the exemption list in order to give them priority for letters of credit applications. VP Taha Ramadan, Uday and Qusay Hussein, and two Deputy Prime Ministers, Hikmat Al Azzawi and Tariq Azziz as well as Abdel Hamoud, Saddam Hussein’s Secretary placed names on this list.⁴⁶ According to former Iraqi Oil Minister Amir Muhammad Rashid Tikriti Al Ubaydi, Saddam Hussein “had the last word. He could add or delete anyone from the secret list. If an entity did not perform to the expectations of the Hussein regime that entity could be removed, with Hussein’s approval, from the allocation list.”⁴⁷

It is estimated by Trade Ministry personnel that 10–15 percent of the 30,000 plus contracts were granted to “exempted” companies. This number, upon examination of the lists, may in fact be higher.

One episode of “illegal activities” that took place was the overfilling of the tanker, the “Essex,” in October 2001. At issue was the practice of “topping off,” or filling the vessel with more oil than contracted for and then stopping off, out of port and off-loading the difference and selling it for illegal profit. A lack of proper measuring equipment at the ports helped to facilitate the practice of “topping off” as well as other irregularities. Were it not for the disclosure by the Essex’s ship captain, the vessel loading the oil, who sent a letter to the UN Oil-Overseer informing him as to what happened, the incident might never have been discovered.⁴⁸ Because of the poor oversight and management by the UN, there is no way to confirm whether or not such practices were routine.

CORRUPT OIL LOADING PRACTICES

Under terms of the OFFP, Saybolt was obligated to inspect the loading of oil at Iraqi ports. In a letter of February 25, 1997, SGS Senior Executive Vice President M.A.M. Gisiger complained to Benon Sevan that:

We have observed that the nominated expert for the United Nations is not only contravening the requirements of the above clauses [relating to the Request for Proposal for the inspection contract] but it is also (together with the United Nations employees on site) actively discouraging the oil purchasers from ex-

⁴⁴ Ibid.

⁴⁵ Blix, p. 54.

⁴⁶ According to former Iraqi Oil Minister Amir Muhammad Rashid Tikriti Al Ubaydi, questioned in writing by HIRC, October 27, 2004 and by officials of the Iraqi Ministry of Trade interviewed by HIRC staff in Jordan.

⁴⁷ HIRC Written interview with former Iraqi Oil Minister Amir Muhammad Rashid Tikriti Al Ubaydi, October 27, 2004.

⁴⁸ Letter of Chlidakis Theofanis to the United Nations, September 21, 2001, HIRC Saybolt documents, #S023917–S023922. American Embassy officials in Caracas, Venezuela had notified the State Department on October 24, 2001 of Venezuela’s rejection of the oil cargo on the Essex as being illegal. See Cable, American Embassy Caracas, October 24, 2001, Document Number 20001CARACA03153.

*ercising their rightful prerogative of selecting the independent third party of their choice to inspect the cargo in accordance with their own sales contract.*⁴⁹

Although Saybolt denied this practice amounted to an ethical and managerial problem, the UN Board of External Auditors found differently in its November 14, 1998, report to the Office of Iraq Programs:

*During first phase [sic], Board had observed that M/S Saybolt had been working at the same time for the UN and the buyer. In view of the remarks of the legal adviser that by working for oil inspectors to work as Inspection agents both for UN and the buyer, it has created a conflict of interest. . . .*⁵⁰

This dual inspection role by Saybolt, and the UN's lack of acceptable measuring system for oil quantity verification,⁵¹ lent itself to oil loading measuring errors and corruption. This in fact, did happen in October 2001 when one of the UN-appointed Oil Overseers informed Mr. Sevan that, on two occasions, oil was loaded at Mina al Baker, outside of Saybolt's control on vessels which carried oil shipments for the program.⁵²

BOYCOTT OF ISRAEL

Saddam Hussein's regime also blacklisted companies from participating in the OFFP. As detailed by the list, many refusals for allowing participation were due to accusations of "Dealing with the Zionist Entity," the common Arab rejectionist reference to Israel.⁵³ In fact, a required step in signing contracts with an Iraqi Ministry was a requirement to not deal with Israel.

Some companies chose to abide by the boycott of Israel. Bayoil, an American company with a subsidiary company in the Bahamas, signed a statement in 1999 attesting that the company had never sold directly or indirectly to Israel and would refuse to do so in the future. August Giangrandi, signing on behalf of Bayoil Supply and Trading Limited, had the document notarized.⁵⁴ Similarly, Bayoil's Houston representative Ludmil Dionossiev, assured an unidentified Russian oil contact, Sergei Sharapov that the Bayoil vessel "World Champion" had never traded in Israel.⁵⁵ Dionossiev and Bayoil Chairman David Chalmers were indicted on April 14, 2005 by the U.S. Attorney for the Southern District of New York on four counts related to the OFFP.⁵⁶

⁴⁹ Letter of SGS Senior Executive Vice President M.A.M. Gisiger to Benon Sevan, then Assistant Secretary-General, United Nations, February 25, 1997, HIRC Saybolt documents, #S053937.

⁵⁰ UN Board of Auditors Audit Query No. 7, November 14, 1998, Subject Contract for Oil Inspectors, HIRC Saybolt Documents, #S023699.

⁵¹ UN Office of the Iraq Programme fax to Peter Boks, Saybolt Nederland BV, November 23, 1998, HIRC Saybolt files, #S024218.

⁵² Email of Morten Buur-Jensen to Benon Sevan, October 29, 2001, 8:44 pm, HIRC Saybolt documents, #S023856.

⁵³ Blacklist Table, Iraqi Health Ministry, n.d.

⁵⁴ Sayolt documents obtained by the HIRC, #45426. See Appendix G.

⁵⁵ Letter of Ludmil Dionossiev to Sergie Sharapov, November 25, 1998. See Appendix H.

⁵⁶ *The United States of America v. David B. Chalmers, Jr., John Irving, Ludmil Dionossiev, Bayoil (USA), Inc., and Bayoil Supply & Trading*, United States District Court, Southern District of New York, Indictment S1 05 Cr. 59 (DC).

Kickbacks

Companies negotiating with Iraqi Ministries for contracts paid kickbacks to assure ample contract business. Once the 10 percent kickback was paid to the regime, the contract was approved. An email from a finance manager of a company shipping humanitarian goods into Iraq discussed the kickbacks to Saddam Hussein's regime as a matter of standard business.⁵⁷

*From: husam Naaseh—Finance Mgr
Sent: Sunday, June 13, 2004 8:01 PM
To:
Subject: RE: LC Amendment Confirmation—COMM 1100650
Importance: High*

Dear Sir

Reference to our phone conversation, I would like to draw your attention that reference to Comm. # 1300036 for 10,000 MT Vegetable Ghee, and according to previous Iraq regime, that no any trucks or goods are allow to enter Iraq if the 10% is not paid, under this comm. we shipped the quantity of 355 MT before 17 March 2003, and as you can see from the Rafdeen voucher the sum of Euro 63,756 covering 1,000 MT already paid. At time of renegotiation the same contract with WFP they deduct the 10% for the remaining qty (10,000—355 = 9,644 MT) copy of WFP contract is attached. So, from above the amount of Euro 41,036/—deducted twice , once paid to Rafdeen bank and other deducted by WFP. You are kindly requested to arrange to pay us the amount of Euro 41,036 directly. our bank details as bellow:

*Account # 65888
Arab bank plc
Abdali branch—Amman—Jordan
Swift code : Arab bank Joax 100*

Best Regards,,,

*Husam Naiseh
The Finance Manager*

Kickback funds were to be deposited in banks into what Iraqi officials called “bridge accounts,” which were made accessible to every ministry in the Iraqi government.⁵⁸ Each ministry was given the account numbers to supply to the companies with which they dealt in order to exact the 10 percent kickback amount. The money was sent to these accounts from suppliers, as well as the Syrian Government and suppliers there.⁵⁹

Another company that supplied humanitarian goods to Iraq discovered that its employees were paying kickbacks to the Iraqi regime. These kickbacks were paid through an Iraqi-approved agent with whom companies were required to deal.⁶⁰ The Weir Group, an

⁵⁷ Email received as part of ongoing investigations into the Oil-for-Food program by the now-defunct Coalition Provisional Authority.

⁵⁸ HIRC Interviews with Iraqi Bank officials, Dubai, UAE, June 29, 2004.

⁵⁹ IRS-CI Details of Investigation with Senior Auditor for the Iraqi Board of Supreme Audit and SOMO, Amman, Jordan, October 19, 2003, p. 1; HIRC Interviews with Iraqi Bank officials, Dubai, UAE, June 29, 2004.

⁶⁰ HIRC Interview with former member of the Iraqi Interim Government, Washington, D.C., April 22, 2004.

engineering firm in Scotland which had secured 38 contracts in the OFFP, an Iraqi-sponsored agent requested that payments be made through accounts in Switzerland under the names of Corsin Financial Ltd and to Inpojex International. As Alan Mitchelson of The Weir Group declared, payments like those made by their employees were “a general acceptance that was the cost of doing business in Iraq.” Weir officials had disclosed these actions by their employees voluntarily and the employees were fired.⁶¹

As the Weir experience shows, Iraq insisted on using approved middle men. In the beginning days of the program, some American companies were allowed to do business including Chevron and Mobil, as well as Coastal Corporation⁶² and Bayoil.⁶³ Mobil, in buying oil from Iraq had to use agents, like the Weir employees did. In Mobil’s case, they used two Iraqis in London to act as a go-between the company and Iraq. Between the two agents working for Carrington Ltd. and Crescent International, Mobil paid them over \$160,000 in fees and expenses.⁶⁴ The Committee makes no allegation of bribes being paid by Mobil.

Bridge accounts for kickbacks were held in a number of currencies in banks in a number of countries including those in Jordan, in the Rafidain Bank (an Iraqi State bank⁶⁵); The National Bank of Jordan; The Cairo-Amman Bank; the Export and Finance Bank, the Union Bank for Savings and Investment; and the Al-Eskan Bank.⁶⁶ U.S. Treasury Department agents suggested that there were as many as 1,600 bank accounts in Jordan alone.⁶⁷

At Rafidain, kickbacks, according to Internal Revenue Service Criminal Investigators, were deposited into at least two accounts.⁶⁸ Iraqi officials provided these depositors guarantees that their deals with Iraq would not fall through. In return for this guarantee, companies would pay a fee to the bank and a percentage of that fee was forwarded back to Iraq. According to bank officials, 600–700 guarantees were written.⁶⁹

Kickback payments were also made to banks in Lebanon, including The Beirut Bank, The Beirut and Arabic Countries Bank, The Saradar Bank, The Franca Bank, Beirut and Al Mawarid Bank.⁷⁰ IRS investigators believe that Al Mawarid Bank at times received transferred funds from accounts in banks in Damascus.⁷¹ In these

⁶¹HIRC Interview with Alan Mitchelson and Malcolm Kelly of The Weir Group, London, December 2, 2004.

⁶²There have been allegations that Oscar Wyatt, in coordination with Samir Vincent, provided food supplies to Iraq through the foundation, “The Friendship Foundation, in Summer 1996 before the Oil-for-Food program began and in subsequent years. See Memorandum of Agreement Between Phoenix International, LLC and Mercy Corps International, Final Draft Agreement; Letter of Wm. Boyd Lyons to Carl Corrallo, Coastal Corporation May 1, 1997. Wyatt was indicted in a superseding indictment along with Bayoil’s David Chalmers on October 21, 2005 and was charged along with two Swiss citizens of paying kickbacks to Iraq in the OFF program.

⁶³SOMO contracts with Chevron, provided by Chevron; SOMO contracts with Mobil, provided by ExxonMobil; “Coastal Corporation and Subsidiaries Payment Request, October 1997.

⁶⁴HIRC Interview with ExxonMobil representatives, Jeanne Mitchell and Pat Conlon, Washington, D.C. January 27, 2005.

⁶⁵When questioned as to why an Iraqi State bank was allowed to operate in Jordan while Iraq was under sanction by the UN, the Governor of the Jordanian Central bank responded that it was a “political issue” that should be raised with the Jordanian government, Umayya Toukan, Governor and Chairman of the Board, Jordanian Central Bank, Washington, D.C., October 1, 2004.

⁶⁶HIRC Interviews with Iraqi Bank officials, Dubai, UAE, June 29, 2004.

⁶⁷HIRC Treasury Department briefing, July 23, 2004.

⁶⁸U.S. Department of the Treasury Report of Interview, June 2003.

⁶⁹Interview officials of Rafidain Bank, Amman, Jordan, July, 26, 2004.

⁷⁰Ibid.

⁷¹IRS-CI Details of Investigation in Damascus, Syria, September 30, 2003, p. 3.

banks, many of the accounts were set up under individual names, some from the CBI or the individual Ministry employees, and some were simply numbered accounts.⁷²

Once the money arrived at the various banks, the CBI was notified within 24 hours. With notification to CBI, suppliers were then comfortable to move forward with pending deals for humanitarian goods bound for Iraq.⁷³

Each ministry in the Iraqi government had use of these funds, but there were quotas for the amounts they would be able to use.⁷⁴ All releases from the accounts required two signatures. There was also a procedure set up whereby funds from the cash account, when the balance reached \$1 million, would automatically be transferred to other banks for eventual transfer, through banking operations, back to the Central Bank of Iraq in Baghdad.⁷⁵

In the case of funds held in Syrian banks, the money was transferred to the Syrian Lebanese Bank in Beirut.⁷⁶ In some cases, the diplomatic pouch of the Iraqi Consulate General, which was housed in the Algerian Embassy in Damascus, would act as the conduit for transfer of funds to CBI.⁷⁷ Cash withdrawn from the accounts was also transported back to Baghdad by diplomatic pouch or diplomatic courier over land from Lebanon.⁷⁸ In one case, Central Bankers couriered the funds, in gold bars back to Baghdad, in the trunk of a car.⁷⁹

Iraq also sought to reward some of its employees from the various ministries for their participation in the kickback system. Of the kickbacks provided, .05 percent were “trickled down,” in the words of one Iraqi, as a reward.⁸⁰ One Iraqi remembers a fellow ministry employee being able to buy a pair of earrings with the money.⁸¹

Payments of \$25,000 were paid from kickback accounts to surviving families of Palestinian suicide bombers. These payments were funneled, in part, from kickback accounts in Rafidain bank.⁸²

THE ROLE OF BANQUE NATIONAL DE PARIS-PARIBAS

The bank responsible for operating the finances of the program, BNP, made unauthorized transfers of funds to third-parties.

The UN had selected BNP to hold proceeds from oil sales. Such funds were deposited directly by the oil purchasers into this UN-monitored escrow account held at the New York branch of BNP.⁸³ In this role, BNP was the recipient of funds for the sale of oil and

⁷² Ibid; HIRC Interviews with Iraqi Bank officials, Dubai, UAE, June 29, 2004.

⁷³ Ibid.

⁷⁴ *Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD*, p. 50.

⁷⁵ HIRC interviews with the Rafidain Bank officials, Amman, Jordan, July 26, 2004.

⁷⁶ IRC-CI Details of Investigation, Interviews with the Iraqi Supreme Board of Audit, Representatives of the State Oil Marketing Organization and the Commercial Bank of Syria and of the Commercial Bank of Syria, Branch 5, Damascus, October 23, 2003, p. 2; *Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD*, p. 177.

⁷⁷ IRS-CI Details of Investigation, Interviews with former Officials of the Military Industry in Iraq (MMI), May 30, 2003, p. 1.

⁷⁸ HIRC Interviews with Iraqi Bank officials, Dubai, UAE, June 29, 2004.

⁷⁹ HIRC Interviews with Iraqi Bank officials, Dubai, UAE, June 28, 2004.

⁸⁰ HIRC interview with Iraqi Oil Ministry official, Amman, Jordan, July 25, 2004.

⁸¹ HIRC Interviews with Iraqi Bank Officials, Dubai, UAE, June 29, 2004.

⁸² HIRC Interviews with unnamed Iraqi officials, Amman, Jordan, July 24, 2004.

⁸³ In response to UN concerns that too much money was being concentrated at BNP, the number of banks receiving oil-for-food deposits was expanded after 2000 to include: JP Morgan Chase, Deutsche Bank, Banco Bilbao Vizcaya, Credit Agricole Indosuez, Credit Suisse, and HypoVereinsbank.

the disbursing party for those same funds for the payment of humanitarian goods into Iraq.

At a hearing with BNP before the Full Committee on November 17, 2004, BNP North American CEO Everett Schenck was asked to explain why BNP had made payments to a company called East Star Trading, a third party payee that was not a party authorized by the UN. At the time, there was no clear identification for this company and moreover, no clear explanation why it received three reassigned payments. During the hearing, Mr. Schenck suggested that these payments were permitted by the UN. U.S. State Department officials dispute this claim:

. . . the United Nations has found no record authorizing BNP to make third party payments to the East Star Trading Company on March 23, April 12, and May 3, 2001. BNP has asserted that it received authorization to make these third party payments. The UN reports that their records indicated they ordered BNP to pay the named party on the Letters of Credit on these dates, that is, Al Riyadh International Flowers Companies Group.⁸⁴

Mr. Schenck promised a full review of the bank's files on the program. This review, in the form of an Interim Report, was delivered to the Subcommittee on Oversight and Investigations on April 28, 2005, during another hearing on the issue.⁸⁵ In delivering the report, BNP CEO for North America, Mr. Schenck admitted that mistakes were made "that should not have occurred."⁸⁶ He also disclosed that the bank had made 403 unauthorized third-party payments, but argued that they were made to "financing facilities." Under Section 2.3.2 of BNP's contract with the UN, such transactions to non-bank third-parties, were forbidden unless authorized by the UN.⁸⁷

BNP is scheduled to deliver an updated report on the unauthorized payments supplied earlier to the Committee. The Committee awaits the results of this new report.

THE UN AND CORRUPTION

Referring to the beginning of the kickback scheme, a UN official told the IIC that:

The Iraqis at some point started to refuse selling the amount of oil needed to recover the costs of the humanitarian imports. They managed to get more and more control over the Oil-for-Food Program and Sevan was letting them.⁸⁸

The Secretary-General and other UN officials advocated increasing Iraq's ability to produce oil and lifting the limits on Iraqi oil sales. Their interest in loosening sanctions was not matched with a commensurate interest in management or enforcement of the OFFP. Officials at the U.S. oil company Mobil explained that the

⁸⁴ Committee Memorandum to File.

⁸⁵ See Appendix B.

⁸⁶ Testimony of Everett Schenck before the Oversight and Investigations Subcommittee of the House International Relations Committee, Prepared Testimony, p.4, April 28, 2005

⁸⁷ Section 2.3.2, Banque National de Paris, "Agreement for Banking Services, Pursuant to Security Council Resolution 986 (1995), pp. 38-39.

⁸⁸ IIC Record of Conversation/Interview with UN official, September 15, 2004, p. 4.

UN did not effectively manage or oversee the OFFP contracts.⁸⁹ Mr. Sevan, as the program grew as well, according to one UN official, cared less and less about this increasing control exercised by Iraq over the OFFP.⁹⁰

Benon Sevan was consistently notified of the surcharges and kickbacks by the UN-appointed Oil Overseers as well as Saybolt.⁹¹ Mr. Sevan, according to one Oil Overseer, refused to act or permit the overseers to investigate the reports of corruption. Mr. Sevan demanded that all overseer reports be delivered to him and not the 661 Committee, the UN body charged with overseeing the OFFP. The Oil Overseer said that Mr. Sevan tried to stop them from “being vocal on the oil side.”⁹² “Sevan,” the official insisted, “did not feel it was his job to keep them [Iraqi officials] from taking over control or to stop the kickbacks.”⁹³

UN Observation of the Movement of Goods in Iraq

Large shipments of humanitarian goods were being moved across Iraq’s borders under the OFFP—borders that companies operating under UN contracts were supposed to monitor for evidence of smuggling illicit goods.

Rehan Mullick, an American employee of the UN working in Baghdad as a research officer with the UN’s Office of the Humanitarian Coordinator in Iraq (UNOHCI) in 2000, tried to bring UN management shortcomings and smuggling to the attention of his UN superiors, but little was done by the UN to monitor or combat smuggling.⁹⁴ As Mr. Mullick wrote to the Committee:

*Soon after I started my job, it became amply evident to me that there were gaping holes in UNOHCI’s [United Nations Humanitarian Coordinator for Iraq] efforts to meet the above objectives. A robust, functional database on the use of SCR 986 supplies, that one expects should have already been in place, was just not there.*⁹⁵

Mr. Mullick testified to the HIRC Subcommittee on Oversight and Investigations that:

The Iraqi regime had rendered the UN observation meaningless, penetrated its information nerve centers by planting Saddam Hussein loyalists in the UN observation process . . . the

⁸⁹HIRC Interview with ExxonMobil representatives, Jeanne Mitchell and Pat Conlon, Washington, D.C. January 27, 2005.

⁹⁰HIRC Interview with ExxonMobil representatives, Jeanne Mitchell and Pat Conlon, Washington, D.C. January 27, 2005.

⁹¹Email of Graham Brett to Benon Sevan, November 16, 2000, HIRC Saybolt documents #S157305.

⁹²HIRC Interview with UN Oil Overseer, April 16, 2004. It should be noted that this Overseer was one of numerous recipients to receive letters prohibiting them from talking to outsiders about the Oil-for-Food program. Letters sent to this Overseer, as well as others, were signed under Sevan’s name, by Maurice Crichley. This letter was sent by the UN at the end of April 2004.

⁹³IIC Record of Conversation/Interview with UN official, September 15, 2004, p. 4.

⁹⁴In 1999, Dr. Mullick was a Statistical Research Analyst for the Rural Development Initiative, a program in association with Iowa State University with the goal of improving policy decisions that stimulate rural development and economic growth. In 2000, became a research officer of the United Nations Office on the Humanitarian Coordination in Iraq and provided expertise to the Multidisciplinary Observation Unit, which, among other things, was responsible for assessing and monitoring humanitarian conditions in Iraq and measuring the impact of the UN Oil-For-Food Program. From 2003 through 2004, Dr. Mullick began work for the USAID’s Iraq Local Governance Project and was head of the Monitoring Evaluation Unit for this project.

⁹⁵Rehan Mullick, “Two Years in UNOHCI,” Statement prepared for the Committee on International Relations Subcommittee on Oversight and Investigations, March 17, 2005.

Iraqi military rebuilt its logistics by diverting thousands of trucks, pickups, 4X4s etc. that were delivered to Iraq under the Oil-for-Food Program. Similarly, it' [sic] was common knowledge in Iraq that thousands of Toyota Camrys, and Avalons imported under the program were promptly gifted to the functionaries of the Iraqi Intelligence, and the Bath [sic] Party. Correspondingly, the Malaysian built Proton cars were offered freely to military officers at token prices. The UN was responsible to insure the proper distribution of these cars.⁹⁶

The provision of cars, luxury and otherwise, was a prominent feature of the program. One former Iraqi Ministry official told of thousands of Mercedes cars being purchased in the program and used as rewards for the Iraqi Military Industrial Program as well as other Iraqi Ministries. In other cases, this official suggested, motorcycles were being diverted for use by Iraq's irregular forces or "fedeyeen."⁹⁷ Some of these motorcycles, he suggested, were used against American forces during the American invasion.⁹⁸ Because of the restriction placed on them for funding their investigations, the OIOS was prevented from auditing all the program's border inspection areas.⁹⁹

OIOS officials agreed that the UN did not investigate or try to prevent diversions that were ongoing in the OFFP. As Mr. Mullick, suggested ". . . it was all stage-managed." Mr. Mullick's warnings and criticisms of corruption within the OFFP were ignored by his UN supervisors, his superiors relieved him of his OFFP duties and failed to renew his employment contract when it expired.¹⁰⁰

Members of the staff at the OIOS Investigative Division complained of a lack of interest and attention by the Secretariat and even the Secretary-General to the work of the OIOS. OIOS officials described Mr. Sevan's reaction to their requests to fund an investigation of the OFFP as "stalling"¹⁰¹ and negligent.

OIOS officials consistently expressed the need for greater resources to investigate the OFFP but were denied the funds and the authority to investigate. "There was a problem with the UN seeing the magnitude of the problem," said one investigator. Eventually they stopped asking: "If you know you're not going to get resources . . . you've asked . . . you know not to ask."¹⁰²

In May 2001, a request was submitted to the UN's Department of Peacekeeping Operations, for "investigators for the Iraq region, which would include UNOHCI, UNGCI [The UN Guard Contingent in Iraq], and the OIP [Office of the Iraq Program]."¹⁰³ On May 26, 2001, Benon Sevan denied this request saying, "Without prejudice to the merits of your proposal, we can ill afford at this time when

⁹⁶ Rehan Mullick, Testimony before the Committee on International Relations Subcommittee on Oversight and Investigations, March 17, 2005.

⁹⁷ HIRC Interview with a former Iraqi Transportation Ministry official, Rome, Italy, June 27, 2004.

⁹⁸ Ibid.

⁹⁹ Congressional discussion with OIOS officials, Washington, D.C., March 16, 2005.

¹⁰⁰ HIRC telephone interview with Rehan Mullick, March 8, 2005.

¹⁰¹ Congressional discussion with OIOS officials, Washington, D.C., March 16, 2005.

¹⁰² Remarks of unidentified UN source.

¹⁰³ Memorandum of [OIOS Official] to DKPO, "Request for Resident Investigators in . . ." May 14, 2001.

the Government of Iraq has been complaining over the increasing number of international staff members in the country.”¹⁰⁴

An OIOS official told the IIC that Mr. Sevan did not want to see OIOS’ Investigations Division (ID) investigating cases involving the OFFP. The official told the IIC that they later tried to get ten more investigators but Mr. Sevan again refused.

As the IIC’s Record of Conversation with the official further explained,

*. . . resistance to OIOS in general and ID specifically is very prevalent through-out [sic] the United Nations system. [The official] stated that there is a complete lack of willingness to accept OIOS ID, its programmes or findings. This resistance goes to and included the Office of the Secretary-General and the General Assembly. Attempts to get resources or implement new programmes are met with strong resistance or silence.*¹⁰⁵

The official explained that as investigators were denied resources, they were forced to borrow from other departments, curb plans for some audits, and simply drop plans for others. One investigator explained that whole functions of the program, such as diversions of goods, were not examined due to a lack of funding and resources. Moreover, he said, “we don’t look for fraud, we look for red flags . . .” said one investigator. The amount devoted to the audit function for Iraq was described as “miniscule.” The official explained that, “[w]ith scarce resources, you have to decide what to do.”¹⁰⁶

RUSSIAN COMPANIES

According to the former Iraqi Oil Minister Amir Muhammad Rashid Tikriti Al Ubaydi, Russia was the most helpful government to Iraq. “Russia,” the Minister argued, “presented Iraq’s case for lifting the sanctions to the UN.”¹⁰⁷ In return, Russia received contracts and access to bidding information for Iraqi contracts.¹⁰⁸ Russian companies paid the standard oil surcharge or slightly lower, to the Iraqi Embassy in Moscow.¹⁰⁹ According to one Russian official, their job was to get as many contracts as possible for their companies.

*We in our Embassy in Baghdad were not satisfied with the work of our representatives on the ground. We fought to get contracts. He [They] [sic] did not do enough to push contracts.*¹¹⁰

In a statement to the International Relations Committee in May 2004, the Russian Embassy in Washington suggested that the OFFP “. . . is simply a question of corruption. Unfortunately such practices are quiet widespread in business . . .”¹¹¹

¹⁰⁴ Letter of Benon Sevan to OIOS Official, “Note to [OIOS Official], Request for Resident. . .”, May 2001.

¹⁰⁵ Ibid, p. 5.

¹⁰⁶ Congressional discussion with OIOS officials, Washington, D.C. March 16, 2005.

¹⁰⁷ HIRC Written interview with former Iraqi Oil Minister Amir Muhammad Rashid Tikriti Al Ubaydi, October 27, 2004.

¹⁰⁸ HIRC Interview with Iraqi official, Amman, Jordan, July 25, 2004.

¹⁰⁹ IRS-CI Memorandum of Interview, November 29, 2003, p. 1.

¹¹⁰ HIRC Interview with Russian officials, Washington, D.C., May 17, 2004.

¹¹¹ Non-Paper, Russian Embassy in the United States, May 20, 2004.

PROCUREMENT CORRUPTION OUTSIDE THE OFFP: YAKOVLEV, IHC SERVICES, AND EUREST SUPPORT SERVICES

The IIC found corruption within the UN procurement office relating to contracts within the OFFP. HIRC uncovered additional irregularities in the procurement department outside the OFFP.

Alexander Yakovlev was a line procurement officer in the UN. Yakovlev's son Dmitry was hired by IHC Services, Inc., a company that had done as much as \$12 million in procurement business with the UN on at least one contract in 1999.¹¹²

Dmitry served as an Administrative Assistant with IHC from May-August 2000 and from May-August 2001, and as an Assistant to the Vice President from December 2002 until the present.¹¹³ According to IHC's CEO, Ezio Testa, "he [Dmitry] was never employed by us; only an internship."¹¹⁴ When pressed for more details, however, Mr. Testa disclosed that Alexander Yakovlev asked him to "give direction" to his son Dmitry and "only later did I ask him if he was interested in a job."¹¹⁵

Telephone calls between Dmitry and IHC continued after Dmitry claimed to leave IHC's employment in December 2003. Dmitry's phone records show that his calls to IHC were closely followed by calls to his father in the UN procurement department.¹¹⁶ Alexander Yakovlev denied any conflict of interest, but he resigned his position with the UN after the potential conflict was disclosed.

Alexander Yakovlev deposited \$950,000 in payments in the Antigua Overseas Bank under the name of Moxyco, Ltd., which helped obtain, according to the IIC, \$79 million in contracts with the UN.¹¹⁷ Alexander Yakovlev used a Seychelles-based group, Maritime International, Ltd. to assist him in placing his illicit payments in Antigua. Maritime International advertises its services on the Internet and tells potential clients that, ". . . [w]e only open off-shore bank accounts for clients with whom we have an existing relationship, i.e. clients for whom we have or are incorporating companies, or for whom we have provided other services."¹¹⁸

This information was reinforced by the IIC's findings in its *Third Interim Report*, released on August 8, 2005. The IIC also tied Alexander Yakovlev to the solicitation of bribes from the Swiss inspection firm Société Générale de Surveillance (SGS).

Only hours after the release of the IIC's report on August 8, 2005, federal agents arrested Mr. Yakovlev and charged him with two counts of wire fraud and one count of money laundering. Mr. Yakovlev immediately plead guilty and, if convicted, faces up to 20 years imprisonment.¹¹⁹ The Secretary-General waived Mr.

¹¹²Claudia Rosett and George Russell, "UN Family Ties: Is There a Replay of the Kofi and Kojo Annan Scandal?" *Fox News Channel*, June 20, 2005, available online at <http://www.foxnews.com/printer—story/0,3566,160081,00.html>.

¹¹³Resume of Dmitry Yakovlev, from IHC Services, Inc.

¹¹⁴HIRC Telephone discussion with Ezio Testa, June 22, 2005.

¹¹⁵Ibid.

¹¹⁶Claudia Rosett and George Russell, "UN Family Ties: Is There a Replay of the Kofi and Kojo Annan Scandal?" *Fox News Channel*, June 20, 2005, available online at <http://www.foxnews.com/printer—story/0,3566,160081,00.html>.

¹¹⁷IIC Interim Report, August 8, 2005, p. 65.

¹¹⁸Website of Maritime International, Ltd., available online at <http://www.milonline.com/off-shore-banking.html>, downloaded August 26, 2005.

¹¹⁹Nick Wadhams and Edith M. Lederer "Former UN procurement officer pleads guilty to taking bribes from UN contractors," *Associated Press*, August 8, 2005.

Yakovlev's UN immunity after a request from the U.S. Attorney for the Southern District of New York.¹²⁰

On August 26, 2005, HIRC issued a subpoena to IHC Services for records relating to their contacts with Yakovlev and the UN. In response, HIRC received records demonstrating business connections between IHC and Eurest Support Services Worldwide (ESS) as well as other documents evidencing malfeasance in the UN procurement department.

Regarding IHC's work with ESS, IHC represented ESS as a vendor intermediary, or broker before the UN on as many as ten contracts.¹²¹ ESS is owned by the Compass Group, the world's largest catering company and the provider of food to U.S. and UN peacekeeping forces.¹²² Compass Group, the parent company of ESS, relied on IHC for advice on obtaining specific UN contracts.¹²³ Mr. Yakovlev was the procurement officer for a number of food service contracts that the UN awarded to ESS.

Moreover, ESS regularly updated IHC on its progress, copying them on correspondence they entered into with Yakovlev regarding their ongoing proposals. In one instance, a Field Logistics official with a branch of ESS's parent company, Compass Global Transit Centre in Holland (ESS Official), discussed in emails information given to him by a UN Rations Contracts Officer in Sudan. The ESS official wrote, "As stated, some limited information was given on what our competitors are doing." He went on to explain how the contract they were bidding on was going to be divided up with different companies getting different parts of the contract.¹²⁴

In the same emails, the ESS official stated that he had heard that the country coordinator for the United Nations Office of Project Services (UNOPS) was in town and advised him on his bid. The ESS official wrote that "He [the UN country coordinator] stated that it would be received very well in the UN if we put an additional appendix to our bid stating that we wish to assist develop the country and can assist in such ways as training of local suppliers and farmers on food production."¹²⁵

On other occasions, IHC may have provided more than simple advice.¹²⁶ Emails between IHC and ESS suggest that in November 2003, IHC obtained secret bidding information for a contract and provided this information to ESS to help ESS secure the contract.¹²⁷

IHC documents also revealed a relationship between IHC and Giandomenico Picco, the UN official first assigned to negotiate an

¹²⁰ "Opening statement read by Mark Malloch Brown, Chef de Cabinet, at a press conference on the Oil-for-Food Programme," August 8, 2005.

¹²¹ HIRC Interview with Charles Clayton, Compass Group, Washington, D.C., October 31, 2005.

¹²² *Ibid*; ESS "Supply of Food Rations—United Nations Advance Mission in Sudan (UNAMIS), Request for Proposal (RFPS)," December 13, 2004, HIRC IHC documents # IHC0005230.

¹²³ HIRC Interview with Charles Clayton, Compass Group, Washington, D.C., October 31, 2005.

¹²⁴ Steve Bickerstaff, "Meeting With Terry Allan—UN Rations Contract Officer Sudan and General Points—by Steve Bickerstaff, November 25, 2004 memo attached to an email to Stephen Queen and forwarded first to Andy Siewert of ESS and on to Ezio Testa of IHC Services, Inc., November 28, 2004, HIRC IHC Services documents, #IHC006045-006052. See Appendix C.

¹²⁵ *Ibid*.

¹²⁶ George Russell and Claudia Rosett, "UN Procurement Scandal: Secret Information Was Leaked to a Bidder," *Foxnews* October 7, 2005.

¹²⁷ *Ibid*.

oil-for-food deal in 1992.¹²⁸ The documents state that Mr. Picco was IHC's Managing Director from 1998 until at least 2000.¹²⁹ During this same period, Picco was acting as Secretary-General Kofi Annan's personal representative to a UN project known as the "Dialogue Among Civilizations," originally sponsored by the Islamic Republic of Iran.¹³⁰ At the same time, Picco was also advising Bayoil's David Chalmers on oil price formulations with the 661 Committee—conduct that led the U.S. Attorney in the Southern District of New York to bring charges against Chalmers for price manipulation in the program.¹³¹ Mr. Picco explained that in hindsight, he wished that he had not taken Chalmers on as a client.¹³²

In the course of Mr. Picco's work with Chalmers, Mr. Picco worked to communicate Chalmers' concerns about the price of oil in the Oil-for-Food program, as well as his provision of information concerning oil pricing information from the 661 Committee, as well as US concerns and a UK proposal about the pricing mechanism and a possible change in its calculation to Mr. Chalmers.¹³³

THE INDEPENDENT INQUIRY COMMITTEE

As a result of public accusations and concerns about corruption in the OFFP, the Secretary-General appointed an independent inquiry committee to investigate the administration and management of the OFFP. The Secretary-General appointed Paul Volcker, former Chairman of the United States Federal Reserve, to Chair the Committee. He appointed Mark Pieth of Switzerland and Justice Richard Goldstone of South Africa as Committee Members. Subsequently, on April 21, 2004, the United Nations Security Council unanimously adopted Resolution 1538, endorsing the inquiry and calling for cooperation from the UN and its member states. The inquiry, known as the Independent Inquiry Committee (IIC), was funded at a level exceeding \$30 million using funds from oil sales under the OFFP.

Over the course of its 18-month investigation, the IIC's reports exposed massive corruption within the OFFP and the UN in general. These reports revealed systemic structural problems that undermined the UN's ability to manage its organization and properly oversee its programs. But the IIC is not a permanent organization. The UN must develop modern organizational and personnel structures that prevent corruption and ensure organizational and individual accountability to obviate future corruption and subsequent multi-million dollar investigations.

Even the IIC investigation was not without criticism. Robert Parton was a senior investigator with the IIC who, among other responsibilities, headed the investigation of a possible conflict of in-

¹²⁸ HIRC Telephone Interview with Giandomenico Picco, June 10, 2005.

¹²⁹ Minutes of the Annual Meeting of the Directors of IHC Services, Inc. for the years 1998–2000, HIRC IHC records # IHC000024–000031. See Appendix D.

¹³⁰ As of the date of publication of this report, the "Dialogue Among Civilizations" project is coordinated by former UN chief of staff S. Iqbal Riza, who remains on the UN payroll as an Under-Secretary-General and who was found by the IIC to have shredded documents relating to the Oil-for-Food Program.

¹³¹ See Appendix E.

¹³² HIRC Telephone Interview with Giandomenico Picco, June 10, 2005.

¹³³ Facsimile of Giandomenico Picco of GDP Associates to David Chalmers, July 11, 2002, HIRC Bayoil documents #BAY04–01029 to 01034; Facsimile of Giandomenico Picco of GDP Associates to David Chalmers, July 11, 2002, HIRC Bayoil documents #BAY04–02263 to 01170. See Appendix F.

terest involving the Secretary-General.¹³⁴ Allegations of a conflict arose in January, 1999, when news services reported that the UN procurement department granted an inspection contract to Cotecna, a Swiss company that employed the Secretary-General's son.¹³⁵ While the Secretary-General acknowledged knowing of his son's employment with Cotecna, he denied that he had any knowledge of Cotecna's bid for the inspection contract.¹³⁶ In its *Second Interim Report*, the IIC found that there "was not reasonably sufficient evidence to show that the Secretary-General knew that Cotecna had submitted a bid on the humanitarian inspection contract in 1998."¹³⁷

Mr. Parton disagreed with the IIC's proposed conclusions for its *Second Interim Report* regarding the Secretary-General's knowledge of a conflict of interest.¹³⁸ Because of this disagreement, Mr. Parton resigned from the IIC.

On April 29, 2005, the Committee subpoenaed IIC documents (hereinafter, the Parton Documents), which Mr. Parton had in his possession. Pursuant to the subpoena, Mr. Parton produced approximately 16,000 pages of documents and other materials. He was questioned in a bicameral, bipartisan Congressional interview about the IIC's Second Interim Report and his reasons for resigning from the IIC.¹³⁹

Robert Parton alleged that the IIC was unwilling to reach any conclusion that would result in significant adverse consequences for the Secretary-General. Mr. Parton asserted that, "No matter what I show, the conclusions of this report are not going to change unless I have a smoking gun."¹⁴⁰ Mr. Parton argued that the IIC: (1) used a more stringent standard of proof to evaluate the evidence against the Secretary-General than it did for other subjects of its investigations, and (2) and provided evidence obtained in its investigations to the Secretary-General that it did not provide to other subjects of its investigation.¹⁴¹

According to Mr. Parton, the IIC failed to apply a consistent standard of proof to the subjects of its investigations. Robert Parton said that, early in the investigation, he asked what standard of proof the IIC would rely on to reach its findings.¹⁴² The IIC's *Investigation Guidelines* state that the IIC must find "reasonably

¹³⁴ Interview of Robert H. Parton, 11 (Sept. 27, 2005) [Hereinafter *Parton Interview*].

¹³⁵ Independent Inquiry Committee, *Second Interim Report*, 81 (Mar. 29, 2005).

¹³⁶ *Ibid.*

¹³⁷ *Second Interim Report*, *supra* note 2, at 78.

¹³⁸ *Ibid.* at 16. On April 20, 2005, the Associated Press reported that Mr. Parton left the IIC because the IIC treated the Secretary General too "softly" in its March 29th report. Mark Pieth, an IIC Member, explained, "You follow a trail and you want to see people pick it up." Desmond O. Butler and Nick Wadhams, *Two on Oil-For-Food Probe Resign*, Associated Press (April 20, 2005). The next day, another IIC Member, Richard Goldstone, contradicted Mr. Pieth and claimed that Mr. Parton left because his contract had ended. *Id.* Mr. Parton responded that Justice Goldstone's remarks were absolutely wrong. *Ibid.*

¹³⁹ Majority and minority staff from the House International Relations Committee, the Senate Permanent Subcommittee on Investigations, and the House Subcommittee on National Security Emerging Threats and International Relations participated in the interview.

¹⁴⁰ *Parton Interview*, *supra* note 1 at 142.

¹⁴¹ See Appendix J.

¹⁴² *Parton Interview*, *supra* note 1, at 31-32 ("As early as September of 2004, I met with the committee and indicated that I felt that it was very important in order to do a fair and objective investigation and at the end have conclusions that were consistent with that objective and fair process to truly understand what the standard of proof was. . . . [U]ltimately the decision, in my view, was made at that time in September to apply the standard of proof "more likely than not . . .").

sufficient evidence.”¹⁴³ Mr. Parton argued that, as a standard, this was meaningless.¹⁴⁴ According to Mr. Parton, the IIC decided early in its investigations to rely on a standard of “more likely than not”¹⁴⁵—a legal standard that requires that a finding be based on at least a 51% probability.¹⁴⁶ Ultimately, the IIC did not rely on this standard in reaching its findings against the Secretary-General. Instead, the IIC relied on the standard published in its *Investigation Guidelines* and concluded that there “was not reasonably sufficient evidence to show that the Secretary-General knew that Cotecna had submitted a bid on the humanitarian inspection contract in 1998.”¹⁴⁷ Mr. Parton stated: “I believe that there was a hesitancy to apply the standard of more likely than not because of the implications that it would have to the Secretary-General.”¹⁴⁸

In a written response to Mr. Parton’s allegations, the IIC argued that it applied the same standard of proof against all subjects of its investigations. According to the IIC, the standard it used to evaluate each subject of its investigation was the standard published on its website of “reasonably sufficient evidence.”

The precise meaning of the IIC’s standard of “reasonably sufficient evidence” is unclear. Neither the IIC’s *Investigation Guidelines* nor the IIC’s website explains the standard. In a letter to the Committee, Paul Volcker noted that the standard was “clearly” lower than the United States criminal standard of “beyond a reasonable doubt” and “obviously” higher than the standard “more likely than not.” Beyond this explanation, however, the IIC did not define the term.

While the IIC informed the Committee that the standard of “reasonably sufficient evidence” is “common” in international investigations, it did not indicate any other investigations that relied on the standard.¹⁴⁹ The only international organization the Committee found that relied on the standard of “reasonably sufficient evidence” was the World Bank—which looked for “reasonably sufficient evidence” of wrongdoing before barring contractors from working with the bank.¹⁵⁰ Notably, in November, 2004, the Chief Counsel for the World Bank announced that the bank would change its standard of proof because the standard of “reasonably sufficient evidence” was unnecessarily vague. The new standard adopted by the World Bank was “more likely than not.”¹⁵¹

While the Committee is unaware of another UN investigation that used the standard “reasonably sufficient evidence,” the IIC standard does conform with the UN’s *Uniform Guidelines for Investigations*, which recommend that “the standard of proof should conform to the standards required by the organization and/or the na-

¹⁴³The Independent Inquiry Committee, *Investigation Guidelines*, (E)(1).

¹⁴⁴*Parton Interview*, *supra* note 1, at 31 (“I don’t understand what reasonably sufficient evidence is as it doesn’t refer to a standard. Reasonably sufficient evidence to show proof beyond a reasonable doubt that something happened? Or reasonably sufficient evidence to show that something is more likely than not that it occurred?”).

¹⁴⁵*Ibid.*

¹⁴⁶*Gao v. Gonzales*, 424 F.3d 122, 128–29 (2d Cir. 2005) (defining the standard “more likely than not”); *Lian v. Ashcroft*, 379 F.3d 457, 461 (7th Cir. 2004) (same).

¹⁴⁷*Second Interim Report*, *supra* note 2, at 78.

¹⁴⁸*Ibid.*

¹⁴⁹See Appendix K.

¹⁵⁰*Presentation by Mr. David R. Rivero, Chief Counsel, Corporate Administration, Legal Department, World Bank, at the Meeting of the Committee of Juridical and Political Affairs* (Nov. 18, 2004).

¹⁵¹*Id.*

tional jurisdiction for referrals, but should generally be reasonably sufficient evidence.”¹⁵²

Mr. Parton also alleged that the IIC provided the Secretary-General with evidence from its investigations that it did not provide to other subjects. The IIC’s *Investigations Guidelines* state that, before the IIC makes an *adverse finding* against any person, the person should be “informed of the proposed finding and the information upon which it is based.”¹⁵³ According to Mr. Parton, this meant, in practice, that the IIC gave the subjects of its investigations notice of the adverse findings it planned to make against them.¹⁵⁴

Mr. Parton alleged that in its investigation of the Secretary-General the IIC deviated from its standard procedure because the IIC provided the Secretary-General with the standard adverse finding letter, but attached an additional document titled “Annex A” that informed the Secretary-General of facts and evidence that were not adverse. Annex A advised the Secretary-General of its evidence of the Secretary General’s potential conflict of interest.¹⁵⁵

Mr. Parton believed that the IIC’s provision of non-adverse information to the Secretary-General compromised the IIC’s investigation. One witness, Michael Wilson, told IIC investigators that he had discussions with the Secretary-General indicating that he knew of the conflict of interest and therefore should have taken actions to disclose it. Subsequent to his interview with the IIC, Mr. Wilson recanted his testimony. Mr. Parton believed that the provision of non-adverse evidence to the Secretary-General affected the testimonies of Michael Wilson and Pierre Mouselli who attested to having another meeting with the Secretary-General. Mr. Parton stated:

*[T]he Secretary-General received information from the committee that other witnesses did not receive, and the reason other witnesses did not receive it is because it’s in my professional judgment and I think in the judgment of others, not a good idea to provide your investigative work directly to the person whom you’re investigating. In this case, that material in some measure was provided to Greg Craig and to the Secretary-General, and I presume Mr. Craig did an effective job of advocating on behalf of his client by attempting to locate witnesses, talk to them, ask them what it was they said, and to test whether or not they really said what it was represented that they said.*¹⁵⁶

The IIC argued that it did not favor the Secretary-General by providing him with evidence that it did not provide to other subjects. The IIC stated that, as a matter of course, it provided subjects of its investigation with evidence that was potentially adverse even if it was not prepared to make an adverse finding. According to the IIC, the adverse finding letters were a part of the process of the IIC’s investigation where subjects of the investigation were permitted to respond to adverse or potentially adverse findings.

¹⁵²United Nations Office of Internal Oversight Services, *Uniform Guidelines for Investigations*, (April, 2003).

¹⁵³The Independent Inquiry Committee, *Investigation Guidelines*, (C)(2)(g).

¹⁵⁴*Parton Interview*, *supra* note 1, at 42.

¹⁵⁵Paul Volcker, *Adverse Findings Letter to Secretary-General Kofi Annan and Greg Craig* (Mar. 21, 2005).

¹⁵⁶*Parton Interview*, *supra* note 1, at 71.

The IIC unequivocally stated that Mr. Parton was mistaken in his claim that the IIC provided non-adverse findings solely to the Secretary-General. For instance, the IIC stated that such findings were also provided to Benon Sevan.

In preparing this report, the Committee relied on the Parton Documents, the transcript of Mr. Parton's interview, and the written responses from the IIC and Mr. Parton. Mr. Parton acknowledged that the IIC did not withhold evidence of the Secretary-General's knowledge of a conflict of interest—all evidence of a conflict of interest was included in the IIC's reports. The IIC's reports are public and the Committee encourages interested parties to carefully consider the evidence they document. The Committee makes no findings regarding the disagreement between Mr. Parton and the IIC.

Regardless of criticisms of the IIC, it was the inherent inability of the existing UN organization that necessitated the creation of a temporary investigatory body. But a subsequent review of corruption within a UN program is not an adequate substitute for effective contemporaneous oversight. The UN must be reformed to prevent the recurrence of the corruption documented within the OFFP.

CONCLUSION

In parallel with its investigatory work on the United Nations, the Committee has pursued a legislative agenda in support of UN reform. In this report, both efforts of the Committee converge, because after all, such corruption, malfeasance and mismanagement are only possible due to the poor state of management practices at the United Nations. The legislative effort of the Committee is the "Henry J. Hyde United Nations Reform Act of 2005" (Hyde bill), a bill which twice has passed the House of Representatives.

If problems associated with the OFFP were simply an aberration, then calls for systemic reform might be of passing interest. Sadly, management problems associated with the OFFP are not an aberration.

In the past decade, the UN has endured a series of scandals that have eroded the credibility of the world body. In March, 2005 reports surfaced about a \$3 million scam involving a little known UN affiliated agency, the World Meteorological Organization (WMO), which facilitates exchange of weather data and information worldwide.¹⁵⁷ A long-time WMO employee was accused of skimming accounts at the organization during a 3–4 year period. Charges of gross negligence were also leveled against numerous other employees. A senior legal advisor for the weather agency commented that, while bad, "the internal (accounting) procedures were not the worst seen in the UN family of organizations."¹⁵⁸

The UN is mandated by the UN Security Council to conduct peacekeeping missions in areas plagued by extended conflict and/or government misrule. The UN has also weathered blistering criticism from human rights groups about its management of UN Peacekeeping operations, which presently number more than 50 separate missions worldwide.

¹⁵⁷ Judith Miller, "Theft and Mismanagement Charged at UN Weather Agency," *New York Times*, February 9, 2005.

¹⁵⁸ *Ibid.*

This year in the Democratic Republic of Congo, UN peacekeepers and civilian personnel were accused of widespread sexual exploitation of refugees. Also this year in Eritrea, UN peacekeeping staff rang up more than \$500,000 of unpaid international telephone calls. In 2004, two UN peacekeepers in Burundi were suspended following allegations of sexual misconduct. In Sierra Leone, UN peacekeepers were accused in 2001 by Human Rights Watch of systematic rape of women. In Bosnia, the UN police mission was accused of misconduct, corruption and sex trafficking in 2001. The UN quashed an investigation into involvement of UN police in the enslavement of Eastern European women in Bosnian brothels. In Angola, corruption and cronyism among UN purchasing officers from 1995 to '97 caused millions of dollars to be wasted and misspent. In Somalia, \$3.9 million vanished from UN HQ in Mogadishu in 1994.¹⁵⁹

A review by a Swiss management consulting firm earlier this year found “a string of management abuses—including misuse of funds—in the UN Electoral Assistance Division which is responsible for managing election in nations recovering from conflict as it did earlier this year in Iraq.¹⁶⁰ In 2001 and 2002, a report prepared by Save the Children documented sexual exploitation of refugees in Liberia, Sierra Leone and Guinea by personnel from over 40 aid agencies, including United Nations High Commissioner for Refugees (UNHCR). In 2001, UN workers in Kenya were accused of extorting fees for the agency’s essential services, which are supposed to be free. “The fees are rumored to range from a few dollars for an appointment or to fill out a form, to up to \$5,000 for a new life in the US, Canada or Australia.”¹⁶¹ Three UNHCR staff were also accused of conspiring to issue death threats against the U.S. Ambassador to Kenya.¹⁶²

The United Nations Children’s Fund (UNICEF) provides assistance to impoverished children. In 1995, two dozen staffers at UNICEF’s Kenya office defrauded or squandered up to \$10 million in agency funds.¹⁶³ Scandal consumed more than 25 percent of \$37 million program budget, and involved 10 percent of the 237-person staff. In 1996, a senior UNCTA official (UN Conference on Trade & Development) was accused in an embezzlement scheme involving the theft of between \$200,000 and \$600,000. In 1997, 16 employees of the United Nations Development Programme (UNDP), which manages a diverse array of poverty eradication and employment projects, were investigated after more than \$6 million was siphoned off over an 8-year period. A 1999 audit of the United Nations Educational, Scientific and Cultural Organization (UNESCO), envisioned to promote international cooperation in the fields of education, science, culture and communication, unearthed widespread cronyism and nepotism. Allegations emerged that two French cabinet ministers intervened directly with the Paris-based UNESCO Secretariat to ensure senior positions for former presidential aides.

¹⁵⁹ UN Administrative Tribunal, Digest of Cases and Jurisprudence, <http://webfarmext.un.org/hrmtribunal/unat—review—landmark—number.asp?AJT—number=742>.

¹⁶⁰ Mallet S.a.r.l, “Report of a Management Review: Electoral Assistance Division (EAD), Department of Political Affairs,” February 16, 2005.

¹⁶¹ News Summary, *New York Times*, February 19, 2001, p. 2.

¹⁶² Global Policy Forum, “Managers Blamed Over UN Agency Crime Rising,” <http://www.globalpolicy.org/nations/corrupt/2002/0125unhcr.htm>.

¹⁶³ Christopher Wren, UNICEF Says Fraud Cost \$10 Million,” *New York Times*, May 26, 1995, p. 3.

The audit revealed that 40 percent of UNESCO appointments and promotions failed to meet UNESCO's own criteria for fair hiring.¹⁶⁴

The UN's ability to manage its diverse portfolio of tasks will continue to degrade as long as the UN delays implementation of fundamental reforms. No observer of reform efforts, including the Hyde bill or the legislative alternative championed by Rep. Tom Lantos (D-CA), can pretend that the current structure and operations of the UN meet an acceptable standard. Even the UN itself has acknowledged the need for extensive remedial measures and, to its credit, has put forward a number of useful proposals for consideration. But no serious person could expect the UN to undertake fundamental reform on its own initiative.

In the United States, there is a widely-shared and bipartisan recognition of the need for change. Republican and Democratic administrations alike have long called for a more focused, transparent and responsible budget, one that reflects what should be the true priorities of the organization, shorn of duplicative, ineffective, and outdated programs, programs that should have been allowed to expire years ago. Aside from differences over an enforcement mechanism tying payment of U.S. dues to UN reform successes, the Hyde bill and the Lantos alternative are substantially similar. Members on both sides of the aisle in Congress agree that the time has indeed come for far-reaching and lasting reforms in the institution.

As a result of the Committee's investigation, and aware of evidence and findings presented by other separate investigations undertaken in the wake of corruption allegations, the Committee seeks to be constructive by setting forth a number of reforms necessary to restore credibility to UN management practices. Included among the committee's underlying principles in support of management reform are:

- Establishment of complete investigatory and budgetary independence for the Office of Independent Oversight Services in order to avoid political interference in its operations and duties;
- Creation of an Independent Oversight Board through which direct oversight over all issues related to the audit and investigatory functions of the UN can be observed, regulated, and carried out;
- Prompt establishment of an Ethics Office through which a proper Code of Conduct can be established for the operations of the UN, including a proper policy on financial disclosure for salaries, gift acceptance, travel allowances, and outside employment; the immediate establishment of a whistleblower policy that both protects and encourages employees of the UN to come forward when they see actions committed within the UN system that violate the rules of procedure.

Without a successful effort by the UN to create a culture of accountability and transparency, the ability of the organization to perform its core functions will be undermined. Among the obvious management and organizational weaknesses are a lack of appropriate and meaningful internal or external independent oversight

¹⁶⁴ "Not the Time for the United States to Rejoin UNESCO." The Heritage Foundation, <http://www.heritage.org/Research/InternationalOrganizations/BG/405.cfm>.

(including both audit and investigations); the near absence of adequate internal controls within the Secretariat allowing the proliferation of scandal; the almost total lack of accountability within the organization; and a lack of appropriate and modern accountability mechanisms. Also missing is: a functioning whistleblower protection policy; a code of ethics; an ethics training and certification regime; a financial disclosure process and policy; and a freedom of information policy.

In those cases in which wrongdoing has been identified, including unrelated corruption cases unearthed in the course of the Committee's work, too often the Secretariat has taken no action because of a lack of a functioning audit compliance mechanism. In particular, the Secretariat, headed by Secretary-General Annan, bears the added burden for ignoring evidence that senior managers repeatedly mislead investigators and fabricated evidence in order to punish low-level employees who had come forward with complaints or cooperated with internal UN inquiries.

The UN's capacity to punish wrongdoing within its ranks also suffers from a lack of a functioning independent administrative justice system, allowing crimes or malfeasance to go unpunished. When cases are brought up, they frequently are riddled with procedural errors such that many are overturned on appeal by the UN's own supreme tribunal. Each of the deficiencies detailed in this report has individually and collectively contributed to the culture of impropriety and the lack of accountability that under girded the oil-for-food era.

Both the Hyde bill and the Lantos alternative require a number of important reforms including:

- Creation of an Independent Oversight Board (IOB) with broad investigative authority through OIOS with an independent budget. The IOB will be responsible for overseeing the audit plans and recommending annual budgets of the Office of Internal Oversight Services (OIOS) and the Board of External Auditors.
- Establishment of whistleblower protection for all employees of the UN.
- Granting OIOS the authority to initiate investigations into mismanagement and wrongdoing, an authority which it does not currently have. In special circumstances, the IOB should be authorized to appoint a special investigator and staff to investigate matters involving senior UN officials.
- Creation of an Ethics Office which is tasked with, among other things, oversight of financial disclosure forms with the goal of thwarting abuses and conflicts of interest. The Office of Ethics (UNEO) should be responsible for creating and managing a Code of Ethics for all UN employees, including making policy, providing education and annual training, and overseeing and enforcing the implementation of the Code. The UNEO should receive all of its operating funds through appropriations from the General Assembly and should not be dependent on any other entity within the UN for such funding. The Director of the UNEO should be required to report on proposals for implementing a system for the filing and review of annual financial disclosure forms for all UN employ-

ees at the P-5 level and above, as well as all consultants compensated at any salary level. The Director should also include in his report proposals for making public: all salaries and other compensation for, and payments to, UN employees—including, but not limited to, pensions and buyouts, and annual payments to consultants; travel and per diem rates and payments for all UN employees.

- Creation of the position of Chief Operating Officer, a vital position for the proper and smoother operation of the UN. In its present form, the UN suffers from a lack of proper administration. The position of Chief Operating Officer (COO), who will report to the Secretary General, will be responsible for the daily administration, operation and supervision, and the direction and control of the business of the UN. As another check and balance in the UN system, the COO will serve as an administrator who can ensure the functioning of the UN, separate from the political functions of the institution. It was in this strata that the UN became bogged down in the daily competitive grind of international politics and individual national drive, which in the case of the OFFP proved so important in the dysfunctional nature of the operations of the Security Council. Under this plan, the COO would allow the Secretary-General a greater ability to pay attention to the details of such constituent parts of the UN, inevitably improving the governance and accountability of the UN.

The historical impact of the UN Oil for Food scandal will not be entirely understood until conclusions have been drawn by the numerous investigations now underway in countries whose citizens or officials are implicated in the scandal including India, France, the U.S. and others. To the extent that the U.S. citizens were implicated in the scandal, the U.S. Attorney for the Southern District of New York, the Office of the Manhattan District Attorney, and perhaps other offices as well, have already brought criminal cases against Americans who allegedly paid bribes in violation of the Foreign Corrupt Practices Act. Some national governments are moving forward only now with investigations. Because of this, serious consideration should be given to opening the files of the IIC to greater public scrutiny. Rather than simply transferring its files back to the UN, it is vital that the IIC place all of its work papers, documents and records in public custody. This work was paid for by the Iraqi people, with their oil revenues, not the UN. The Committee believes strongly that these records should be given to a public institution, perhaps a University or other similar entity, in order to allow for further research and review by academics, journalists, and human rights researchers as well as investigators from member governments. To the extent possible, the archives of the IIC should also be accessible via the internet. Appropriate steps should, of course, be taken to protect sensitive security information. Chairman Hyde has introduced legislation to encourage the establishment of this archive.

Some consideration should also be given to the creation of an outside commission to examine the full breadth and scope of records and actions of BNP in relation to its work for the UN OFFP. Additional work should also be undertaken to explain the

role of former UN Secretary-General Boutros Boutros-Ghali and his family, and his role in formulating the OFFP. Further work needs to be undertaken to explain the role of Cotecna executives Robert and Elie Massey, as well as Michael Wilson for their respective roles in obtaining the award of the UN contract for the humanitarian inspection of goods as part of the OFFP.

Like Congress, the Department of State should monitor whether the UN pursues disciplinary proceedings against other individuals cited in the IIC reports as having violated UN procurement procedures or staff regulations but who remain on the UN payroll, including Diana Mills-Ayree, Iqbal Riza, and to examine the role of Giandomenico Picco, formerly an Under-Secretary General of the UN. Likewise, Maurice Strong should be examined for his role in the OFFP.

ADDITIONAL AND DISSENTING VIEWS

INTRODUCTION

Although we agree with certain of its conclusions, the report by the majority on the Subcommittee is a flawed and incomplete product and we cannot sign on to it. We respectfully offer additional and dissenting views.

First, it is important to note that the report's basic conclusion—that the UN must undergo significant and meaningful reform—is one that we agree with completely. And we do not dispute that there were a number of serious problems with the Oil-for-Food Program (OFFP), which in turn revealed structural problems in the UN itself. As supporters of the Lantos alternative to the Hyde Act, we recognize the critical need for change at the UN if it is to meet the challenges it faces in the 21st century. We believe that any criminal activities in the OFFP should be investigated and punished by the appropriate authorities with the full cooperation of the UN and its member states. We applaud the willingness of the Secretary-General to remove the diplomatic immunity of officials for that purpose.

However, the report's basic flaw is that it provides a distorted picture of the UN and how it operates. It makes almost no mention of the power, role, or responsibility of UN member states, particularly the United States and members of the Security Council, in creating and overseeing the OFFP, enforcing the sanctions on Iraq, or managing the UN. As a result, the report does little to add to the constructive criticism that can help promote productive UN reform, improve future UN programs, and avoid repeating the failures of the OFFP.

Moreover, by failing to examine the role of the US in the OFFP and the UN, the majority has produced a report that represents an abdication of this Subcommittee's most basic obligation as an arm of the US Congress: to oversee the activities of the executive branch of the US government, particularly the State Department and its mission to the UN.

There have been a number of investigations into the OFFP, the most well-known and authoritative of which are the products of the Independent Inquiry Committee (IIC) and the Comprehensive Report of the Special Advisor to the Director of Central Intelligence on Iraq's Weapons of Mass Destruction (the "Duelfer Report"). This Subcommittee had a unique opportunity to complement those reports' findings by examining a topic they did not adequately cover: the decisions and actions of the US in its role as a permanent member of the Security Council, with the responsibility of overseeing the activities of the OFFP as well as the larger sanctions regime on Iraq.

Such an inquiry would have provided key insights into the US rationale and decision-making process for its choices regarding the OFFP and the Iraq sanctions regime; would have determined what responsibility the US bears for the problems of the OFFP and violations of the sanctions; would have painted a clearer picture of the operations of the Security Council as well as the larger UN system; and would have provided a clear example of the activities of a member state in the UN vis-à-vis the Secretariat. In turn, this would have enabled the Congress to make any legislative and financial modifications to the agencies under our jurisdiction necessary to enhance the US capacity to engage in effective diplomacy, advocacy, and oversight at the UN. It would have demonstrated through action, not simply words, the American commitment to transparency and accountability. It would have informed and assisted efforts to promote positive changes at the UN. And it would have explained to the American people and the world why the US made the choices it did.

Unfortunately, the majority on this Subcommittee chose not to fulfill our constitutional responsibility to oversee and investigate the activities of the executive branch. The result is a flawed and incomplete report, and we cannot agree to it.

EXAMPLES OF FLAWS IN THE MAJORITY REPORT

There are numerous problems in (and questions raised by) the majority's report, but given the compressed schedule we faced after receiving the majority's draft, we have chosen to detail some of the most obvious shortcomings and to provide our own commentary.

Misrepresentation of the Reality of the United Nations

In discussing the UN it is critical to recognize that it is, first and foremost, a diplomatic institution, not a governing one. This is a key distinction for understanding many of the problems confronting the UN today. Unfortunately, the majority's report does not describe this reality. Thus, it gives a distorted picture of how the UN operates and where the real power and authority in the organization exists.

The UN was created after the Second World War as an organization for the peaceful resolution of disputes between its member states. To that end, the member states work through the General Assembly, the Security Council, and various other bodies in the institution. The Secretariat, which is the part of the UN headed by the Secretary-General, is tasked with supporting the activities of the member states and running the organization's day-to-day affairs. In addition, many independent international organizations, such as the Universal Postal Union and World Meteorological Organization, operate within the UN "system," although they remain largely autonomous, with their own funding sources and member state "boards of directors."

Over the years, the UN system has evolved into much more than a venue for conflict resolution. Some of its many activities now include providing relief services, fighting disease, conducting peace-keeping operations, promoting culture, and fostering economic growth. In particular, as the phenomenon of "failed states" has increased, the UN's role has expanded dramatically. Often, the UN

is expected to accept the kinds of responsibilities that are usually demanded of governments. As a result, the profile of the organization, particularly its most visible representative—the Secretary-General—has risen dramatically, as have the tasks of the Secretariat.

Yet the fact of the matter is that power in the UN remains primarily in the hands of the member states, not the Secretariat. Patrick Kennedy, then-US Ambassador to the UN for Management and Reform, explained this to our Subcommittee on March 2, 2005:

Ambassador KENNEDY. I think in summary, sir, you could say that when you say the word U.N., you are talking about essentially two things. You are talking about the Secretariat, meaning the staff who are hired to run the United Nations operations.

Mr. DELAHUNT. The hired help, if you will, with all due respect.

Ambassador KENNEDY. The hired help, with all due respect. So you have the Secretariat, and you have the staff, and the owners of the U.N., in effect, are the member states. And it is the member states that set in writing the policies of the United Nations, and pass resolutions, whether it is in the General Assembly, the Economic and Social Council, or the Security Council, that set down the rules and procedures under which operations take place of the United Nations, yes, sir.¹

Failing to recognize the reality that power in the UN rests principally with the member states, not the Secretariat, is the fatal flaw in the majority's report. The Secretariat certainly shares responsibility for the problems with the OFFP, as described by the IIC, and particularly demonstrated by the malfeasance of Benon Sevan. However, the report fails to fully acknowledge that the member states of the Security Council—including the US—created, approved, and oversaw the OFFP. Furthermore, the imposition of quasi-governmental responsibilities on the UN without a similar reconfiguration of the lines of authority may have doomed the OFFP to problems from the start. Thus, the US and other members of the Security Council bear significant responsibility for the Program's failings.

This Subcommittee, as an authorized oversight body of a member state that has a permanent seat on the Security Council, had the opportunity to provide another dimension to the discussion of the OFFP and UN reform by investigating the actions of that member state in the context of the OFFP. Unfortunately we have not done so.

Confusion of Iraq Sanctions With the OFFP

The report also makes the fundamental mistake of confusing the OFFP and the UN sanctions on Iraq. The OFFP was not responsible for enforcing the sanctions, nor were its contractors. That responsibility belonged to the Security Council and other member

¹*United Nations Operations: Integrity and Accountability: Hearing Before the Subcomm. on Oversight and Investigations of the House Comm. on Int'l Relations, 109th Cong. 16 (2005) (exchange between Amb. Kennedy and Rep. Delahunt).*

states of the UN, particularly Iraq's neighbors. The OFFP was meant to provide relief to the people of Iraq from the unforeseen consequences of sanctions and avert a humanitarian catastrophe, so that Saddam could not exploit their suffering in his bid to have the embargo dropped without meeting its conditions. In this effort, the OFFP was largely successful, and allowed the sanctions to be maintained on Iraq until 2003. And, as we know now, the sanctions were successful in preventing Saddam Hussein's regime from reconstituting his weapons of mass destruction.

Nevertheless, much of the public discussion of the OFFP tends to conflate all of Saddam's illicit income during the 1991–2003 sanctions under the term "Oil-for-Food Program," thus implying that the Program was somehow responsible for enforcing the embargo on Iraq. The report makes a similarly confusing statement:

Of the estimated \$65 billion in oil sales during the life of the program (1996–2003) at least as much as \$10 billion was siphoned off by Saddam Hussein in the form of illicit revenue from oil smuggling and contract kickbacks, all on the backs of the Iraqi people for whom this program was intended to benefit.²

The statement highlighted in bold is incorrect and misleading. According to the report by Charles Duelfer, the Central Intelligence Agency official charged by President Bush with investigating Saddam's weapons of mass destruction, Saddam skimmed approximately \$1.8 billion from the OFFP.³ The IIC had similar findings.⁴ As the chart below indicates, this means that only sixteen percent of all of Saddam's illegal revenue during sanctions came from corruption of the OFFP.⁵

Duelfer's report details how eleven percent of Iraq's illicit income, or \$1.2 billion, came from smuggling ("Border and Private Sector Cash Sales"), while the vast majority—seventy-three percent, or \$8 billion—came from trade protocols.⁶ The protocols were signed, written agreements between the Iraqi regime and the governments of Jordan, Syria, Turkey, and Egypt. According to the Duelfer Report, through its trade protocol, "Jordan was the key to Iraq's financial survival from the imposition of UN sanctions in August 1990 until the implementation of the UN's [OFFP]."⁷ Neither the smuggling nor the trade protocols had anything to do with the OFFP. Both were blatant violations of the UN sanctions on Iraq.

It was the responsibility of the member states of the UN—particularly those on the Security Council and those neighboring Iraq—to block the smuggling and the trade protocols. As a permanent, veto-wielding member of the Security Council—and a close

²SUBCOMM. ON OVERSIGHT AND INVESTIGATIONS, HOUSE COMM. ON INT'L RELATIONS, THE OIL-FOR-FOOD PROGRAM: THE SYSTEMIC FAILURE OF THE UNITED NATIONS 1, para. 4 (Dec. 2005) (draft) (emphasis added) [hereinafter O&I REPORT].

³1 CENTRAL INTELLIGENCE AGENCY, COMPREHENSIVE REPORT OF THE SPECIAL ADVISOR TO THE DCI ON IRAQ'S WMD, Regime Finance and Procurement 19 (Sept. 30, 2004).

⁴1 INDEPENDENT INQUIRY COMM. INTO THE U.N. OIL-FOR-FOOD PROGRAM, THE MANAGEMENT OF THE UNITED NATIONS OIL-FOR-FOOD PROGRAM 103 (Sept. 7, 2005).

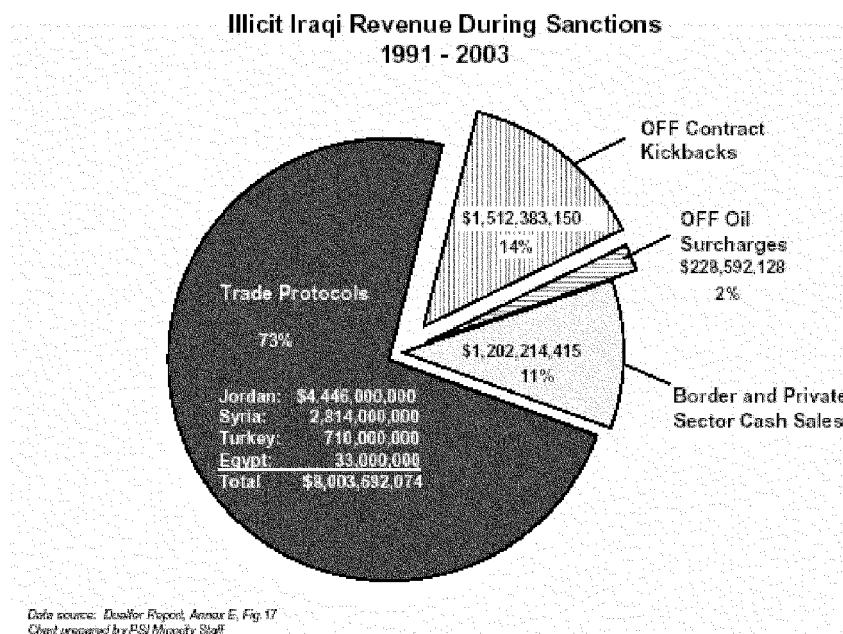
⁵1 CENTRAL INTELLIGENCE AGENCY, *supra* note 3, at 23, Figure 9.

⁶*Id.* at 23, Figure 8. The IIC found that Iraq's illicit revenue from smuggling and the trade protocols was \$1 billion and just under \$10 billion, respectively. 1 INDEPENDENT INQUIRY COMM. INTO THE U.N. OIL-FOR-FOOD PROGRAM, *supra* note 4, at 103.

⁷1 CENTRAL INTELLIGENCE AGENCY, *supra* note 3, at 24.

ally of Jordan, Turkey, and Egypt—the US was in a key position to take action in this matter. However, it appears not to have done so. In fact, it actually waived US sanctions on Jordan and Turkey for violating the UN sanctions on Iraq.⁸

This highlights one of the structural challenges facing the UN; the effectiveness of its operations, particularly sanctions, is often dependent on the political will of its member states, not the capacity or intentions of the Secretariat. This Subcommittee is in a unique position, with its direct oversight responsibility for the US mission to the UN, to determine why the US allowed the trade protocols and the smuggling to go forward and what steps were taken to stop them. We have not done so.



Lack of Context for the Creation, Organization, and Oversight of the OFFP

The report fails to put the genesis and supervision of the OFFP in the proper context—that is, as a program of the UN, where member states hold the power. Examples include:

The initial and ultimately fatal weakness of this arrangement was the exclusive authority it granted to Saddam Hussein to choose buyers for Iraq's oil as well as the suppliers of humanitarian goods.⁹

Contracting, however, was to be done directly between the various Iraqi ministries and suppliers, giving Saddam Hussein

⁸2 INDEPENDENT INQUIRY COMM. INTO THE U.N. OIL-FOR-FOOD PROGRAM, THE MANAGEMENT OF THE UNITED NATIONS OIL-FOR-FOOD PROGRAM 190-97, 231-32 (Sept. 7, 2005).

⁹O&I REPORT, *supra* note 2, at 1, para. 3.

*and his regime the opportunity to corrupt the program in the absence of effective oversight from the U.N.*¹⁰

*In addition to the lack of personnel and expertise, the U.N.'s basic initial strategy was flawed. As a former 661 Committee diplomat explained, obtaining the cooperation of the Iraqi government was the problem but also the key to the program.*¹¹

We agree that allowing Saddam to choose the buyers for Iraq's oil and suppliers of humanitarian goods was the basic flaw in the OFFP. However, the majority's report fails to explain the context in which this agreement was reached; does not inform the reader that the US not only accepted this flawed arrangement, but actually had a hand in proposing it; and leaves out the critical fact that the Security Council (of which the US is a permanent member) retained the exclusive power to review—and accept or reject—every single contract under the program.

The sanctions the UN Security Council placed on Iraq after its invasion of Kuwait in 1990 were some of the most comprehensive in history. Unfortunately, they gave Saddam the opportunity to exploit the suffering of the Iraqi people in his effort to end the sanctions without meeting their conditions. As the report indicates, an early version of the Oil-for-Food Program was proposed in 1991.¹² The idea was that providing humanitarian relief to Iraq's people would remove Saddam's ability to hold them hostage while allowing the sanctions to be maintained. But, since the UN is a diplomatic organization that treats its member states as sovereign entities—even when they are under sanctions—Iraq's acceptance was necessary in order for the program to go into effect.¹³ Saddam rejected the proposal,¹⁴ and the suffering of the Iraqi people increased horrifically.

By 1995, international pressure was growing—especially on the US and the United Kingdom, the strongest advocates of the embargo—for the sanctions to be dropped, even though Iraq had not met the conditions for their removal.¹⁵ In an effort to preserve the sanctions, the US, along with other Security Council members, proposed a resolution creating an oil-for-food program that “was intended to be more palatable to the Iraqi leadership.”¹⁶ It was adopted by the Security Council as Resolution 986, which Iraq initially rejected.¹⁷

However, the August 8, 1995 defection of Saddam's son-in-law, Hussein Kamel, revealed that Saddam was still working on weapons of mass destruction programs and hiding them from UN inspectors, causing the Security Council to put off any further consideration of weakening or removing sanctions.¹⁸ Meanwhile, the hu-

¹⁰ *Id.* at 10, para. 1.

¹¹ *Id.* at 10, para. 5.

¹² 2 INDEPENDENT INQUIRY COMM. INTO THE U.N. OIL-FOR-FOOD PROGRAM, *supra* note 8, at 43–44.

¹³ *See* 1 INDEPENDENT INQUIRY COMM. INTO THE U.N. OIL-FOR-FOOD PROGRAM, *supra* note 4, at 14; INDEPENDENT INQUIRY COMM. INTO THE U.N. OIL-FOR-FOOD PROGRAM, INTERIM REPORT 4 (Feb. 3, 2005) [hereinafter INTERIM REPORT].

¹⁴ 2 INDEPENDENT INQUIRY COMM. INTO THE U.N. OIL-FOR-FOOD PROGRAM, *supra* note 8, at 45.

¹⁵ *See Id.* at 50–52.

¹⁶ *Id.* at 39–40.

¹⁷ *Id.* at 51–55.

¹⁸ *Id.* at 58–61.

manitarian situation in Iraq was becoming so bad that it was threatening the viability of the state itself—and thus Saddam’s hold on power.¹⁹ It was in this context that the US and Saddam both found it advantageous to come to an agreement on creating an oil-for-food program. Then-UN Secretary-General Boutros Boutros-Ghali—under supervision by the Security Council, particularly the US—negotiated the details of the implementation of the program with the Iraqi government.²⁰ In May 1996 Iraq accepted Resolution 986, and the Oil-for-Food Program was born.²¹

The majority’s report is correct that the agreement allowed Iraq to negotiate oil and humanitarian contracts directly with proposed suppliers and buyers. However, the majority’s report fails to mention that explicitly enshrined in Resolution 986 was the exclusive right of the Security Council to review and accept or reject any of those contracts. As the IIC noted, “the 661 Committee [the panel mirroring the Security Council, which oversaw the OFFP and the sanctions on Iraq] retained the right to approve or reject all contracts submitted by prospective buyers of Iraqi oil or suppliers of humanitarian goods.”²² This was a right that the US, as a permanent member of the Security Council and thus of the 661 Committee, utilized throughout the life of the OFFP to block humanitarian contracts with the potential for “dual use” (military and civilian application).²³ As the US Government Accountability Office’s chart below indicates, every export contract went through an extensive review by multiple US agencies.²⁴ Significantly, as we will discuss later, despite efforts by the UN Secretariat to raise concerns about corrupt contracts, it appears that only two contracts (out of approximately 30,000) were ever rejected because of pricing-related concerns.²⁵ And yet, there was concern that Saddam might try to manipulate the program for his own ends, as evidenced by the quote in the majority’s report from a 661 Committee diplomat: it was “. . . assumed from the beginning that Iraq would corrupt [the OFFP] from the start.”²⁶

Leaving out the fact that the US essentially had a veto on every contract under the OFFP is an inexcusable lapse in the report that fundamentally undermines its value. It gives an incomplete and misleading impression of how the OFFP operated and where responsibility for its failings lie. The Subcommittee could have determined why the US proposed the OFFP in the first place and illuminated the challenges involved in creating the program. It could have investigated why the US did not reject contracts even when aware that they were being corrupted. But it did not.

¹⁹ *Id.*

²⁰ *See Id.* at 66.

²¹ *Id.* at 70–71.

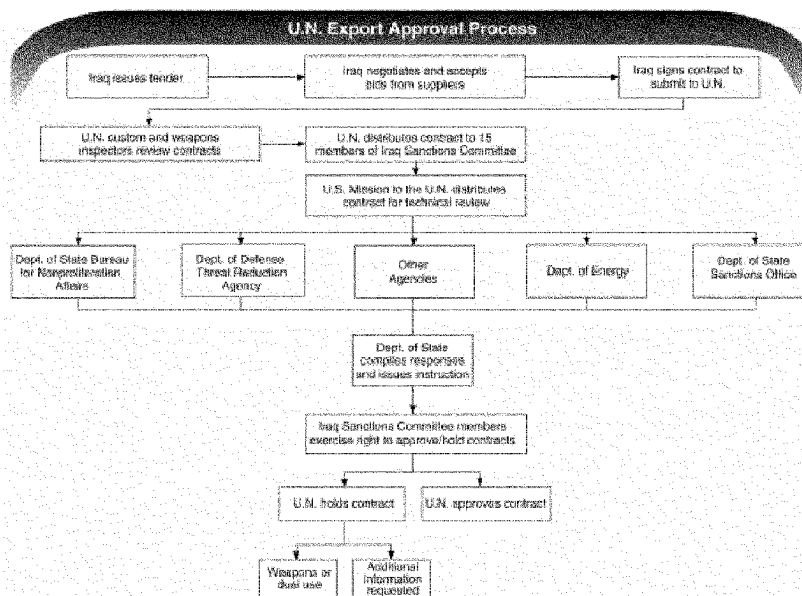
²² *Id.* at 54.

²³ *Id.* at 154–55.

²⁴ GENERAL ACCOUNTING OFFICE, GAO-02-625, WEAPONS OF MASS DESTRUCTION: U.N. CONFRONTS SIGNIFICANT CHALLENGES IN IMPLEMENTING SANCTIONS AGAINST IRAQ 18, Figure 5 (May 2002).

²⁵ 2 INDEPENDENT INQUIRY COMM. INTO THE U.N. OIL-FOR-FOOD PROGRAM, *supra* note 8, at 119.

²⁶ O&I REPORT, *supra* note 2, at 10.



Distortions Regarding the Selection of Banque National de Paris

We recognize that there were several inexcusable failings in BNP's management of the escrow account for the OFFP; not only has that been confirmed by other reports, but BNP officials have testified to that fact before this Subcommittee.²⁷

However, the majority's report presents an imprecise picture of the process by which BNP was selected:

Saddam Hussein was allowed to choose the bank, BNP, which was awarded the escrow account into which the proceeds of the sale of Iraqi oil were deposited. Iraqi Central Bankers told the Committee that one reason the bank was chosen was that BNP was a major holder of Iraqi government accounts overseas. BNP maintains that it won the contract in a fair bid, a point that the IIC disputes. According to the IIC, former Secretary-General Boutros Boutros Ghali [sic] unfairly awarded the contract to BNP.²⁸

Significantly, this section fails to note that the US, as a member state directly involved in the establishment of the OFFP, played an active role in the process which resulted in the selection of BNP. Thus, the picture is painted of BNP as "Saddam's bank" which obtained the contract through underhanded means without any oversight or control from the US, potentially giving the further impression that BNP actively participated in and enabled Saddam's corruption of the OFFP.

²⁷ See *The Role of BNP-Paribas SA (Banque National de Paris) in the United Nations Oil-for-Food Program: Hearing Before the Subcomm. on Oversight and Investigations of the House Comm. on Int'l Relations*, 109th Cong. (2005) [hereinafter *BNP Hearing*].

²⁸ O&I REPORT, *supra* note 2, at 9, para. 5 (citations omitted).

The IIC's reports describe a more complex bidding and negotiation process surrounding the selection of BNP than the impression given by the simple statement, "Saddam Hussein was allowed to choose the bank." In fact, the IIC states that, in negotiating the Iraq-UN Memorandum of Understanding (MoU) that governed the establishment of the OFFP, "the parties agreed that the Secretary-General would choose the bank but only after consulting with Iraq."²⁹ According to the IIC, the US played a key role in crafting the MoU: "The United States and United Kingdom used their access to the draft agreement to tighten some of the provisions. For example, the two member states added language governing the selection of the bank holding the escrow account. . . ."³⁰

Although the IIC confirms that BNP was one of several banks suggested by the Iraqi government, the UN considered several other banks that were not proposed by the Iraqis.³¹ In the end, the final list came down to a US bank, two Swiss banks, and BNP. One of the Swiss banks, Credit Suisse, was the highest-ranked according to the criteria established by the UN Treasury.³² However, according to the IIC, just four days before the contract was awarded, the US objected to a Swiss bank:

*The United States stated three problems it had with the selection of a Swiss bank: 1) lack of transparency in Swiss banking laws; 2) Switzerland was then a non-member of the United Nations, which would make it difficult to enforce a Security Council resolution; and 3) Saddam Hussein and his family maintained accounts in Switzerland, and a situation in which their personal assets and the escrow account could overlap should be avoided.*³³

Because the Iraqis apparently also objected to an American bank, BNP became the "compromise" choice. Secretary-General Boutros Boutros-Ghali discussed the matter with the Iraqi government, who indicated a preference for BNP.³⁴ BNP was then awarded the contract.³⁵ Boutros-Ghali later defended the decision to the IIC, saying:

The choice of the bank, BNP, for the programme for the escrow account was done *in agreement with the American delegation and the Iraqi delegation*. It was a political decision to be able to implement the Memorandum of Understanding which was approved by the Security Council.³⁶

The "political nature" of the decision and the involvement of the US, Iraqi and other delegations again demonstrates how the real power at the UN lies with the member states. This Subcommittee could have investigated why and how the US made the decisions it did regarding the process and selection of the bank. Unfortunately it did not.

²⁹ INTERIM REPORT, *supra* note 13, at 73.

³⁰ 2 INDEPENDENT INQUIRY COMM. INTO THE U.N. OIL-FOR-FOOD PROGRAM, *supra* note 8, at 67.

³¹ INTERIM REPORT, *supra* note 13, at 74-77.

³² *Id.* at 74-77.

³³ *Id.* at 11 (emphasis added).

³⁴ *Id.*

³⁵ *Id.* at 77.

³⁶ *Id.* at 83 (emphasis added).

Misleading Statements Regarding the Operation of the OFFP

The report also makes misleading statements regarding the operation of the OFFP. One such statement takes one incident and portrays it as a pervasive element of the Program:

*One episode of “illegal activities” that took place was the overfilling of the tanker, the “Essex,” in October 2001. At issue was the practice of “topping off,” or filling the vessel with more oil than contracted for. . . . Because of the poor oversight and management by the U.N., there is no way to confirm whether or not such practices were routine.*³⁷

The report fails to acknowledge that this issue was addressed. At the March 17, 2005, Subcommittee hearing, Saybolt Group—the company contracted by the UN to inspect tanker loadings of Iraqi oil at the two UN-approved ports—responded to questions about the *Essex* and “topping off.” John Denson, the company’s General Counsel testified:

[U]pon learning of the [two *Essex*] incidents, Saybolt immediately investigated what happened and why it happened. Our investigation found no evidence to suggest that the company knew of the topping-off incidents.

The evidence indicated that the *Essex* loaded additional oil, approximately 230,000 barrels of oil each of the two times, after the Saybolt inspectors had already certified the loading amount correctly and had left the vessel to return to their living quarters.

To prevent any recurrence, however, Saybolt immediately instituted several additional safeguards. Under the new procedures, our inspectors stayed on board ships until their departure. If departure was delayed, we placed numbered sealed caps on the vessel loading valves, which we again inspected prior to departure to make sure they had not been removed. These additional measures were effective, and we are aware of no further incidents of topping off.³⁸

The report also misrepresents who bore the responsibility for enforcing the sanctions imposed on Iraq.

*Large shipments of humanitarian goods were being moved across Iraq’s borders under the OFFP—borders that companies operating under U.N. contracts were supposed to monitor for evidence of smuggling illicit goods.*³⁹

However, the ICC clearly refuted this statement.

By the Programme’s design, inspectors were charged only with the inspection of oils and goods that were financed under the Programme. They had no directions or mandate to inspect or

³⁷ O&I REPORT, *supra* note 2, at 13–14.

³⁸ *The United Nations Oil-for-Food Program: The Cotecna and Saybolt Inspection Firms: Hearing Before the Subcomm. on Oversight and Investigations of the House Comm. on Int’l Relations, 109th Cong. 9 (2005)* (statement of John Denson, General Counsel, Saybolt Group) [hereinafter *Cotecna and Saybolt Hearing*].

³⁹ O&I REPORT, *supra* note 2, at 18, para. 5.

report on cargo smuggled in violation of United Nations sanctions outside the Programme.⁴⁰

Furthermore, the report's statement was also refuted by testimony before the Subcommittee.⁴¹

Questionable use of Sources

It must be noted that many of the interviewees relied upon as sources for this report are unidentified except by occupation, and several are former Saddam Hussein regime officials. The report fails to address the possibility that interviewees may lack credibility or direct knowledge of what they claim. It takes their representations as fact, neglecting the risk that statements relied upon without corroborating evidence from other sources often amount to little more than hearsay. It does not provide any justification for the grant of anonymity and does not clarify whether sources received any compensation or benefit for speaking with the Subcommittee. Given recent experience with anonymous sources of explosive allegations—such as the infamous “Curveball” who provided what turned out to be false information about Iraq’s WMD⁴²—this is extremely disturbing.

An example is the majority’s justification for its conclusion that the Iraqi regime implemented a conspiracy to document phantom deliveries of humanitarian goods as legitimate deliveries under the program:

A purely paper transaction in which humanitarian goods were never delivered. *According to a CPA official, this type of transaction involved the active participation of the inspection team, who was bribed, and the Iraqi Ministry, who was ordered to sign for the receipt of non-existing goods. Proceeds of the sale were shared among regime officials.*⁴³

Several issues arise with this reference to the Hussein regime’s OFFP corruption schemes. It makes serious allegations, one of several attributed to a “former CPA official.”⁴⁴ No minority Subcommittee staff were present at the interview—even though it took place nine months into the Subcommittee’s tenure—and no notes from it were furnished to minority Subcommittee staff. While a case could be made that Iraqi sources might face retaliation if named, one can discern no reason why an American official could not be identified so that the person’s claims and motivations could be verified.

⁴⁰ 1 INDEPENDENT INQUIRY COMM. INTO THE U.N. OIL-FOR-FOOD PROGRAM, *supra* note 4, at 31.

⁴¹ *Cotecna and Saybolt Hearing, supra* note 38, at 16–17 (statement of Evelyn Suarez, Counsel, Cotecna S.A.) (“Most people misunderstand Cotecna’s role in Iraq. Their role did not involve policing the Iraqi border, enforcing sanctions or performing traditional Customs inspection functions. . . . Cotecna’s role was limited to authentication, a process unique to the U.N. Oil-for-Food Program. . . . Cotecna was not authorized to monitor outbound oil, inbound oil, weapons, contraband, smuggled goods, non-Oil-for-Food goods imported by the Government of Iraq and goods imported by private parties.”).

⁴² See Bob Drogin and John Goetz, *The Curveball Saga*, L.A. TIMES, Nov. 20, 2005.

⁴³ O&I REPORT, *supra* note 2, at 11.

⁴⁴ *Id.* at 31 n.30.

ADDITIONAL TOPICS MERITING INVESTIGATION

In the course of the Subcommittee's investigative efforts, issues emerged that were, at best, only tangentially related to the OFFP. The Subcommittee's focus on Alexander Yakovlev, IHC, and Eurest Support Services in the report is an example of such a peripheral issue. Yet, the Committee and Subcommittee did not seriously look into other issues that more appropriately bear on US government activities and fall under the Committee and Subcommittee's oversight responsibilities. What follow are examples of such important issues that, if examined, could add to the lessons learned from the problems revealed by the OFFP experience, and are certainly worthy of full investigation and public hearings by this Subcommittee.

Trade Protocols

Charles Duelfer, the Special Advisor to the Director of Central Intelligence on Iraq's WMD, reported that the vast majority of the illicit revenue the Saddam Hussein regime received during the period of UN sanctions came from trade and smuggling outside the OFFP. Nearly three-quarters of the regime's illegal revenue during the 1991–2003 sanctions—over \$8 billion—came from trade protocols negotiated with Jordan, Turkey, Syria, and Egypt.⁴⁵ The IIC estimated these protocols netted the Hussein regime nearly \$10 billion.⁴⁶ The protocols were formal, written agreements between these countries' governments and Saddam's regime whereby Iraq sold oil to its neighbors in exchange for cash, credit, and goods.⁴⁷ The Duelfer report indicated that Saddam used the funds derived from these protocols to slow the deterioration of his military and to obtain dual-use items which could be used for WMD programs.⁴⁸

The US and the Security Council were aware of the ongoing trade in violation of UN sanctions from the beginning.⁴⁹ Jordan officially notified the UN Security Council in 1991 that it intended to resume trade with Iraq.⁵⁰ The Security Council merely "took note" of Jordan's notification.⁵¹ The US even issued waivers required by US law so that Jordan and Turkey would be eligible for US foreign assistance because of their violation of UN sanctions on Iraq.⁵²

Representative Delahunt raised the issue of trade protocols beginning with the Subcommittee's first hearing on February 9, 2005. Representative Schiff also raised the issue at the March 17, 2005, Subcommittee hearing. Chairman Rohrabacher responded:

In terms of the shipments of oil to Turkey and to Jordan which evaded, basically, the whole embargo that had been placed on Saddam Hussein, this Chairman does intend to call witnesses about that. We will especially call witnesses for those Government officials in the United States who initiated the policy.

⁴⁵ 1 CENTRAL INTELLIGENCE AGENCY, *supra* note 3, at 19–28.

⁴⁶ 1 INDEPENDENT INQUIRY COMM. INTO THE U.N. OIL-FOR-FOOD PROGRAM, *supra* note 4, at 103.

⁴⁷ 1 CENTRAL INTELLIGENCE AGENCY, *supra* note 3, at 19–28.

⁴⁸ *Id.* at 24.

⁴⁹ 2 INDEPENDENT INQUIRY COMM. INTO THE U.N. OIL-FOR-FOOD PROGRAM, *supra* note 8, at 190.

⁵⁰ *Id.* at 194.

⁵¹ *Id.*

⁵² *Id.* at 197, 231–32.

. . . The fact is that the United States obviously had a policy of permitting Turkey and Jordan, for whatever reason, to receive oil that was contradictory to the sanctions that had been laid down in the embargo.⁵³

Representative Delahunt raised the issue again at the April 28, 2005, Subcommittee hearing. However, only one hearing has been held where the subject was a trade protocol with Iraq. Yet, that hearing was misleadingly entitled “Syria and the United Nations Oil-for-Food Program” when it was really about the Syrian trade protocol, a distinctly different subject. Representative Delahunt again raised the question of the trade protocols at that hearing, on July 27, 2005, and requested similar hearings for Jordan, Turkey, and Egypt—the other three countries known to have participated in illicit trade with Saddam. To date, no such hearings have been held.

The “661 Committee”

The 661 Committee was created by UN Security Resolution 661 to oversee the sanctions regime imposed on Iraq following its invasion of Kuwait in 1990.⁵⁴ The 661 Committee’s membership mirrored that of the Security Council; thus, the US was a permanent member of the 661 Committee.⁵⁵ The 661 Committee was tasked with oversight of the OFFP when the Program was established in 1995.⁵⁶ It has become clear that the 661 Committee, and therefore the US, failed in certain aspects of its oversight functions and bears some responsibility for the OFFP’s problems.

For example, the 661 Committee failed to address the several illicit trade protocols Iraq had with its neighbors discussed above. In May 1991, the 661 Committee “took note” of Jordan’s open and illicit trade with Iraq in violation of Resolution 661.⁵⁷ The 661 Committee also did not act in the case of Turkey and Syria.⁵⁸

Another example: the UN Secretariat’s Office of the Iraq Program, responsible for forwarding OFFP contract applications to the 661 Committee for approval, notified the 661 Committee of seventy contracts that were potentially overpriced.⁵⁹ The US placed holds on thirty-three of these contracts, but only one was related to pricing concerns.⁶⁰ The Saddam Hussein regime levied kickbacks on at least forty-five of these contracts, totaling \$9.2 million.⁶¹

The 661 Committee also failed to address reports of the Khor al-Amaya smuggling incident discussed below. The issue was brought to the 661 Committee’s attention by a UN Oil Overseer and various media reports, including *The Wall Street Journal*.⁶² Yet, the 661 Committee took no action.⁶³

⁵³ *Cotecna and Saybolt Hearing*, *supra* note 38, at 6 (statement of Chairman Rohrabacher).

⁵⁴ S.C. Res. 661, U.N. SCOR, 45th Sess., 2933rd mtg., U.N. Doc. S/Res/661 (1990).

⁵⁵ *Id.*

⁵⁶ S.C. Res. 986, U.N. SCOR, 50th Sess., 3519th mtg., U.N. Doc. S/Res/986 (1995).

⁵⁷ 2 INDEPENDENT INQUIRY COMM. INTO THE U.N. OIL-FOR-FOOD PROGRAM, *supra* note 8, at 194.

⁵⁸ *Id.* at 227–36, 237–53.

⁵⁹ *Id.* at 170.

⁶⁰ *Id.* at 170 n.461.

⁶¹ *Id.* at 170.

⁶² *Id.* at 222.

⁶³ *Id.*

Representative Delahunt and other members of the Subcommittee have raised the issue of the 661 Committee's failures repeatedly at several Subcommittee hearings and at least one full committee hearing. At the November 10, 2005, Subcommittee hearing, Representative Delahunt specifically requested that Chairman Rohrabacher hold hearings on this issue. Chairman Rohrabacher did not address Representative Delahunt's request and claimed that, with respect to the OFFP, "[w]e covered it thoroughly."⁶⁴

The Khor al-Amaya Incident

The US Senate Permanent Subcommittee on Investigations and the IIC released reports documenting how US officials tacitly allowed, and may have even assisted, seven vessels to smuggle oil out of Iraq on the eve of the 2003 US-led invasion of Iraq.⁶⁵ In the month leading up to the invasion, the tankers loaded more than 7.7 million barrels of Iraqi oil from an unauthorized Persian Gulf terminal at Khor al-Amaya, Iraq, in violation of UN sanctions.⁶⁶ The shipments, worth over \$200 million if sold at market prices, netted the Hussein regime over \$53 million in illicit revenue.⁶⁷

A UN Oil Overseer alerted the US and United Kingdom representatives to the UN's 661 Committee about the loadings.⁶⁸ Further, a Saybolt inspector on the ground also warned the US-led Maritime Interdiction Force (MIF), the naval force charged with enforcing sanctions.⁶⁹ But when the vessels left port, the MIF did nothing to stop them.⁷⁰ In fact, the IIC learned that the tankers were assured that the MIF was aware of their mission and would not interdict their passage.⁷¹ The IIC also notes that, after the Iraqi Oil Minister expressed concerns about the MIF's possible interference with the shipments, one of the individuals involved in brokering the operation "assured the Oil Minister not to worry—he claimed to have strong friendships in the United States at the Department of Defense and the CIA, and stated that he had taken some measures to ensure a smooth process."⁷² This allegation of US involvement certainly merits investigation by our Subcommittee.

Representative Schiff raised the issue in a hearing of the Subcommittee on Oversight and Investigations held on March 17, 2005—the same hearing at which the issue of the *Essex's* oil smuggling ("topping off"), which the majority cites in the report, was addressed.⁷³ Representative Delahunt raised the issue again at the

⁶⁴ *Broadcasting Board of Governors and Alhurra Television: Hearing Before the Subcomm. on Oversight and Investigations of the House Comm. on Int'l Relations*, 109th Cong. (2005) (statement of Chairman Rohrabacher) (forthcoming).

⁶⁵ PERMANENT SUBCOMM. ON INVESTIGATIONS, SENATE COMM. ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, REPORT ON ILLEGAL SURCHARGES ON OIL-FOR-FOOD CONTRACTS AND ILLEGAL OIL SHIPMENTS FROM KHOR AL-AMAYA 65–105 (May 17, 2005); 2 INDEPENDENT INQUIRY COMM. INTO THE U.N. OIL-FOR-FOOD PROGRAM, *supra* note 8, at 214–26.

⁶⁶ PERMANENT SUBCOMM. ON INVESTIGATIONS, *supra* note 65, at 66–69.

⁶⁷ 2 INDEPENDENT INQUIRY COMM. INTO THE U.N. OIL-FOR-FOOD PROGRAM, *supra* note 8, at 226.

⁶⁸ *Id.* at 222.

⁶⁹ *Id.* at 220–21.

⁷⁰ *Id.* at 223.

⁷¹ *Id.* at 216–20.

⁷² *Id.* at 216.

⁷³ See O&I REPORT, *supra* note 2, at 13–14; *Cotecna and Saybolt Hearing*, *supra* note 38.

Subcommittee hearing on April 28, 2005, and pushed for an investigation. Chairman Rohrabacher responded:

[W]e will certainly be asking administration officials to come here and to explain the policies that we all should know about. . . . I certainly hope that the administration can explain to your satisfaction and my satisfaction why it permitted certain things to happen.⁷⁴

Representative Delahunt sent a letter to Chairman Hyde and Chairman Rohrabacher on September 22, 2005, requesting an investigation into the Khor al-Amaya incident.⁷⁵ Representative Delahunt never received a response to this request and the Subcommittee has held no hearings on the subject.

The Development Fund For Iraq

The Development Fund for Iraq (DFI) was created by UN Security Council Resolution 1483 to meet the needs of the Iraqi people after the US-led invasion of Iraq in 2003.⁷⁶ Resolution 1483 also dissolved the OFFP and transferred its remaining funds—totaling \$8.1 billion—to the DFI.⁷⁷

The Special Inspector General for Iraq Reconstruction (SIGIR) and the Defense Contract Audit Agency (DCAA) have detailed how DFI monies have been mismanaged, misspent, and lost.

The SIGIR released a report showing how the Coalition Provisional Authority (CPA) failed to account for \$8.8 billion in DFI funds used to support Iraqi ministries through the national budget process.⁷⁸ The SIGIR demonstrated in several reports how US officials mismanaged DFI funds in the Rapid Regional Response Program (R3P), which funded regional reconstruction projects.⁷⁹ The SIGIR also has shown how the CPA provided inadequate security for the vast sums of cash on hand in Iraq.⁸⁰

DFI funds were also used to pay for the Army Corps of Engineers' Restore Iraqi Oil (RIO) contract with Kellogg Brown & Root (KBR). Of the over \$2.5 billion KBR charged, \$1.62 billion was paid from the DFI—making KBR the largest single recipient of DFI

⁷⁴ *BNP Hearing*, *supra* note 26, at 58 (statement of Chairman Rohrabacher).

⁷⁵ Letter from William D. Delahunt, U.S. Rep., to Henry J. Hyde, Chairman, House Comm. on Int'l Relations and Dana Rohrabacher, Chairman, Subcomm. on Oversight and Investigations, House Comm. on Int'l Relations (Sept. 22, 2005).

⁷⁶ S.C. Res. 1483, U.N. SCOR, 58th Sess., 4761st mtg., U.N. Doc. S/Res/1483 (2003) (“[T]he Development Fund for Iraq shall be used in a transparent manner to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq’s infrastructure, for the continued disarmament of Iraq, and for the costs of Iraqi civilian administration, and for other purposes benefiting the people of Iraq.”).

⁷⁷ OFFICE OF THE SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION, REPORT NO. 05-004, OVERSIGHT OF FUNDS PROVIDED TO IRAQI MINISTRIES THROUGH THE NATIONAL BUDGET PROCESS 28 (Jan. 30, 2005) [hereinafter OVERSIGHT OF FUNDS PROVIDED TO IRAQI MINISTRIES THROUGH THE NATIONAL BUDGET PROCESS].

⁷⁸ OVERSIGHT OF FUNDS PROVIDED TO IRAQI MINISTRIES THROUGH THE NATIONAL BUDGET PROCESS, *supra* note 77.

⁷⁹ OFFICE OF THE SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION, REPORT NO. 05-006, CONTROL OF CASH PROVIDED TO SOUTH-CENTRAL IRAQ (Apr. 30, 2005); OFFICE OF THE SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION, REPORT NO. 05-015, MANAGEMENT OF RAPID REGIONAL RESPONSE PROGRAM GRANTS IN SOUTH-CENTRAL IRAQ (Oct. 25, 2005).

⁸⁰ OFFICE OF THE INSPECTOR GENERAL, COALITION PROVISIONAL AUTHORITY, REPORT NO. 04-009, COALITION PROVISIONAL AUTHORITY COMPTROLLER CASH MANAGEMENT CONTROLS OVER THE DEVELOPMENT FUND FOR IRAQ (July 28, 2004).

funds.⁸¹ Of the ten task orders that made up the RIO contract, five were paid solely with DFI funds and a sixth was almost all DFI money.⁸² Congressional analyses of the DCAA's audits of the various task orders have identified \$219 million in questioned costs and an additional \$60 million in unsupported charges.⁸³

Representative Schiff raised the question of contracting irregularities related to Iraq reconstruction in the Subcommittee's March 17, 2005 hearing. Chairman Rohrabacher responded:

This Chairman does intend to hold hearings, number one, on the contracting irregularities and the total chaos of spending procedures that were part of the whole Iraqi liberation for far too long and may be perhaps still going on. We will find out. This Chairman does intend to hold hearings on that.⁸⁴

At the April 28, 2005, Subcommittee hearing, Representative Delahunt again raised the need for hearings on issues of Iraqi reconstruction and the mishandling of OFFP funds for that purpose. Representative Delahunt sent a letter to Chairman Hyde and Chairman Rohrabacher on November 1, 2005, requesting an investigation into the mismanagement of DFI monies by the CPA, Army Corps of Engineers, and other US officials.⁸⁵ Representative Delahunt never received a response and the Subcommittee has held no hearings on the subject.

Additionally, Representative Betty McCollum of Minnesota, a Member of the full Committee, wrote Chairman Hyde and Chairman Rohrabacher calling for an investigation into allegations that \$1 billion was stolen from the Iraqi Defense Ministry, which most likely were DFI funds.⁸⁶ Representative Delahunt wrote to Chairman Hyde and Chairman Rohrabacher in support of Representative McCollum's request and reiterated the call for an investigation.⁸⁷ Neither Representative McCollum nor Representative Delahunt has received a response and the Subcommittee has held no hearings on the subject.

Oil-for-Food Humanitarian Suppliers

As noted above, Saddam Hussein's largest source of illicit revenues during the sanctions was derived outside the OFFP. But of that revenue derived from his manipulation of the OFFP, the largest source came from "kickbacks" paid by companies contracted to

⁸¹ HOUSE COMM. ON GOV'T REFORM, REBUILDING IRAQ: U.S. MISMANAGEMENT OF IRAQI FUNDS 14 (June 2005).

⁸² U.S. ARMY CORPS OF ENGINEERS, MARCH 2003 CONTRACT OBLIGATION STATUS: TASK ORDERS, at <http://www.hq.usace.army.mil/CEPA/Iraq/March03-table.htm> (last visited Nov. 2, 2005).

⁸³ HOUSE COMM. ON GOV'T REFORM AND SENATE DEMOCRATIC POLICY COMM., JOINT REPORT ON HALLIBURTON'S QUESTIONED AND UNSUPPORTED COSTS IN IRAQ EXCEED \$1.4 BILLION 10-14 (June 27, 2005).

⁸⁴ *Cotecna and Saybolt Hearing*, *supra* note 38, at 6 (statement of Chairman Rohrabacher).

⁸⁵ Letter from William D. Delahunt, U.S. Rep., to Henry J. Hyde, Chairman, House Comm. on Int'l Relations and Dana Rohrabacher, Chairman, Subcomm. on Oversight and Investigations, House Comm. on Int'l Relations (Nov. 1, 2005).

⁸⁶ Letter from Betty McCollum, U.S. Rep., to Henry Hyde, Chairman, House Comm. on Int'l Relations, Tom Lantos, Ranking Member, House Comm. on Int'l Relations, Dana Rohrabacher, Chairman, Subcomm. on Oversight and Investigations, House Comm. on Int'l Relations, and William Delahunt, Ranking Member, Subcomm. on Oversight and Investigations, House Comm. on Int'l Relations (Sept. 27, 2005).

⁸⁷ Letter from William D. Delahunt, U.S. Rep., to Henry J. Hyde, Chairman, House Comm. on Int'l Relations and Dana Rohrabacher, Chairman, Subcomm. on Oversight and Investigations, House Comm. on Int'l Relations (Oct. 3, 2005).

provide humanitarian supplies.⁸⁸ Those kickbacks totaled more than \$1.5 billion.⁸⁹

Representative Delahunt sent a letter to Chairman Hyde and Chairman Rohrabacher on February 10, 2005, requesting that investigations into companies that purchased oil from Iraq during the OFFP be expanded to include companies that sold humanitarian goods to Iraq under the Program.⁹⁰ Representative Delahunt never received a response and the Subcommittee has held no hearings on the subject.

In October 2005, however, the IIC found that at least one of the companies Representative Delahunt suggested be investigated, Ingersoll Dresser, had paid kickbacks to the Hussein regime.⁹¹

CONCLUSION

We recognize the significant failings of the Oil-for-Food Program and agree with the critical need for United Nations reform. We appreciate the work that the majority on the Subcommittee has done on this topic. We wish to particularly commend the majority staff for their dedication and perseverance through what has often been a difficult process.

However, we believe that the majority's report presents such a distorted picture of how the UN operates that it does little to contribute to the work of this Congress on UN reform. Rather, this report represents a missed opportunity for this Subcommittee to investigate the operations of our own government in the context of the OFFP and the UN. Such a fulfillment of our constitutional oversight responsibility would have complemented other reports on the OFFP and would have allowed this Congress to take steps to ensure that such mistakes were not repeated by officials in the US government. Unfortunately, this Subcommittee has failed to fulfill its responsibility in this regard.

Therefore, we respectfully dissent from the Subcommittee's report.

WILLIAM D. DELAHUNT.
HOWARD L. BERMAN.
EARL BLUMENAUER.
ADAM B. SCHIFF.

⁸⁸ INDEPENDENT INQUIRY COMM. INTO THE U.N. OIL-FOR-FOOD PROGRAM, MANIPULATION OF THE OIL-FOR-FOOD PROGRAM 4 (Oct. 27, 2005) [hereinafter MANIPULATION OF THE OIL-FOR-FOOD PROGRAM].

⁸⁹ 1 INDEPENDENT INQUIRY COMM. INTO THE U.N. OIL-FOR-FOOD PROGRAM, *supra* note 4, at 103. The Duelfer Report's estimate did not differ substantially from the IIC's. *See* 1 CENTRAL INTELLIGENCE AGENCY, *supra* note 3, at 20.

⁹⁰ Letter from William D. Delahunt, U.S. Rep., to Henry J. Hyde, Chairman, House Comm. on Int'l Relations and Dana Rohrabacher, Chairman, Subcomm. on Oversight and Investigations, House Comm. on Int'l Relations (Feb. 10, 2005).

⁹¹ MANIPULATION OF THE OIL-FOR-FOOD PROGRAM, *supra* note 88, Table 7, at 66, 83.

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