

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

INTERIM REPORT

The Initial Procurement of United Nations Contractors (1996)
Benon Sevan and Oil Allocations
Internal Programme Audits
Management of the Programme's Administrative Account (2.2%)

Paul A. Volcker, Chairman
Richard J. Goldstone, Member
Mark Pieth, Member

February 3, 2005
www.iic-offp.org

This page is intentionally left blank

INTERIM REPORT

TABLE OF CONTENTS

PART ONE

I. PREFACE	1
II. INTRODUCTION	3
A. Brief Overview of the Programme	4
B. The Mandate, Organization, and Procedures of the Independent Inquiry Committee.	6
III. PROCUREMENT	9
A. Summary Background	9
B. Questions	10
C. Escrow Account: Banque Nationale de Paris	10
D. Oil Inspectors: Saybolt Eastern Hemisphere BV	12
E. Goods Inspectors: Lloyd’s Register Inspection Ltd.	14
F. Findings and Conclusions	16
IV. BENON SEVAN AND OIL ALLOCATIONS	19
A. Summary Background	19
B. Questions	19
C. Actions	19
D. Findings and Conclusions	25
V. INTERNAL AUDITS	29
A. Summary Background	29
B. Questions	29
C. Overall Assessment.....	29
D. Application of Internal Audit “Best Practices”	30
E. Findings and Conclusions	31
F. Recommendations.....	33
VI. ADMINISTRATIVE EXPENDITURES	37
A. Summary Background	37
B. Questions	37
C. Methodology	38
D. Findings and Conclusions	38
E. Recommendations.....	40
VII. MAGNITUDES	41

INTERIM REPORT

TABLE OF CONTENTS

PART TWO

CHAPTER 1.....	43
I. OVERVIEW	43
II. THE INVESTIGATION	45
A. Staff and Investigative Approach.....	45
B. Witness Interviews.....	45
C. Documentary and Electronic Evidence.....	46
III. COMMITTEE POLICIES AND PROCEDURES	49
A. Adverse Notice Process	49
B. Law Enforcement Cooperation	49
CHAPTER 2.....	51
I. ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME	51
A. Historical Context.....	51
B. Resolution 986	51
C. Memorandum of Understanding	52
D. Programme Contractors	52
E. Rules and Procedures.....	53
II. EVOLUTION OF THE PROGRAMME.....	57
A. Overview.....	57
B. United Nations Administration of the Programme	58
III. UNITED NATIONS RULES OF EMPLOYEE CONDUCT.....	61
CHAPTER 3.....	63
I. INTRODUCTION.....	63
II. THE UNITED NATIONS PROCUREMENT RULES	65
III. THE IRAQ STEERING COMMITTEE	69
IV. SELECTION OF A BANK – BANQUE NATIONALE DE PARIS.....	73
A. Toward Selection of BNP	73
B. Questions Remaining.....	78
V. SELECTION OF OIL INSPECTORS - SAYBOLT EASTERN HEMISPHERE BV.....	85
A. Before Formal Bidding	85
B. The Initial Bidding Process.....	87
C. Revision of the RFP.....	89
D. The Steering Committee’s Intervention.....	91
E. Explanation of Allan B. Robertson.....	94

INTERIM REPORT

TABLE OF CONTENTS

VI. SELECTION OF GOODS INSPECTORS – LLOYD’S REGISTER INSPECTION LTD. ..	97
A. The Initial Bid Process.....	98
B. Alerting the United Kingdom	99
C. Intervention of the Iraq Steering Committee	101
D. Rejecting All Bids and the “Interests of the Organization”	103
E. Explanation of Joseph J. Stephanides	107
VII. FINDINGS AND CONCLUSIONS	109
VIII. ANNEX.....	113
CHAPTER 4.....	121
I. INTRODUCTION: OIL ALLOCATIONS AND BENON SEVAN.....	121
II. BACKGROUND OF BENON SEVAN.....	123
III. IRAQ AND OIL ALLOCATIONS	125
IV. OIL FOR AMEP	127
V. ALLOCATIONS OBTAINED BY BENON SEVAN	131
A. The First Allocation.....	131
B. The Second Allocation.....	136
C. The Third Allocation	138
D. The Fourth Allocation.....	142
E. The Fifth Allocation.....	145
F. The Sixth Allocation.....	150
G. The Final Allocations.....	151
VI. EXPLANATIONS OF BENON SEVAN AND FAKHRY ABDELNOUR.....	153
VII. FINDINGS AND CONCLUSIONS	163
CHAPTER 5.....	165
I. INTRODUCTION.....	165
II. BACKGROUND – OVERSIGHT OF THE UNITED NATIONS SYSTEM.....	167
A. Office of Internal Oversight Services	167
B. Other Oversight.....	172
III. PROGRAMME AUDITS.....	177
A. Funding and Staffing	177
B. Scope and Authority Issues.....	178
C. Communication of Findings and Follow-up on Recommendations	183
IV. APPLICATION OF INTERNAL AUDIT “BEST PRACTICES”	187
A. Operational Independence	187
B. Risk Assessment and Audit Planning	187

INTERIM REPORT

TABLE OF CONTENTS

C. Scope and Funding of Internal Audit.....	188
V. FINDINGS AND CONCLUSIONS	189
VI. RECOMMENDATIONS	191
A. Provide OIOS/IAD with a Direct Line of Reporting to a Non-Executive Body	191
B. Establish Budgetary Independence for OIOS/IAD.....	191
C. Reiterate OIOS/IAD’s Mandate and Resolve any Current Disputes on its Scope... ..	192
D. Strengthen Oversight of Joint Funds and Programs.....	192
E. Conduct Periodic Reviews of IAD by Independent External Auditors	193
F. Develop Audit Plans for All New Programs Coincident with Startup.....	193
G. Require Audits Throughout All Phases of Programs.....	194
H. Release Audit Reports within Three Months.....	194
I. Mandate Commitment to Implement Recommendations within a Set Time Period	194
CHAPTER 6.....	195
I. INTRODUCTION.....	195
II. METHODOLOGY.....	197
III. THE ESD ACCOUNT	199
A. Foundation of the ESD Account	199
B. Budgeting and Accounting	200
C. ESD Account Sources and Uses	202
IV. ANALYSIS OF EXPENDITURES.....	205
A. Major Fund Uses.....	205
B. Advances to UN-Related Agencies	206
C. OIP and UNOHCI Expenditures.....	207
D. Other Costs	212
V. AUDIT OVERVIEW	215
VI. FINDINGS AND CONCLUSIONS	217
VII. RECOMMENDATIONS	219
A. Transparency.....	219
B. Controls and Oversight	219

APPENDIX

GLOSSARY

INTERIM REPORT

TABLE OF CONTENTS

I. PREFACE

Part One of this Report provides a summary and overview of investigative results and, for the convenience of the reader, sets out the Findings, Conclusions, and Recommendations of the Independent Inquiry Committee into the United Nations Oil-for-Food Programme (“the Committee”). There is also a brief section relating to differing estimates of the magnitude of funds involved.

Part Two contains the full investigative narrative and analysis with the Committee’s Findings, Conclusions, and Recommendations. In addition, it outlines the Committee’s investigative approach and methodology, its activities, and the organization of the Committee’s staff.

INTERIM REPORT
TABLE OF CONTENTS

This page is intentionally left blank

PART ONE

II. INTRODUCTION

This Interim Report reviews investigatory progress and presents certain findings of the Committee as it carries out its mandate. Subjects addressed in this Report are:

- **Initial Procurement** – The initial procurement in 1996 of three United Nations contractors responsible for critical components of the Oil-for-Food Programme (“the Programme”): (1) the inspection of oil exports; (2) the inspection of humanitarian goods imports; and (3) the holding, in escrow, of the proceeds and payments within the Programme.
- **Internal Programme Audits** – An evaluation of the internal audits conducted during the Programme. (On January 9, 2005, the Committee released the audit reports and a Briefing Paper to the public.¹)
- **Administrative Expenditures** – The disposition of Programme funds allocated to the United Nations for administrative purposes: the “ESD Account,” which was funded with approximately 2.2 percent of the Programme’s oil proceeds.

These areas of investigation include sensitive areas of administration directly involving the United Nations Secretariat. Each has been the source of a number of questions and allegations. *While the Committee’s investigation of these areas is well advanced, and certain findings and recommendations are made within this Report, work will continue where questions remain.*

This Report also addresses some of the allegations regarding the Executive Director of the United Nations Office of the Iraq Programme (“OIP”), Benon Sevan, and more precisely how Mr. Sevan conducted himself in discharging his duties.

However, the Report does not deal with another issue about which allegations have been made. In December 1998, the United Nations selected a Swiss company, Cotecna Inspection SA (“Cotecna”), to replace Lloyd’s Register Inspection Ltd. (“Lloyd’s”) as the humanitarian goods inspectors. Secretary-General Kofi Annan’s son, Kojo Annan, was affiliated with Cotecna at the time that Cotecna was selected to receive this inspection services contract. *The selection of Cotecna has been the subject of intensive investigation by the Committee, and the Committee expects to issue a second interim report on this issue.*

In proceeding with its investigation, the Committee is well aware that the United Nations is comprised of member states, each sovereign in its own right. Much of the functioning of the United Nations takes place in circumstances in which political realities and compromises influence the ultimate decisions. But taking this into account does not absolve the United Nations

¹ Independent Inquiry Committee into the United Nations Oil-for-Food Programme, “Briefing Paper – Internal Audit Reports on the United Nations Oil-for-Food Programme,” <http://www.iic-offp.org/documents.htm>.

PART ONE

from observing its own rules of fairness and accountability or relieve it from global public scrutiny.

As indicated when its work began, the Committee aims to provide a definitive report on the entire internal administration of the Oil-for-Food Programme by the middle of 2005.² *Further interim reports may be made as investigatory progress justifies.*

In addition, widespread allegations have been and are being made about illicit or corrupt activity by some of the approximately 3,500 private companies that participated in either the purchase of oil from Iraq or the sale of humanitarian or other goods to Iraq. *The Committee is pursuing inquiries into alleged abuses in these areas.*

A. BRIEF OVERVIEW OF THE PROGRAMME

In 1990, following Iraq's invasion of Kuwait, Security Council Resolution 661 imposed broad sanctions on Iraq. These sanctions required United Nations member states to end all purchases from Iraq, including purchases of oil, and to cease exports of non-humanitarian goods to Iraq. During subsequent years, reports accumulated of critical shortages of food and medicines in Iraq, imposing severe hardship on large segments of the population. As early as 1991, proposals—ultimately not acceptable to the Iraqi regime on grounds of infringement of their sovereignty—were developed to permit oil exports under carefully controlled circumstances to finance the purchase of “humanitarian goods” (e.g., food and medicines). The Security Council received the argument about infringing Iraq's sovereignty with a degree of understanding.

In 1995, the Security Council tried again by passing Resolution 986, which ultimately provided the Programme's framework. Briefly stated, proceeds of a limited amount of oil sales would be held in escrow at a designated bank, to be utilized primarily for the purchase of “humanitarian” goods. Once more, Iraq initially rejected the terms of the resolution.

However, in early 1996, Iraq elected to negotiate with the United Nations to develop procedures for the Programme's implementation. Under the *aegis* of Secretary-General Boutros Boutros-Ghali, negotiations with the Government of Iraq ensued, resulting in a Memorandum of Understanding between Iraq and the United Nations on May 20, 1996 (“Iraq-UN MOU”).³

Many argue that this agreement contained the seeds of much of what went wrong with the Programme, as its provisions left the Iraqi authorities very substantial discretion. Most importantly, Iraq ultimately influenced the pricing of crude oil and chose the purchasers of oil and

² The term “internal administration” encompasses work of the Secretariat managed by the Secretary-General and of a number of agencies with responsibilities for administration of the Programme “on the ground” in Iraq, and of the Security Council and its sub-committee (the “661 Committee”), which had broad policy and oversight responsibilities.

³ “Memorandum of understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of Security Council resolution 986 (1995),” S/1996/356 (May 20, 1996) (hereinafter “MOU” or “Iraq-UN MOU”).

PART ONE

most of the sellers of humanitarian goods (which later was expanded to encompass spare parts for the petroleum industry).

The Programme's design contemplated and maintained a number of verification procedures for both the oil exports and goods purchases. These were administered in large part by the United Nations contractors, the selection of which is one subject of this Report. The Security Council, mainly through its "661 Committee," maintained general oversight.⁴

The first shipment of oil took place in December 1996, and the first humanitarian imports were in March 1997.

As much testimony and investigation have disclosed, Security Council oversight largely focused on ensuring that the Programme did not inadvertently provide an avenue for the purchase of military equipment or so-called "dual use" materials, which might facilitate production of weapons of mass destruction.

The United Nations Secretariat, initially through its Departments of Humanitarian and Political Affairs and later through OIP, which was created to manage the Programme, carried the central administrative responsibilities. Nine UN-related agencies had significant roles in the Programme on the ground in Iraq, especially in the three governorates in the largely Kurdish northern region.⁵

Among the first tasks of the Secretariat was the hiring of the Programme's three prime contractors: a bank to manage the escrow account; an inspection company to inspect the oil leaving Iraq; and an inspection company to inspect the goods arriving in Iraq under the Programme. Between June and August of 1996, these three contractors were chosen. The manner in which these three contractors were selected is a focus of this Interim Report.

The Programme was terminated with the invasion of Iraq in March 2003. During the seven years of the Programme, \$64.2 billion of Iraqi oil was exported within the Programme's framework. Added to the interest on unspent proceeds and currency gains, Programme proceeds totaled \$69.5 billion, and Programme expenditures in Iraq amounted to \$38.7 billion. Percentages of the proceeds ranging from five to thirty percent, in total \$18 billion, were allocated for compensation of claims arising from Iraq's earlier invasion of Kuwait. Nearly 2.2 percent, or \$1.4 billion, was reserved for funding the United Nations' administration of the Programme, of which \$372 million so far has been returned to Iraq. Funding for the Committee's investigation has been drawn from these funds.

⁴ The 661 Committee was so called because it was created expressly to monitor the sanctions imposed on Iraq under Security Council Resolution 661. See S/RES/661 (Aug. 6, 1990).

⁵ These agencies were: Food and Agriculture Organization ("FAO"); World Food Program ("WFP"); World Health Organization ("WHO"); United Nations Children's Fund ("UNICEF"); United Nations Human Settlements Programme ("UN-Habitat"); United Nations Office for Project Services ("UNOPS"); United Nations Educational, Scientific and Cultural Organization ("UNESCO"); United Nations Development Funds ("UNDP"); and the International Telecommunications Union ("ITU"). For ease of reference, the Report refers to this group of agencies as "UN-related agencies" in recognition that they have varying legal relationships to the United Nations.

PART ONE

The absence of Iraqi weapons of mass destruction and the fulfillment of basic food and medicine needs of the Iraqi people have been cited as indications that the Programme succeeded. However, as the Programme continued, it became evident that both the oil exports and humanitarian imports under the Programme were accompanied by illicit activities that increasingly undermined the purposes of the Programme and eroded support for its maintenance. Persistent allegations of mismanagement and corruption within the United Nations itself prompted the Secretary-General of the United Nations to appoint the Independent Inquiry Committee in April 2004.

B. THE MANDATE, ORGANIZATION, AND PROCEDURES OF THE INDEPENDENT INQUIRY COMMITTEE

The Committee is tasked with collecting and examining information relating to all aspects of the administration and management of the Programme, from its inception to its transfer to the Coalition Provisional Authority, including allegations of fraud and corruption on the part of United Nations officials, personnel, and agents, as well as the contractors of the United Nations or Iraq under the Programme.

Committee reports are submitted to the Secretary-General with the understanding that they will be made public. Such reports shall provide a full explanation of the support for its findings. The rights of those implicated to respond to findings and any undertaking by the Committee as to confidentiality of interviews or other information are to be respected.

The international investigatory staff operates mainly through teams concentrating on particular areas: (1) the United Nations Secretariat, including OIP; (2) the Security Council and its 661 Committee; (3) Programme contractors, including their procurement and performance; (4) United Nations agencies; and (5) forensic accounting and auditing. Details concerning the Committee's staff, and its investigatory approach and methodology, can be found in Part Two of this Report.

The Committee's investigation proceeds on the authority of the terms of reference agreed upon between its Chairman and the Secretary-General of the United Nations, buttressed by the unanimously adopted Security Council Resolution 1538 of April 21, 2004. That resolution welcomed the appointment of the Independent Inquiry Committee and called upon all member states (including their regulatory authorities) to cooperate fully, by all appropriate means, with the Committee. In addition, the Secretary-General has explicitly and repeatedly instructed United Nations employees to cooperate fully and to preserve and make available to the Committee all United Nations records. He is also explicit in his expectation that all United Nations staff will cooperate fully. Moreover, the Secretary-General has indicated clearly that any violation of this instruction will lead to disciplinary action.

A word on subpoena power: Law enforcement authorities in one country have no power to subpoena witnesses or records of international institutions or compel testimony in another country, and international requests for information, even expedited, routinely take months, if not years. With an international investigation involving allegations of illicit or corrupt activity in multiple countries, the subpoena power of a single jurisdiction, while potentially useful in certain circumstances, has limited impact across the breadth of a transnational inquiry.

PART ONE

A word also on process: Consistent with its Investigation Guidelines, prior to making any adverse findings against an individual or corporation that has cooperated and submitted to an interview, the Committee will have advised the individual or corporation of the Committee's proposed findings and provided the individual or corporation with an opportunity to produce any additional information for the Committee's final consideration of the issue. *To the extent that individuals or companies refuse to cooperate, the Committee will so note in its Report and determine whether to present information on these issues relying on other sources.*

This and forthcoming Reports of the Committee, in making specific findings, will describe the extent of the relevant investigative efforts. *At the same time, sensitivity to the need to maintain confidentiality of witnesses who may be exposed to intimidation and retribution is essential both to elicit facts and even more importantly to avoid injury to them and those close to them. Although fully documented by the investigation, the Committee has decided that vulnerable, cooperating witnesses will not be named in the body of the Report.*

The Committee has the advantage of the strong support of the Security Council, through Resolution 1538, in engendering the cooperation of United Nations member states. Such cooperation by the United Nations and by member states is, of course, crucial to the work of the Committee. In general, work within Iraq has been greatly facilitated—within the limitations imposed by disturbed conditions in Baghdad—by the Interim Government of Iraq, by former Iraqi officials, and by the United States and other coalition personnel on site in Iraq. While time-consuming administrative delays have occurred and concerns about safeguards of confidential material could not be avoided, access to United Nations records and staff, current and retired, has been quite satisfactory. Most member governments involved, and their officials and relevant agencies, have been cooperative in important areas of investigations. In a few cases, resistance has slowed the investigatory efforts, and future reports may take note of areas in which the Committee has been unable to secure needed cooperation in a timely manner.

PART ONE

This page is intentionally left blank

PART ONE

III. PROCUREMENT

A. SUMMARY BACKGROUND

Following the signing of the Iraq-UN MOU on May 20, 1996, the United Nations immediately turned its attention to the selection of contractors capable of providing the necessary banking and inspection services. The MOU assigned selection of all three of these contractors to the Secretary-General, requiring in the case of the bank selection that he consult with the Government of Iraq.⁶ In the absence of a coordinating body for the Programme's administration, Secretary-General Boutros Boutros-Ghali formed the Iraq Steering Committee ("Steering Committee"), composed of some of the United Nations' most senior managers and chaired by the Secretary-General's Senior Political Advisor, Chinmaya Gharekhan. The Steering Committee did not have clear terms of reference, mandate, or limitations, but it was generally to oversee the establishment of the Programme and report to the Secretary-General "on a regular basis."⁷

Whatever the exigencies, creation of the Steering Committee was the first step to move these initial United Nations procurement selections outside the established procurement and financial rules and into a more *ad hoc* process subject to political influence.

In 1996, a fair reading of the United Nations' financial and procurement rules contemplated a process governed by transparency and accountability as well as fair and competitive bidding requirements. Specifically, as confirmed by OLA, the contract selection process required, among other things, advertised tenders, the public opening of bids, and contract awards to the lowest acceptable bidder. It should be noted that Financial Rule 110.21 required that, if the United Nations were not to select the lowest acceptable bidder, then it must record in writing the reasons why "the interests of the Organization" warranted this result. Also, the Secretariat was under pressure from member states to enhance the transparency and competitive bidding aspects of the United Nations' procurement system.

At this time, the United Nations Treasury conducted procurement activities for banking and financial services, and the Purchase and Transportation Division (the "procurement department") was responsible for conducting most other procurement activities on behalf of the United Nations.

⁶ It is understood that assigning this role to the Secretary-General means assigning the role to the United Nations as an organization and subject to the organization's financial rules, not endowing the Secretary-General with absolute personal discretion.

⁷ Secretary-General Boutros Boutros-Ghali memorandum to Yasushi Akashi, Joseph Connor, Hans Corell, Chinmaya Gharekhan, Marrack Goulding, Yukio Takasu (May 28, 1996).

PART ONE

B. QUESTIONS

In Chapter 3 of the Report, the Committee addresses the following questions:

1. Was the selection of the Programme's major contractors in 1996 conducted in accordance with the United Nations' financial regulations and competitive bidding rules?
2. Was the selection of the Programme's major contractors in 1996 conducted in a fair and transparent manner?
3. Were these selection processes free from improper or illicit influence?

C. ESCROW ACCOUNT: BANQUE NATIONALE DE PARIS

It was clear from the outset that the establishment of the escrow account with a qualified bank was a necessary precursor to the sale of oil and the purchase of humanitarian goods. Given pressures to implement the Programme speedily, the Secretary-General tasked the United Nations Controller, Mr. Yukio Takasu, with coordinating the selection of a bank.

While Controller Takasu was pursuing the modified Treasury process noted above, the Secretary-General was pursuing a more political approach, one which suggested a predisposition to name a French bank. On a confidential basis, the Secretary-General met with the French Ambassador on May 22, 1996, to advise him of the names of three French banks that Iraq would accept. The Secretary-General suggested that the names should be channeled through the United Nations' legal advisor, Under-Secretary-General Hans Corell. Among the three French banks identified by the Secretary-General was Banque Nationale de Paris ("BNP").

On May 28, 1996, Mr. Takasu produced on the basis of Treasury's technical merits evaluation a "long list" of sixteen banks from various jurisdictions. This list was shared with the Government of Iraq, which responded by expressing "its hope that the Secretary-General will choose from the following banks: Banque Nationale de Paris, Credit Agricole, Credit Suisse, and Union Bank of Switzerland." BNP was named by Iraq despite the fact that it had not been included on the United Nations' long list of most technically qualified banks.

On June 1, 1996, Mr. Takasu wrote a note to the Secretary-General stating that he had advised Iraq's Ambassador that the Secretary-General "will make the selection on the basis of criteria such as credit quality, capital, operation capacities, services, and pricing," and that "particularly, it is important that the bank can provide the best services at the most competitive price."

On June 2, 1996, Mr. Takasu sent a note to the Secretary-General with a short list of six banks, chosen according to three financial criteria developed by the United Nations Treasury: "high credit quality (minimum 'A' or 'B'), capital (minimum \$11 billion) [and] operational capacity to meet the requirements of the Escrow Account." The banks on the short list were: BNP, Chase Manhattan, Citibank, Credit Suisse, Deutsche Bank, and the Union Bank of Switzerland ("UBS"). BNP did not meet Treasury's criteria, but it nonetheless was included because of Iraq's response to the long list.

PART ONE

On June 3, 1996, Mr. Takasu invited the six banks on the short list to submit proposals for the Programme's escrow account contract. The Treasury issued a Request for Proposal ("RFP") for the escrow account contract, but the RFP was less detailed than the norm; the deadline for response to the RFP was shorter than normal; and the evaluation and selection were completed more quickly than usual.

On June 6, Iraqi Ambassador Nizar Hamdoon contacted Mr. Takasu and stressed that "it was the strong wish of his Government that the Secretary-General should make his selection from four of the banks on the [short] list: Banque Nationale de Paris, Credit Suisse, Deutsche Bank and the Union Bank of Switzerland."

By the deadline of June 10, 1996, only four banks submitted proposals for the Programme's escrow account contract. These banks were: BNP, Chase Manhattan, Credit Suisse, and UBS. On June 12, United Nations Treasury performed an analysis of the proposals and rated them according to four additional categories: (1) banking services for oil exports; (2) banking services for humanitarian purchases; (3) investment income; and (4) quarterly maintenance.

According to this analysis, Credit Suisse ranked the highest in all four categories, and it became Treasury's bank of choice. Thus, Credit Suisse won the competition, but not the contract, which was awarded on June 18, 1996 to BNP. Why?

In the absence of any United Nations documents available to the investigation to explain why the choice was made, the Committee sifted through collateral documents and the recollections of those officials who were ostensibly involved in the process. Evidence from Iraqi witnesses is conflicting. On the one hand, Amer Muhammad Rashid, the former Oil Minister, stated that a French bank was selected over a Swiss bank because of Iraq's stated preference for a country more friendly to Iraq on sanctions. On the other hand, the former Governor of Iraq's Central Bank, Isam Rashid Al-Huwaysh, has stated that Iraq did not exert influence to have BNP chosen over a Swiss bank or a German bank. Iraq's communications to Mr. Takasu reflect a stated preference for either a French or Swiss bank—including that Credit Suisse would have been acceptable to Iraq.

It is also apparent that the United States had concerns about selecting a Swiss bank to manage the escrow account. These concerns were articulated as late as June 14, 1996—just four days before BNP was awarded the contract—by Ambassador Madeleine Albright, then the United States Permanent Representative to the United Nations, in a meeting with the chairman of the Steering Committee, Mr. Gharekhan. 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.

Ultimately, the selection fell to Secretary-General Boutros-Ghali. When interviewed by investigators on this point, the former Secretary-General said, in essence, that when provided with the short list, he contacted the Government of Iraq and asked for its choice. Apparently, the Government of Iraq indicated a preference for BNP, and the Secretary-General acquiesced.

PART ONE

He added that, concerned with Iraq's historical refusal to participate in the Programme, he had been willing to give Iraq the "maximum concession" by selecting BNP.

Further reflection by Mr. Boutros-Ghali prompted his recent recall that the United States did not want a Swiss bank, and then finally a letter (appended to this Report) which stated, in part: "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."

Finally, the Committee wishes to note that after BNP was selected as the escrow bank, a Senior Legal Officer with OLA was assigned to assist in negotiating the contract with BNP. At a meeting on July 6, 1996, Mr. Takasu assured the legal officer that BNP had been selected in accordance with a competitive bidding process and that this would be reflected in the minutes of the Steering Committee. The legal officer, in turn, requested formal documentation of this process for purposes of conducting contract negotiations with BNP and in order to determine that the selection had been in compliance with the competitive bidding rules. Mr. Takasu replied that the minutes of this high-level committee were confidential and that he would have to provide the officer with a briefing on them at a later date. Despite repeated inquiries, neither the documentation nor the briefing ever was provided.

D. OIL INSPECTORS: SAYBOLT EASTERN HEMISPHERE BV

After the bank was selected, it was time for the United Nations to select a contractor to conduct on-site inspections of oil to be exported from Iraq under the Programme. At this early stage, the United Nations Department of Political Affairs ("DPA"), along with the Department of Humanitarian Affairs ("DHA"), was responsible for the implementation of the Programme, and Joseph J. Stephanides, Chief of DPA's Sanctions Branch, took charge of the oil inspector selection process on DPA's behalf.

In the spring of 1996, weeks before the Iraqi government signed the MOU on May 20, Mr. Stephanides confided to a diplomat that he hoped to avoid a competitive bidding process for the selection of the oil inspection contractor. He solicited technical advice from the Government of the Netherlands, which in turn contacted Saybolt Eastern Hemisphere BV ("Saybolt"), a Dutch company, and Saybolt submitted a proposal on April 22. When Mr. Stephanides was interviewed by the Committee's investigators, he stated that he contacted the Dutch government because of its commitment to enforcing the sanctions regime.

By May 29, the Steering Committee was discussing various United Nations General Assembly resolutions calling for transparency and competitive bidding in the awarding of United Nations contracts. The following week, on the advice of OLA, the Steering Committee decided to require a competitive bidding process, and Mr. Stephanides thereafter led DPA's coordination with the procurement department through the selection process.

On June 11, an RFP was sent to eight companies, six of which responded within the one week deadline. The procurement department then conducted an evaluation of the responses and found that only one—submitted by Société Générale de Surveillance S.A. ("SGS"), a Swiss company—

PART ONE

was both fully acceptable under the applicable criteria and the lowest bidder. It found that the higher bids of Saybolt and another company were acceptable with limitations.

DPA, through Mr. Stephanides, disagreed with the procurement department's conclusion and argued against the award to SGS in a memorandum to the procurement department dated June 21, 1996. On June 25, 1996, the procurement department sent an "updated" RFP, to which both SGS and Saybolt responded. For the six-month term of the contract, SGS was the low bidder at \$1.9 million, and Saybolt proposed \$2.4 million (approximately twenty-five percent more than SGS's bid).

In light of these results, the procurement department again recommended awarding the contract to SGS as the lowest and only fully technically acceptable bidder. The department also reminded DPA that if any other company—apart from the lowest bidder—were recommended for the contract award, a strong and comprehensive written justification was required to enable the procurement department to recommend that company to the contract review committee that was known as the Headquarters Committee on Contracts ("HCC").

Mr. Stephanides continued to make his case in favor of Saybolt to the Steering Committee. According to Mr. Stephanides, the Steering Committee had agreed with him that SGS should be asked to provide additional names of qualified on-site inspectors with no links to the Iraqi region. The request was explained as arising from a desire to have "non" local personnel to "ensure maximum integrity of inspectors on-site." The request went to both SGS and Saybolt.

In mid-July, both SGS and Saybolt responded to the procurement department's request. SGS confirmed its original bid price in its reply, whereas Saybolt reduced its inspector man-day rate and also decreased (uninvited) its price for oil quality testing by about \$132,000, which slid its bid just below SGS's bid by \$38,124.

After Saybolt's price change for quality testing, a line officer in the procurement department protested to the officer-in-charge of the department, Allan B. Robertson. In light of the rule that a bidder may not reduce the price of its initial bid unless invited to do so by the procurement department, the line officer believed that Saybolt's reduction of the quality testing price as a response to the request to submit additional CVs of inspectors was "a serious violation by Saybolt of bidding procedures in the attempt to get an award of this contract" and should be rejected.

But Mr. Robertson disagreed. Rather than outright rejecting Saybolt's attempt to amend its bid price, Mr. Robertson authorized a further query to SGS and Saybolt about their bid prices and to Saybolt about the basis for its reduction—pointing out to Saybolt that "quality testing has nothing to do with the additional inspectors" and asking Saybolt to "please explain the basis for this reduction." Saybolt replied on July 24, 1996, that it had reduced the price for quality testing because it now intended to sell results from its testing to "interested third parties."

This response satisfied Mr. Robertson, and he recommended Saybolt's selection to the HCC based on Saybolt's reduction in price. However, the procurement department memorandum recommending the award to Saybolt misrepresented the basis for Saybolt's testing price change, suggesting that it resulted from a change in test method by Saybolt rather than Saybolt's intent to sell the test results to third parties.

PART ONE

On July 30, 1996, the HCC recommended the award of the contract to Saybolt. But the HCC realized that the testing results generated by Saybolt were the property of the United Nations and could not be sold by Saybolt to third parties. Saybolt agreed that it would not sell the test data to third parties. It was now apparent not only that Saybolt had not properly been permitted to amend the price of its bid but also that there was not a valid basis for Saybolt's final price reduction. Nevertheless, the United Nations decided to enter into a contract with Saybolt, and a contract was signed on August 16, 1996.

E. GOODS INSPECTORS: LLOYD'S REGISTER INSPECTION LTD.

The third major initial procurement decision was the selection of a company to conduct inspections of Programme-financed humanitarian goods that would enter into Iraq. An early front-runner for the job was Lloyd's, which had pertinent background since 1994 in capably conducting on-shore inspections of goods at the Port of Aqaba in Jordan (in enforcement of the economic sanctions against Iraq). As DPA was developing the technical requirements to be included in an RFP, Mr. Stephanides met with two employees of Lloyd's to seek their ideas about how inspections might work. He had also told a British diplomat in early April 1996 that other companies were asking about the inspection contract, but that he would have to turn them down because he trusted Lloyd's.

Eventually, by early June 1996, it was decided by the Steering Committee that there would be a competitive bidding process to select the goods inspector. As with the selection of the oil inspector, Mr. Stephanides took the lead in coordinating the selection process with the procurement department.

On July 22, 1996, the procurement department issued an RFP to seventeen humanitarian goods inspection companies in nine countries, asking for a response in the unusually short time of eight days. Five companies responded with bids that were accepted for consideration, and the procurement department conducted an open reading of the bid prices on July 30, 1996. The lowest bidder—by far—was Bureau Veritas ("Veritas") of France at a price of \$4.3 million for the initial six-month inspection term. Lloyd's was the second lowest at \$5.4 million (about twenty-five percent more than Veritas). The procurement department recommended awarding the contract to Veritas.

As in the case of Saybolt, Mr. Stephanides did not agree with the procurement department's recommendation. There then ensued an exchange between the two Secretariat units, each supporting their respective positions. In seeking to support the candidacy of Lloyd's rather than a French company, Mr. Stephanides was acting with the support of some members of the Security Council.

In light of the inconclusive nature of this exchange, the matter was considered on August 9 and August 12 by the Steering Committee. Despite the significant difference between the Veritas bid and that of Lloyd's, the Committee members collectively believed that the selection of Veritas would pose "significant political problems" because an oil overseer post had been given to a French national, and the banking contract also had been given to a French company, and it would be "unacceptable" for the goods inspection contract to go to "a French company."

PART ONE

Legal counsel Hans Corell informed the Committee that the United Nations Office of Legal Affairs (“OLA”) had carefully reviewed the rules; if the “interests of the Organization” so required that the lowest bid could not be accepted, then all bids could be rejected pursuant to Financial Rule 110.21. The procurement department “could be requested” by the HCC to enter into negotiations with one firm—which, according to the meeting notes, “obviously should be Lloyd’s (although this could not explicitly be stated by the Steering Committee).” The Chairman asked whether attempts should be made to lower Lloyd’s bid through negotiations, as had been done with Saybolt and SGS. Mr. Corell balked at the prospects of such negotiations, noting that it would be preferable to be straightforward and to invoke the extraordinary procedure of Rule 110.21.

Prior to the August 9 meeting, Mr. Stephanides told an official of the United Kingdom’s Mission to the United Nations that Veritas’s bid would be approved because of the “whopping” price difference between Veritas and Lloyd’s. He also described how much lower the Lloyd’s bid needed to be in order to compete with Veritas. The upshot was that the United Kingdom’s Permanent Representative to the United Nations, wrote to the Chair of the Steering Committee advising that Lloyd’s was prepared to lower its bid by \$900,000, thus bringing it much closer to Veritas’s bid.

On August 13, 1996, the Steering Committee reconvened to discuss the humanitarian goods contract a final time. Mr. Gharekhan acknowledged that “everything” about the implementation of 986 was “political,” and no aspect could be assessed purely on its merits. Mr. Corell added that none of the Steering Committee members was happy with the state of affairs, and the Committee did not want to compromise United Nations bidding procedures. Mr. Corell emphasized that absent a Committee determination that political considerations were paramount, the contract would be awarded to Veritas.

Politics won. The Committee concluded that the procurement department should enter into exclusive negotiations with Lloyd’s. Further, it was decided that the Secretary-General need not be brought into this process. Finally, the Steering Committee agreed that the Chairman would send a memorandum to Benon Sevan, who was then Assistant Secretary-General with responsibility for procurement, informing him of the decision.

One day after the Steering Committee had concluded its discussions on Lloyd’s, Mr. Sevan drafted a “Strictly Confidential” memorandum (“Sevan Memorandum”) to Sanjay Bahel, a supervisor in the procurement department, directing him to reject all bid proposals as permitted by Financial Rule 110.21 and stating that the Steering Committee had recommended this. The memorandum, dated August 14, 1996, read:

I have been informed of the unanimous decision taken by the Committee to recommend the rejection of all proposals made in response to the RFP on the above subject, in the interest of the United Nations, as permitted by Financial Rule 110.21. Accordingly, you are directed to reject all proposals concerned.

The Steering Committee has also recommended that the Procurement and Transportation Division [the procurement department] seek the authorization from the Committee on Contracts, pursuant to the above mentioned Rule, to enter

PART ONE

into a negotiated contract with the contractor that [the procurement department] considers is the best for the discharge of the duties.

The final paragraph, added subsequently at the insistence of the procurement department, stated: “In light of the considerations of, and the recommendations made by the Steering Committee, the obvious conclusion is that [the procurement department] should enter into negotiations with Lloyd’s Register, and seek the best terms of a contract.”

An internal note-to-file in the procurement department stated that the Sevan memorandum “does not contain justification/reasons for rejecting the proposals. Therefore, despite reference to the Financial Rule 110.21, this decision of the Steering Committee is not exactly in compliance with this Rule.”

On August 23, 1996, the United Nations awarded the humanitarian goods inspection contract to Lloyd’s, and the contract was signed on August 30, 1996.

F. FINDINGS AND CONCLUSIONS

As outlined above, the Committee set out to answer the following three questions in regard to the procurement of BNP, Saybolt, and Lloyd’s:

1. Was the selection of the Programme’s major contractors in 1996 conducted in accordance with the United Nations’ financial regulations and competitive bidding rules?
2. Was the selection of the Programme’s major contractors in 1996 conducted in a fair and transparent manner?
3. Were these selection processes free from improper or illicit influence?

Findings:

1. The investigatory record reviewed herein is replete with convincing and uncontested evidence that the selection process for each of the three United Nations contractors selected in 1996 (namely, Banque Nationale de Paris, Saybolt Eastern Hemisphere BV, and Lloyd’s Register Inspection Ltd.) did not conform to established financial and competitive bidding rules.
 - a. In the case of the escrow bank, BNP, the decision taken—ultimately by the former Secretary-General Boutros Boutros-Ghali—did not conform to the requirement to accept the “lowest acceptable bidder.” Moreover, neither the former Secretary-General nor any other appropriate official justified in writing the rejection of the lowest acceptable bidder—in “the interests of the Organization”—as required by Rule 110.21 of the Financial Regulations and Rules of the United Nations. In its interviews and review of United Nations records, the Committee has not found any record justifying the Secretary-General’s decision “in the interests of the Organization.”

PART ONE

- b. While an expedited competitive bidding process for the oil inspection contract was put in place, fully credible evidence demonstrates that this process was in practice frustrated and preempted. With the acquiescence of the Steering Committee, and the ultimate approval of Allan B. Robertson, as officer-in-charge of the procurement department, Saybolt prevailed because of the procurement department's acceptance of an invalidly amended bid to lower Saybolt's contract price.
 - c. An expedited competitive bidding process also was initiated in the case of the contract to inspect humanitarian goods. However, the Steering Committee—with the active participation of Mr. Stephanides—prejudiced and preempted the competitive process in a manner that rejected the lowest qualified bidder in favor of an award to Lloyd's Register. The bid process was terminated for political reasons, but without a written record of reasons—as required under Financial Rule 110.21—to justify that decision in the “interests of the Organization.”
2. The investigatory record clearly and repeatedly demonstrates that in deviating from the established financial and procurement rules, the decision-making process in 1996 for the United Nations contractors did not meet reasonable standards of fairness and transparency.
 - a. For the selection of BNP, a competitive bid process was initiated but then not completed, as the former Secretary-General chose a bank that was not the lowest acceptable bidder, and he did so for reasons that were not appropriately disclosed at the time.
 - b. For the selection of Saybolt, there was a clear early preference for Saybolt, and the procurement process was manipulated by the officer-in-charge of the procurement department and with the acquiescence of the Iraq Steering Committee to allow Saybolt to amend its bid to become the lowest bidder. The process was neither fair nor transparent in its operation.
 - c. For the selection of Lloyd's, there was a clear early preference for Lloyd's, and the regular competitive bidding process was tainted by Mr. Stephanides's contacts with a member state mission and preempted for political reasons dictated by the Iraq Steering Committee, and—contrary to fairness and transparency—these reasons were not adequately disclosed.
3. The consistent violations of prescribed procurement procedures, engaging in unfair practices, and failing to appropriately document decision-making processes, reflect adversely on one area of the United Nations' administration. Evidence bearing upon motivation is partly conflicting and incomplete. However, one influence bearing on the decision was an effort to achieve a balance among broadly “political” interests of some member states.

PART ONE

Conclusion:

The United Nations' established procurement process was strongly tested by the need to quickly obtain qualified contractors to implement an urgent, complex, and unprecedented program combining humanitarian relief for the Iraqi population with strong sanctions against a corrupt Iraqi governing regime. While the details differ for the three contracts awarded in 1996, common themes emerge.

In each case, preferred contractors emerged at an early stage of the selection process, even predating any organized competitive bidding process. Formal financial regulations and rules set out by procurement officials were repeatedly and knowingly short-circuited and violated, without a clear and consistent written rationale. The result was a selection process that, whatever the motivation, failed to meet the organization's own standards of fairness, objectivity, and transparency.

One pervasive, but not exclusive, influence was broadly "political": accommodating the concerns of Iraq reflected in the Memorandum of Understanding that it be consulted with respect to the escrow bank; accommodating the concerns of the United States about the selection of a Swiss bank; and avoiding concentration of contractors domiciled in one member state.

Objective criteria, such as the financial and procurement rules are designed to protect the integrity and effectiveness of the organization. At the same time, the decision-makers are influenced by a need to reconcile political concerns of some member states and to achieve a reasonable political balance.

As its investigation proceeds, the Committee will make recommendations concerning greater institutional transparency and accountability in making such important financial decisions.

PART ONE

IV. BENON SEVAN AND OIL ALLOCATIONS

A. SUMMARY BACKGROUND

Benon Vahe Sevan, a native of Cyprus, is a career United Nations official and has held increasingly responsible positions covering a wide range of United Nations activities through forty years of employment. With his appointment as Under-Secretary-General and Executive Director of OIP, in October 1997, Mr. Sevan assumed responsibility for overall administration of the multi-billion dollar Programme.

The Committee's investigation of Mr. Sevan involves allegations that he requested "allocations" of oil from the Government of Iraq while he served as Executive Director of OIP and that the Government of Iraq responded to his requests in the form of allocations of oil for a small trading company known as African Middle East Petroleum Co. Ltd. Inc. ("AMEP").

B. QUESTIONS

In Chapter 4 of the Report, the Committee addresses the following questions:

1. Did Mr. Sevan on behalf of AMEP request and receive one or more allocations of oil from Iraq for purchase by AMEP while employed as Executive Director of OIP?
2. Did Mr. Sevan's solicitation of oil allocations as Executive Director of OIP amount to a conflict of interest and violate the United Nations Charter and staff conflict-of-interest rules?
3. Was Mr. Sevan forthcoming to the Committee concerning the circumstances surrounding his requests for oil allocations on behalf of AMEP?
4. Is Mr. Sevan's explanation regarding cash income he received in addition to his United Nations salary supported by information available to the Committee?

C. ACTIONS

Resolution 986 allowed Iraq to choose its oil buyers. For each 180-day phase of the Programme, Iraq developed a list of "allocations," identifying companies and individuals to whom it would be willing to sell oil. Saddam Hussein personally reviewed who would receive oil, in conjunction with his "Command Council," which included, among others, Vice President Taha Yassin Ramadan, Deputy Prime Minister Tariq Aziz, and Oil Minister Amer Muhammad Rashid. At the commencement of each phase of the Programme, the process was repeated.

In addition, for each phase, the Ministry of Oil's marketing arm, the State Oil Marketing Organization ("SOMO"), prepared tables of crude oil contracts that were based on the allocation lists authorized by the Command Council. As the Programme evolved, the Command Council began to grant special oil allocations for the benefit of particular individuals or entities that were perceived to support or be politically favorable to Iraq. An individual beneficiary of a special

PART ONE

allocation could designate a company to enter into a contract with SOMO for the crude oil that had been allocated in his name.

1. Sevan, Spare Parts, and Allocations

From the time he became Executive Director of OIP, in October 1997, Mr. Sevan was an advocate for the Programme. He supported proposals to create an “oil spare parts” program: to grant Iraq’s longstanding request to use funds from the humanitarian escrow account for the import of parts and equipment to repair and maintain Iraq’s oil production infrastructure. On June 19, 1998, the Security Council authorized Iraq to use up to \$300 million of oil proceeds to purchase “oil spare parts” for renovating its oil production and transportation facilities.

Two days after the Security Council passed the “oil spare parts” resolution, Mr. Sevan traveled to Iraq for a two-week trip. One of the official purposes of his trip was to meet with Iraqi officials and oil specialists about implementing the “oil spare parts” program. Official travel records show that Mr. Sevan met twice with Oil Minister Rashid and once with Vice President Ramadan. As noted above, both Mr. Rashid and Mr. Ramadan were on the Command Council, which was in charge of approving the oil allocations.

During one of his meetings with Oil Minister Rashid, Mr. Sevan asked him for an allocation of oil. He requested this allocation for AMEP. Around this time, Mr. Sevan also made this allocation request to an official at Iraq’s Permanent Mission to the United Nations. According to an Iraqi official who handled Sevan’s request, Mr. Sevan said he wanted to “help a friend” who was from Egypt, and he said the friend’s name was “Abdelnour.”

Fakhry Abdelnour was an oil trader and owner of AMEP. The company was registered in Panama, with offices in Monaco and Mr. Abdelnour’s home city of Geneva, Switzerland. On June 17, 1998—four days before Mr. Sevan’s trip to Iraq—Mr. Abdelnour had written to SOMO to present the *bona fides* of his company and to request an opportunity to buy crude oil. At that time in the Programme, it was highly unlikely that Iraq would sell oil to a company such as AMEP unless sponsored by a beneficiary that Iraqi officials wished to favor. Mr. Abdelnour’s letter to SOMO was not answered until after Mr. Sevan approached Oil Minister Rashid to ask for an allocation of oil.

SOMO’s internal records confirm that an allocation was granted in response to Mr. Sevan’s request. SOMO’s records from early June, at the beginning of this phase of the Programme, did not identify AMEP or Mr. Sevan. But when they were updated in August following Mr. Sevan’s trip to Iraq, both the names of Mr. Sevan and AMEP appeared. In a letter dated August 10, 1998, SOMO’s Executive Director informed Oil Minister Rashid that AMEP had made a request to purchase oil during the current phase and that this was the company mentioned by Mr. Sevan to the Oil Minister when Mr. Sevan was in Baghdad:

PART ONE

Mr. Muwafaq Ayoub of the Iraqi mission in New York informed us by telephone that the abovementioned company is the company that Mr. Sevan, director of the Iraq Programme at the United Nations, mentioned to you during his last trip to Baghdad.

For your consideration and proportioning.

The August 10 letter contained a handwritten notation signed by the Minister of Oil that “[t]he approval of the Vice President of the Republic was received in a meeting of the Command Council on the morning of August 15, 1998” for the allocation. Another handwritten notation specified an allocation of 1.8 million barrels of oil. When former Oil Minister Rashid was interviewed and shown a copy of this letter, he confirmed its authenticity, and he identified his signature and the co-signature of a senior SOMO executive authorizing the allocation of oil.

The August 10 letter is the first of many internal documents, such as allocation lists and transaction authorization requests, that were maintained by SOMO and that reflect Mr. Sevan’s name in connection with oil sold to AMEP. These records were among the scores of routine transaction records for companies that contracted for oil under the Programme, and that were obtained by the Committee from the offices of SOMO.

Following the Vice President’s approval of Mr. Sevan’s request for an allocation, an Iraqi official instructed Mr. Sevan to have “his guy” call SOMO directly and request to purchase oil. Mr. Abdelnour again contacted SOMO officials. This time, unlike in June, there was a response to Mr. Abdelnour’s query. In a telex, dated August 18, 1998, SOMO’s Executive Director thanked Mr. Abdelnour for his inquiries and invited Mr. Abdelnour to Baghdad “to discuss matters related to crude oil supply.”

On September 24, 1998, Mr. Abdelnour went to SOMO in Baghdad to execute a contract for AMEP to purchase 1.8 million barrels of crude oil. SOMO in turn sought approval of the contract from the Ministry of Oil, and SOMO’s Executive Director re-confirmed by telephone with Muwafaq Ayoub, one of Iraq’s officials at the Mission in New York, that AMEP was indeed the company that had been recommended by Mr. Sevan. The fact of this communication was duly recorded in a SOMO memorandum of September 26, 1998, to Oil Minister Rashid, seeking formal approval of the final contract terms:

With reference to the approval of the Vice President of the Republic, Mr. Taha Yassin Ramadan indicated to us by your note on our letter number kh2/9124 dated 10 Aug. 1998 (copy of which is attached).

And with reference to the phone conversation on the morning of 24 September 1998 between the undersigned [Saddam Zibn Hassan, SOMO Executive Director] with Mr. Muwafaq Ayoub from the Iraqi mission in New York in which he emphasized that AFRICAN MIDDLE EAST PETROLEUM CO. LTD. INC. represented by Mr. Fakhry Abdelnour is the one recommended by Mr. Sevan.

The memorandum then summarized the contract’s terms, and it bears hand notations indicating its later approval by the Oil Minister.

PART ONE

However, AMEP did not “lift” or take physical possession of the 1.8 million barrels of oil for which it contracted. Instead, it sold the oil to two other companies for nearly \$300,000 more than it paid for the oil.

Iraqi officials were hopeful that providing allocations in response to Mr. Sevan’s request would ensure a good relationship with him and would help them obtain Mr. Sevan’s assistance in lifting holds on oil industry spare parts. After the Programme ended, former Oil Minister Rashid explained that oil allocations had been granted to individuals “who ha[d] been good to us, people of influence.” With respect to Mr. Sevan, Mr. Rashid explained that the Iraqi regime allocated oil to Mr. Sevan because “he was a man of influence.”

2. More Allocations for Benon Sevan

Mr. Sevan requested another oil allocation for AMEP for the next phase of the Programme (December 1998 to May 1999), but because Mr. Sevan had not been as helpful as hoped with lifting contract holds on spare parts, Iraqi officials recommended and the Government of Iraq decided to cut the allocation down to one million barrels. SOMO’s internal records reflect the grant of the reduced allocation to Mr. Sevan, including an authorization letter dated January 25, 1999, which was signed by the Vice President and contained a “subject” line stating: “Subject/Company (African Middle East Petroleum) (Mr. Sevan).”

Neither Mr. Sevan nor Mr. Abdelnour was pleased with the reduction in the oil allocation. Both men went to an OPEC conference in Vienna in March 1999, where Mr. Sevan spoke to Oil Minister Rashid about increasing the amount of this second allocation. When this was not done, AMEP ultimately decided not to follow through on its contract for the oil.

For the next phase of the Programme (May 1999 to December 1999), AMEP did not initially appear in SOMO’s records as a recipient of an allocation. But that changed after Mr. Sevan traveled to Iraq for three weeks in June and July 1999 and met with Oil Minister Rashid to discuss an expansion of the oil spare parts program. Within five days of Mr. Sevan’s departure from Iraq, SOMO updated its crude oil allocation list to reflect the name of “Mr. Sevan” and an allocation of two million barrels of oil. Mr. Abdelnour signed a contract in Baghdad on July 29, 1999, for the two million barrels of oil, and AMEP later sold the oil for nearly \$500,000 more than it paid for it.

Over the next two years, AMEP continued to receive more oil allocations. Time and again, SOMO’s internal lists and authorization records for these sales indicate the name “Mr. Sevan” (often without indicating the name AMEP).

Beginning in late 2000, Iraq began to demand that oil purchasers, including AMEP, pay an illegal surcharge to Iraq outside the Programme’s escrow account. In October 2001, AMEP paid to an Iraq-controlled bank account in Jordan an illegal surcharge of \$160,088. Although SOMO continued after this time to grant allocations in the name of Mr. Sevan, AMEP stopped entering into contracts because of the Iraqi Regime’s surcharge policy.

PART ONE

As set forth in the summary table below, for allocations granted by Iraq in the name of “Mr. Sevan,” AMEP lifted approximately 7.3 million barrels of oil and sold the oil for a total of \$1.5 million more than its purchase price:

Summary of AMEP Liftings In Connection with Benon Sevan

Contract Date	Oil Lifted (Barrels in Millions)	AMEP's Revenue from Resale of Oil (In US Dollars)
September 24, 1998	1.8	\$298,576
July 29, 1999	2.0	490,914
January 11, 2000	1.5	306,218
August 15, 2000	1.0	183,967
August 13, 2001	1.0	220,635
	7.3	\$1,500,310

Note: Amounts allocated for Mr. Sevan and AMEP that were not lifted are not included. Revenue amounts do not include bank fees paid by AMEP as well as AMEP's payment to Iraq of an illegal surcharge (€177,978 or \$160,088). See also table of oil sales in Chapter 4 of Part II of this report for a more detailed description of the AMEP oil transactions.

3. Explanation of Benon Sevan and Fakhry Abdelnour

Mr. Sevan denies that he asked for oil allocations or recommended any company to Iraqi officials for purchasing oil. But these claims are contradicted by the firsthand accounts of Iraqi officials involved and the extended chain of internal SOMO records documenting the granting of oil allocations, often following occasions when Mr. Sevan met with Oil Minister Rashid.

Mr. Abdelnour also has stated that Mr. Sevan did not assist him in obtaining oil allocations from Iraq. When asked why he was provided oil allocations, Mr. Abdelnour replied that it was a “good question” and that the Committee should “ask the Iraqis.” The Committee has done so.

Mr. Sevan initially maintained to the Committee that he only had met Mr. Abdelnour briefly at the OPEC Vienna conference in March 1999. But he was interviewed recently by the Committee on January 21, 2005, and he admitted that he had passed at least one inquiry from Mr. Abdelnour to the Iraqi Oil Minister. He was less than certain that he had not promoted AMEP to Oil Minister Rashid. When asked about his initial approach to Oil Minister Rashid in the summer of 1998, Mr. Sevan acknowledged that he “might have mentioned” AMEP to Oil Minister Rashid, but then added that he did not “know” if he did. In addition, Mr. Sevan acknowledged contact with AMEP during that time frame, stating that AMEP had called him to ask how to register with the Programme.

During the interview of January 21, Mr. Sevan was asked about the Vienna OPEC conference of March 1999 when, as described in the previous Section above, he approached Oil Minister Rashid to inquire about a second oil allocation for AMEP:

PART ONE

Q. In the meeting in Vienna, did you ever have any discussions with the Oil Minister about lifts for this particular company? [AMEP]

A. No.

Q. Or the amount of lifts that this particular company would get?

A. Well, like I said, the guy wants more.

Q. You would have said that?

A. I might have said, yeah.

Prior to the interview of January 21, both Mr. Sevan and Mr. Abdelnour had claimed that they had met only once at the March 1999 OPEC conference in Vienna and that they had no other contacts. But when the contents of Mr. Sevan's United Nations office were searched, investigators found *two* business cards for Mr. Abdelnour (reflecting different Geneva addresses). Moreover, Mr. Sevan's computer had detailed telephone contact listings for AMEP and Mr. Abdelnour, including a listing that was updated in September 2002. AMEP was the only oil company on Mr. Sevan's telephone contact list.

In addition, telephone records show a call from Mr. Sevan's United Nations telephone to Mr. Abdelnour's cell phone on July 19, 2000; two more calls from Mr. Sevan's cellular telephone to Mr. Abdelnour's cell phone on April 3, 2001; and two more calls to Mr. Abdelnour on January 13, 2004. When Mr. Sevan was interviewed on January 21, 2005, his description of past contacts with Mr. Abdelnour evolved from a single meeting at the OPEC conference to acknowledging a second chance meeting at a restaurant in Geneva and then, after being confronted with phone record evidence, to having developed an acquaintanceship with Mr. Abdelnour lasting over several years: "I came to like the guy. He is an interesting character you know, he's been around the world."

Additional phone records suggest Mr. Sevan's frequent communication with Mr. Abdelnour through Fred Nadler. Both Mr. Sevan and Mr. Abdelnour have acknowledged having a friendship with Mr. Nadler. Mr. Sevan stated that he met Mr. Nadler and his brothers at United Nations receptions or meetings at which Secretary-General Boutros Boutros-Ghali, their brother-in-law, spoke. Mr. Abdelnour, a cousin of the former Secretary-General, stated that he is a good friend of Mr. Nadler's and that one of Mr. Abdelnour's uncles is the Nadler family lawyer.

The records show that Mr. Sevan and Mr. Nadler were in close contact on an almost weekly basis from at least 1998 through 2004. The records correspondingly show that Mr. Nadler was in regular telephone contact with Mr. Abdelnour, beginning in September 1998, when Mr. Abdelnour signed the first contract for oil. On multiple occasions, at key periods in the Programme and in AMEP's dealings with SOMO, the phone records show calls between the numbers for Mr. Sevan and Mr. Nadler within a few minutes of calls between the numbers for Mr. Nadler and Mr. Abdelnour.

The Committee is continuing to investigate the full scope and nature of the involvement of Mr. Sevan, Mr. Abdelnour, and other individuals.

PART ONE

4. Unexplained Wealth

Of final concern is evidence of Mr. Sevan's receipt of large cash payments. According to United Nations financial disclosure forms, Mr. Sevan received \$160,000 in cash from 1999 through 2003.

Year	Source	Amount
1999	Cash from aunt	\$50,000
2000	Cash from aunt	\$45,000
2001	Cash from aunt	\$30,000
2003	Cash from aunt	\$35,000

Mr. Sevan claimed in these forms that this money came from his elderly aunt (now deceased), who lived in Cyprus. Her lifestyle did not suggest this to be so. She was a retired Cyprus government photographer, living on a modest pension, for about twenty years. During her retirement, she lived in a small, plain two-bedroom apartment in Cyprus, which had been purchased by Mr. Sevan. According to a longtime family friend, she never had shown signs of having access to large amounts of cash and would not have been carrying large amounts of cash outside the country. The full scope and extent of benefits received by Mr. Sevan as a result of his solicitation of oil allocations for AMEP is under continuing investigation.

D. FINDINGS AND CONCLUSIONS

As outlined above, the Committee set out to answer the following questions regarding Mr. Sevan:

1. Did Mr. Sevan request and receive one or more allocations of oil from Iraq for purchase by AMEP while employed as Executive Director of the Office of Iraq Programme?
2. Did Mr. Sevan's solicitation of oil allocations as Executive Director of Office of Iraq Programme amount to a violation of the United Nations Charter and staff conflict of interest rules?
3. Was Mr. Sevan forthcoming to the Committee concerning the circumstances surrounding his requests for oil allocations on behalf of AMEP?
4. Is Mr. Sevan's explanation regarding cash income he received in addition to his United Nations salary supported by information available to the Committee?

Findings:

1. The Committee concludes that Mr. Sevan, while employed as Executive Director of OIP, solicited and received on behalf of AMEP several million barrels of allocations of oil

PART ONE

from 1998 to 2001. As a result of Mr. Sevan's conduct, AMEP's revenue—net bank fees and surcharge payment—totaled approximately \$1.5 million.

2. The Committee finds also that Mr. Sevan's solicitations on behalf of AMEP and AMEP's resulting purchases of oil presented a grave and continuing conflict of interest, were ethically improper, and seriously undermined the integrity of the United Nations. Mr. Sevan was in an extremely important position with great power and authority to exercise influence over the Programme's administration. He was positioned to affect matters of substantial interest to the Government of Iraq, and the Government of Iraq hoped that he would act favorably in return for the allocations that he was granted. Moreover, throughout the time that these oil allocations were granted, Mr. Sevan was involved officially in areas of the Programme that were highly significant to the Ministry of Oil, including the funding of the repair and maintenance of Iraq's oil infrastructure, and the lifting of holds on contracts for oil-related spare parts and equipment. Mr. Sevan was not the only one in favor of such oil-related causes, and it is possible that—even without the oil grants—he still would have championed these causes. But the fact remains that Mr. Sevan would not have been permitted to remain in a trusted position, as a liaison responsible for conveying information to and counseling the Secretariat and Security Council, had he disclosed his personal involvement in oil allocations. In any event, by soliciting oil allocations from the Government of Iraq on behalf of AMEP—while acting in the capacity of Executive Director of OIP—Mr. Sevan violated the Charter of the United Nations and various Staff Regulations and Rules of the United Nations by:
 - a. Acting in a manner that did not favorably reflect on his position as an international official responsible only to the Organization (Article 100 – Charter of the United Nations (1945));
 - b. Failing to discharge his duties only in the interests of the United Nations (Staff Regulations 1.1 and 1.9 (1995-98); Staff Regulations 1.1(b), 1.2(e), and 1.3(a), and Staff Rule 101.3(a) (1999-2003));
 - c. Failing to conduct himself at all times in a manner befitting his status as an international civil servant and engaging in an activity that was incompatible with the proper discharge of his duties on behalf of the United Nations, thereby reflecting adversely on his status, integrity, impartiality, and independence as required by his position (Staff Regulation 1.4 (1995-98), and Staff Regulations 1.2(b) and (f) (1999-2003)); and
 - d. Actively associating with a business concern (namely AMEP), where it was possible for him to benefit from such association by reason of his official position with the United Nations, thus creating a conflict of interest that deprived the United Nations of his ability to properly discharge his duties on behalf of the Organization (Staff Rule 101.6(b) (1995-98)).
3. In addition, Mr. Sevan was not forthcoming to the Committee when he denied approaching Iraqi officials and requesting oil allocations on behalf of AMEP. Mr. Sevan failed to disclose the full nature and extent of his contacts and relationship with Mr.

PART ONE

Abdelnour as well as the full nature and extent of communications among Mr. Abdelnour, Mr. Nadler, and himself, regarding oil allocations under the Programme.

4. Last, the Committee finds that Mr. Sevan's statements regarding the source of the additional cash income, which he disclosed on his United Nations Financial Disclosure Forms for years 1999 to 2003, are not adequately supported by the information reviewed by the Committee.

The Committee continues to investigate to what extent Mr. Sevan and any other individuals and entities received personal or financial benefits in return for Mr. Sevan's solicitation of oil allocations on behalf of AMEP.

PART ONE

This page is intentionally left blank

PART ONE

V. INTERNAL AUDITS

A. SUMMARY BACKGROUND

The Committee's recent Briefing Paper, issued on January 9, 2005, provided perspective on the scope and findings of the audits conducted in relation to the Programme by the Internal Audit Division ("IAD") of the Office of Internal Oversight Services ("OIOS"). Expanding on the Briefing Paper, Chapter 5 addresses how IAD executed its duties and responded to challenges that it encountered regarding the Programme.

B. QUESTIONS

Specifically, Chapter 5 answers the following questions:

1. Did IAD have sufficient funding and staff to adequately audit the Programme?
2. Were all the important aspects of the Programme fully audited by IAD?
3. Did IAD properly report its audit findings and monitor implementation of its recommendations?
4. Was IAD able to resolve contentious issues relating to Programme audits?
5. Do IAD policies and procedures conform to the best practices of internal audit?

C. OVERALL ASSESSMENT

In addressing these questions, Chapter 5 elaborates on the main concerns raised in the Briefing Paper, including how IAD's effectiveness was severely diminished by limitations of audit scope and the slow start of its Programme audits. For audits that were conducted, follow-up by both IAD and Programme management to audit recommendations sometimes was not forceful or timely, and management apparently did not implement a significant proportion of IAD's critical recommendations.

Admittedly, the Programme would have significantly challenged any internal audit department. Effective oversight required exceptional resources, firm organizational support, and compliance with "best practice" policies and procedures. Although the Committee believes that IAD did not fulfill its mandate by failing to audit and report on critical aspects of the Programme, it recognizes that IAD's auditors were committed and diligent in the audits they performed, and they made many valuable recommendations for improvement. In fact, the accomplishments of this small group of audit staff appear to be greater than would be anticipated based on their number alone.

The Committee's assessment of IAD is based on full access to United Nations' records, including related correspondence, internal audit working papers, and interviews regarding OFFP. Based on these observations, the Committee includes in its Interim Report recommendations to the United

PART ONE

Nations to help provide IAD with the mandate, structure, and support to enhance its ability to operate effectively and meet future challenges.

D. APPLICATION OF INTERNAL AUDIT “BEST PRACTICES”

The IAD Manual, which identifies key policies, procedural guidelines, and principles, was first prepared in 1990 and has undergone many revisions. The most recent version was released in July 2003 and incorporates the Professional Practices Framework (“PPF”) promulgated by the Institute of Internal Auditors (“IIA”), which was adopted in June 2002 by the Representatives of Internal Audit Services of the United Nations Organizations and Multilateral Financial Institutions (“RIAS”).⁸

Operational independence, effective risk assessment and audit planning, and adequate scope and funding are critical to an effective internal audit function. These prerequisites, as embodied in the IIA Practice Advisory Statements (“PAS”), which are guidelines to the implementation of the PPF, are considered below in regard to IAD’s current and past practices.

1. Operational Independence

PAS 1110 recommends that the *functional* reporting line for internal audit should be an audit committee, board of directors, or other appropriate governing authority. Functional reporting includes approval of risk assessment, audit plans, staffing, and compensation of the head of internal audit; review of results of all internal audit activities; and inquiries of management about any scope and budgetary limitations. For *administrative* reporting, which involves day-to-day operations, the head of internal audit normally should report to the Chief Executive.⁹

In contrast, the Head of IAD reports to the Under-Secretary-General of OIOS, who in turn reports both administratively and functionally to the Secretary-General.

2. Audit Planning and Risk Assessment

PAS 2010-2 recommends that plans for internal audit activities should be designed based on an overall assessment of risks and exposures. The IIA supports the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”), which has developed a framework for assessing enterprise risk that expands upon the internal control framework to encompass a fuller, more robust, risk management process. Among other things, an audit plan should be based on such a risk assessment.¹⁰

⁸ OIOS IAD Operational Manual (June 2003), p. 1 (hereinafter “New IAD Manual”).

⁹ “Practice Advisory 1110-1: Organizational Independence” (revised Feb. 12, 2004); “Practice Advisory 1110-2: Chief audit Executive (CAE) Reporting Lines” (revised Feb. 12, 2004).

¹⁰ “Practice Advisory 2010-2: Linking the audit Plan to Risk and exposures” (revised Feb. 12, 2004).

PART ONE

In this regard, since 2001, IAD has been developing a planning approach based on risk assessments. In 2003, it constructed its audit plans based on a formal system of area-by-area risk assessment. But for the purpose of setting priorities, allocating resources, and identifying gaps in coverage and resources, IAD does not formally view risks systematically, from the “top down,” across the United Nations system.

3. Scope and Funding of Internal Audit

PAS 1110-A1 recommends that “the internal audit activity should be free from interference in determining the scope of internal auditing, performing work, and communicating results.”¹¹

However, approximately forty percent of IAD’s current funding comes from contributions negotiated with the funds and programs that it wishes to audit. Moreover, if IAD cannot secure the necessary financing from a particular fund or program, it either must allocate resources from its general budget (to the detriment of other audit areas) or limit its audit activity of the particular program.

E. FINDINGS AND CONCLUSIONS

As outlined above, the Committee set out to answer the following five questions about IAD’s audits of the Programme:

1. Did IAD have sufficient funding and staff to adequately audit the Programme?
2. Were all the important aspects of the Programme fully audited by IAD?
3. Did IAD properly report its audit findings and monitor implementation of its recommendations?
4. Was IAD able to resolve contentious issues relating to Programme audits?
5. Do IAD policies and procedures conform to the “best practices” of internal audit?

¹¹ New IAD Manual, p. 10.

PART ONE

Findings:

1. Given the Programme's size and complexity, the Committee finds that the resources committed to audit the Programme were inadequate—especially in comparison to the level of internal audit staffing for peacekeeping missions and the general benchmark identified by the United Nations Board of Auditors (“BOA”). The Committee finds also that IAD's limited funding and staffing hampered its audit coverage of the Programme. Finally, the Committee notes that had IAD been able to conduct a thorough risk assessment it would have been better positioned to identify and justify the number of staff needed to appropriately audit the Programme.
2. The Committee finds that several important aspects of the Programme were not reviewed by IAD. These include many of the functions performed at OIP's headquarters in New York as well as key elements of the oil and humanitarian contracts, including price and quality of goods. The Committee finds that the view held by IAD staff that the contracts were beyond their purview was erroneous. IAD had the means and duty to examine these contracts and to test the respective approval processes. All contracts were held at OIP's New York headquarters, where they were subject to full review by OIP management and IAD. IAD had the opportunity to test the contracts for fairness of price and end-user suitability, and also to assess the adequacy of any quality testing of goods that was conducted in Iraq. A thorough audit of these aspects could have uncovered or confirmed the various kickback schemes employed by the Iraqi Regime in relation to the Programme. Furthermore, despite efforts by OIOS and OIP management, the Committee finds that there was poor coordination among IAD and the numerous internal audit resources within the various agencies involved in administering the Programme.
3. In the Committee's view, OIOS's reporting to the General Assembly on Programme-related matters was unsatisfactory. Many of the Programme's key deficiencies—identified through IAD audits—were not described in the OIOS Annual Reports submitted to the General Assembly. In regard to the implementation of recommendations, the Committee finds that, while IAD diligently followed its procedures for recording and tracking Programme-related findings and recommendations made to management, its monitoring of the implementation of these recommendations was inadequate. Follow-up audits were very infrequent, with the result being that there was little monitoring of whether recommendations accepted by management in fact had been implemented. Moreover, when follow-up audits were performed, IAD found that many accepted recommendations had not been implemented. Finally, OIP and the United Nations Office of the Humanitarian Coordinator for Iraq (“UNOHCI”) apparently were not systematically monitoring the implementation of recommendations (at least not prior to 2002).
4. The Committee finds that the United Nations did not possess adequate means to resolve disputes regarding OIOS's activities, including disagreements relating to the scope of audits. Among other things, OIOS was unable to adequately resolve disputes relating to its attempt to report directly to the Security Council, its attempt to conduct risk assessment studies, and the scope of its work at the United Nations Compensation Commission (“UNCC”).

PART ONE

5. While the current IAD policies and procedures incorporate the Professional Practices Framework (“PPF”) promulgated by the Institute of Internal Auditors (“IIA”), the Committee notes that several deviations from “best practices” still are evident. These include: (a) inability to report directly to an audit committee or other independent board; (b) failure to complete enterprise-wide risk assessments; and (c) lack of budgetary independence.

F. RECOMMENDATIONS

The recommendations below are made in an effort to assist the United Nations in providing IAD with the mandate, structure, and support to enhance its ability to operate effectively and meet future challenges.

1. Provide OIOS/IAD with a Direct Line of Reporting to a Non-Executive Body

There is a need for independent reporting by OIOS and IAD. The Committee therefore recommends that the United Nations consider creating an independent board to which OIOS and IAD would report.

At present, the Under-Secretary-General of OIOS reports to the Secretary-General. However, there were instances involving Programme audits in which this reporting arrangement was unsatisfactory because of potentially conflicting budgetary and management responsibilities of the Secretary-General.

Potential conflicts can be avoided by creating a new independent, non-executive Board that is accountable to the General Assembly for the oversight of internal audit activities. This Board should assume responsibility for reviewing plans and budgets and for ensuring that IAD fulfills its mandate, adheres to IIA standards, receives sufficient resources, raises audit concerns at the appropriate level, and properly resolves issues throughout the United Nations system.

Additionally, oversight by an impartial, non-executive Board that has representatives from BOA and the Joint Inspection Unit (“JIU”) would: (1) enhance the independence and quality of the internal audit function; (2) improve the planning and budgeting processes, including alleviating concerns regarding the sufficient allocation of resources; and (3) facilitate coordination among IAD and the external oversight bodies.

2. Establish Budgetary Independence for OIOS/IAD

The current practice of allowing the executive directors of funds and programs the right to approve budgets and staffing of internal audit activities can lead to critical and high risk areas being excluded from internal audit examination.

The Committee therefore recommends that the IAD budgets and staffing levels—both for normal internal audit activities and activities in support of funds and programs—be submitted to the General Assembly supported by comprehensive risk assessments, and endorsed by the independent board (recommended above), if such a board is created.

PART ONE

The Committee further recommends that budgeting for staff positions be based on neutral metrics (for example: so many auditors per millions in expenses multiplied by a risk factor) rather than bargaining with managers and Secretariat executives.

3. Reiterate OIOS/IAD's Mandate and Resolve any Current Disputes on its Scope

The Committee recommends that the General Assembly reiterate IAD's broad mandate.

IAD should have the unquestioned ability and duty to examine and report on any program for which it considers oversight inadequate and believes there is potential for the non-attainment of objectives or waste of resources. The General Assembly should clarify that all executive activities of the United Nations are subject to unhindered IAD review. For example, as discussed earlier in regard to the oil and humanitarian contracts, the involvement of a body comprised of member state representatives—such as the Security Council or 661 Committee—does not eliminate IAD's critical oversight role.

Moreover, the Secretary-General should resolve the dispute between OLA and OIOS regarding IAD's ability to audit "quasi-judicial processes," such as in regard to UNCC's activities. Additionally, any future restrictions imposed, contested, or accepted on the scope of IAD's activities should be reported immediately to the appropriate supervisory body.

4. Strengthen Oversight of Joint Funds and Programs

The Committee recommends that the United Nations strengthen the oversight of funds and programs involving both the United Nations and the UN-related agencies. The United Nations should consider establishing OIOS as the lead auditor of such joint funds and programs.

Most United Nations funds and programs have their own internal audit resources that report directly to the Executive Director of the fund or program. Establishing OIOS as the lead auditor for a fund or program involving the United Nations and one or more of the agencies would provide many benefits, including independence, consistent professional standards, transparency, coordination, and optimum allocation of resources within comprehensive risk plans. Of course, this would require organizational confidence that OIOS possesses the necessary management capabilities, and the Executive Directors of the agencies and programs understandably would require assurances that OIOS would respond appropriately to their concerns and requests. A series of internal audit oversight committees could be established at each fund and program to facilitate the execution and coordination of audit plans.

5. Conduct Periodic Reviews of IAD by Independent External Auditors

Consistent with IIA standards, the Committee recommends that an external professional examination of IAD's policies, procedures, resources, and performance be conducted at least once every five years.

IAD has stated its intent to adopt the IIA's PPF. The Committee fully supports this intention. However, the Committee has noted that IAD's current Manual—even though based on IIA

PART ONE

standards—does not always reflect IIA standards, and, in any event, IAD's practices sometimes deviate from the Manual's policies and procedures (e.g., in respect of timing of report preparation and management response).

While BOA routinely examines IAD's audit work, it does not appear to have conducted a top-to-bottom, in-depth review of all IAD policies, procedures, and work products. Accordingly, the Committee recommends periodic reviews by an external professional body of IAD's policies and procedures—as well as their actual application—so as to ensure that IAD operates in accordance with the highest professional standards.

6. Develop Audit Plans for All New Programs Coincident with Startup

The Committee recommends that whenever a new program involving significant resources is initiated, IAD establish a comprehensive audit plan and commit sufficient resources for reviewing the new operations to ensure that any deficiencies in the program are immediately identified and addressed.

As noted throughout this Interim Report, the Programme was a very complex operation involving huge sums of money. It also operated in very difficult and often dangerous circumstances. It therefore should come as no surprise that there were numerous control and procedural shortcomings. However, the first IAD review was not started until June 1997, and the corresponding audit report was not published until April 1999, more than two years after the Programme began operating. Also, the early IAD reviews covered only a small part of the overall program.

Establishing a new program presents unique risks. New policies and procedures often need to be developed and implemented by staff, many of whom may lack the relevant experience and expertise. Early involvement and monitoring by IAD is therefore essential. If problems are not identified and addressed early in the life of a program, serious deficiencies can go undetected for long periods and exacerbate over time. In such circumstances, recovery often becomes difficult.

7. Require Audits Throughout All Phases of Programs

The Committee recommends that internal audits be planned for each distinct phase of programs, including initiation, expansion, ongoing operation, wind-down, and closure. Each phase carries a different set of risks that should be evaluated and monitored.

8. Release Audit Reports within Three Months

The Committee recommends that all audit reports are issued promptly and no later than three months after the end of field work. This will ensure that audit concerns are surfaced and addressed quickly.

PART ONE

9. Mandate Commitment to Implement Recommendations within a Set Time Period

The Committee recommends the establishment of a framework of accountability and disclosure to ensure that management, the Secretary-General, and the independent board (recommended above) address recommendations on a timely basis. The Committee recommends that IAD reports indicate for all agreed recommendations the precise dates by which management has committed to ensure implementation. Last, the Committee recommends that for important recommendations, IAD schedule follow-up audits within six months of the agreed implementation date.

PART ONE

VI. ADMINISTRATIVE EXPENDITURES

A. SUMMARY BACKGROUND

When the Programme was established, the United Nations created a special account to manage the funds dedicated for administration. The account, identified internally as the ESD Account, was funded with approximately 2.2 percent, or \$1.4 billion, of the proceeds from the sale of \$62.4 billion of Iraqi oil for this purpose.¹² Including interest income and foreign exchange gains of \$105 million, available sources of funds for the account ultimately totaled \$1.5 billion.

In light of the allegations of fraud and corruption surrounding the Programme, the United Nations' access to these monies has prompted persistent questions regarding its entitlement to and use of the funds as well as whether the ESD Account was audited. Some have asserted also that these funds essentially represented a "commission" inciting the United Nations to ignore Programme abuses rather than try to eliminate or mitigate them.

B. QUESTIONS

Chapter 6 addresses the following three questions:

1. Did the United Nations treat the 2.2 percent, which was allocated to the ESD Account, as a commission or entitlement that it could spend at will?
2. Did the United Nations spend the ESD funds for purposes or programs other than the Programme, or did it otherwise use the funds to enrich itself?
3. Was the ESD Account ever audited?

To answer these questions and understand more generally the nature of ESD expenditures, the Committee has performed a forensic analysis of the account, examining transfers into the account and expenditures from the account, and evaluating how these flows of funds were accounted for and reported.

As discussed later, the nine UN-related agencies tasked with implementing the Programme in Northern Iraq received fifty-three percent, or \$482 million, of the total funds spent from the ESD Account.¹³ The findings expressed in Chapter 6 do not pertain to the ESD funds spent by the agencies. That review will be part of the Committee's report on the agencies' involvement in the Programme, which will be issued later this year. In addition, a future report will address

¹² S/RES/986, para. 8 (Apr. 14, 1995). While the total amount of oil sold was \$64.2 billion, the 2.2 percent allocation did not apply to the \$1.8 billion of oil sold to meet the Turkish pipeline tariffs. See *ibid.*

¹³ Pursuant to Security Council Resolution 986, para. 8, nine UN-related agencies were tasked with implementing the Programme in the three northern Governorates of Dohuk, Erbil, and Suleimaniyah. As of June 30, 2004, disbursements to the nine agencies were approximately: FAO (\$89 million); ITU (\$8 million); UNDP (\$66 million); UNESCO (\$23 million); UN-Habitat, SRP (\$56 million); UNICEF (\$67 million); UNOPS (\$35 million); WFP (\$91 million); and WHO (\$47 million).

PART ONE

questions relating to the United Nations' administration of the Programme, including: (1) how United Nations internal costs were allocated; (2) the processes and controls in place to monitor and approve Programme disbursements; (3) Programme procurement practices; and (4) whether funds were used effectively and appropriately within the Programme.

C. METHODOLOGY

The Committee's forensic analysis benefited from unfettered access to the Programme-related project, treasury, banking, and accounting information that it sought. The Committee staff conducting the review consisted of independent, experienced forensic accountants, investigators, and information technology specialists, all of whom were employed under the Committee's direction.

The Committee obtained the financial statements for all Programme-associated accounts as well as the Programme's detailed general ledger. In addition, the Committee also collected extensive and detailed information, including documentary support relating to how the United Nations budgeted and spent monies allocated to the ESD Account, and it interviewed numerous United Nations budgeting, treasury, payroll, audit, and accounting personnel.

In the process of confirming the amounts in the general ledger, the Committee and its forensic accountants examined a significant proportion of the allotments and expenditures—as well as related underlying supporting documentation such as budgets, invoices, and contracts—to determine what ESD funds were used for and whether there were indications of monies being allotted or spent for purposes unrelated to the Programme.

D. FINDINGS AND CONCLUSIONS

As outlined above, the Committee set out to answer the following three questions:

1. Did the United Nations treat the 2.2 percent, which was allocated to the ESD Account, as a commission or entitlement that it could spend at will?
2. Did the United Nations spend the ESD funds for purposes or programs other than the Programme, or did it otherwise use the funds to enrich itself?
3. Was the ESD Account ever audited?

Findings:

1. The Committee finds that the ESD Account was not treated by the United Nations as a commission, either by design or practice, but rather as a necessary pool of funds dedicated to covering the significant administrative expenses associated with the Programme. Although the inflow of funds available for use was tied directly to oil sales—which therefore grew as oil sales increased—actual expenditures were based on the Programme's expected needs. To spend money from the account, detailed semi-annual or annual needs-based budgets that incorporated standard United Nations rates and ceilings were required to be submitted for evaluation and approval by the United Nations Controller. The budgets and actual expenditures were always significantly less

PART ONE

- than the amount of funds available, so much so, that \$372 million, or twenty-seven percent of the total oil proceeds allocated to ESD and available for the United Nations to spend, was not used, but rather was transferred out of the account to be used directly for the benefit of the Iraqi people.
2. The Committee finds that funds designated to be deposited in the ESD Account, pursuant to the appropriate resolutions, were in fact deposited. The Committee found no evidence that funds allocated to the ESD Account were commingled with other Programme or United Nations funds or removed from the ESD Account without authorization, including transfers or payments to non-Programme entities at the United Nations. With the one exception mentioned below, the Committee found no evidence that ESD funds were used for any purpose other than the Programme. However, the Committee notes the following matters that it continues to investigate as part of its evaluation of the Programme's administration:
 - a. In reviewing disbursements from the ESD Account, the Committee found instances in which the purpose of the expenditure was not well supported or its use adequately explained. This was especially prevalent in the charges internally allocated to the Programme by the United Nations. The Committee also identified instances in which expenses were inadvertently miscoded within the accounting records or were inconsistently coded across multiple budget classifications.
 - b. In addition, the Committee identified one instance in which an individual's remuneration was inappropriately allocated to and funded from the ESD Account. The Committee has reviewed numerous other non-OIP staffing positions funded from the ESD Account, and it has concluded that this instance is likely an isolated occurrence.
 - c. Finally, the Committee noted weaknesses in some of the supporting documentation, controls and safeguards in place to maintain the integrity of the accounting and financial reporting functions. These matters and concerns—many of which were also previously identified by the external auditors—could have resulted in isolated instances of inappropriate spending of ESD funds. The Committee is further investigating this and will provide its evaluation in its report on the Programme's administration, which will be released later this year.
 3. The Committee finds that IAD conducted only one internal audit relating to ESD, but that the accounting and financial reporting processes and results of the ESD Account were audited routinely by BOA. The Committee finds also that external audit reports were distributed to the Security Council and others. The Committee will review and assess BOA's Programme-related findings in a future report.

Although the funds spent from the ESD Account appear to the Committee to have been appropriately accounted for and used for administering the Programme, additional analysis and review of the expenditures is needed in order to determine whether those funds were effectively used. This includes the amounts advanced to the nine UN-related agencies for which little transparency and oversight was in force.

Finally, in light of the allegations of fraud and corruption relating to the Programme's administration, the Committee finds that additional funds should have been expended on

PART ONE

inspections and audits, notwithstanding the request of the Security Council to “minimize the cost of the United Nations activities associated with the implementation of resolution 986 (1995) as well as the cost of the independent inspection agents and the certified public accountants.”¹⁴

E. RECOMMENDATIONS

The Committee recognizes that the Programme was unique to the United Nations in many respects, namely its sheer size, scope, and political and geographic complexities. The Committee commends the United Nations for establishing a separate accounting for the various components of the Programme. The Committee also notes the intention of the Security Council, United Nations, and OIP to minimize the administrative costs of the Programme. Finally, the Committee is aware of the United Nations’ efforts to operate the administrative and budgetary components of the Programme within the applicable standard practices and policies of the United Nations.

In light of this and its findings related to the ESD Account, the Committee has the following recommendations:

1. Transparency

Increase transparency of the administration of funds and programs, especially in relation to the need to review, based on detailed financial reports, budgetary, disbursement, and cost allocation processes and decisions. Provide more detailed and descriptive financial statements and reports. Consider making such reports publicly available.

2. Controls and Oversight

Emphasize the importance of establishing and maintaining high standards of documentation, controls, oversight, and reporting for large humanitarian aid programs or funds, especially ones involving extra-budgetary funding sources, to preclude any doubt regarding the United Nations’ costs and questions as to whether it profits from such projects.

¹⁴ S/RES/1284, para. 22 (Dec. 17, 1999).

PART ONE

VII. MAGNITUDES

A number of estimates of illicit payments to the Iraqi Regime during the period of official sanctions have been published. These estimates—the earliest published in late 2002 and the most recent in November 2004 and all from U.S. sources—differ widely in quantitative conclusion. The table below provides a broad summary of the available estimates published by the Coalition for International Justice, the United States Governmental Accountability Office (“GAO”), the Iraq Survey Group (“ISG Report”), and the United States Senate’s Permanent Subcommittee on Investigations (“US Senate PIC”).

Table 1

Comparison of Estimates of Illicit Iraqi Income During UN Sanctions

(Amounts in Millions)

	Coalition for International Justice	GAO	ISG Report	US Senate PIC
	Sep-02	16-Jun-04	30-Sep-04	15-Nov-04
<u>Protocol & Smuggling Revenue</u>				
Revenue prior to the Programme	(1994-1996)		(1991-1996)	
Protocol Revenues	\$ 699		\$ 2,220	
Smuggling Revenues	286		180	
<i>Sum prior to the Programme</i>	985	<i>Not estimated</i>	2,400	\$ 3,900
Revenue during the Programme	(1997-2002)		(1997-2003)	
Protocol Revenues	6,014		5,783	
Smuggling Revenues	2,309		1,022	
<i>Sum during the Programme</i>	8,323	\$ 5,700	6,805	9,700
Total Protocol & Smuggling Revenue	\$ 9,308	\$ 5,700	\$ 9,205	\$ 13,600
<u>Programme-Related Revenue</u>				
Surcharges on Oil Sales	275	859	229	241
Kickbacks on Humanitarian Purchases		3,541	1,512	4,400
Substandard Goods				2,100
Northern/Kurdish Area Purchases				405
Investment Income on Illicit Income				403
Total Programme-Related Revenue	\$ 275	\$ 4,400	\$ 1,741	\$ 7,549
Total Estimated Illicit Iraqi Income	\$ 9,583	\$ 10,100	\$ 10,946	\$ 21,149

Sources: Coalition for International Justice, “Sources of Revenue for Saddam & Sons” (September 2002); United States General Accountability Office, “Weapons of Mass Destruction U.N. Confronts Significant Challenges in Implementing Sanctions against Iraq” (May 2002); “United Nations Observations on the Oil for Food Program and Iraq’s Food Security” (June 16, 2004); Iraq Survey Group, “Comprehensive Report of the Special Advisor to the DCI on Iraq’s WMD” (Sept. 30, 2004); United States Senate Permanent Subcommittee on Investigations – Committee on Governmental Affairs, “Methodology for Estimate of Total Illicit Iraqi Income During UN Sanctions (1991-2003)” (Nov. 15, 2004).

PART ONE

At this point, the Committee continues to refine its understanding of the numbers, looking toward cooperation with other interested parties. It is not presenting its own estimates at this time regarding the components of these flows of funds. One exception is the value of “surcharges” required of purchasers of oil by the Iraqi Regime during the later stages of the Programme. Iraqi data, consistent with United Nations records of actual contractor purchases of oil under the Programme, supports the figure of \$228 million for surcharges on oil sales.

Data recording similar surcharges related to imports imposed by the Iraqi Regime (i.e., the so-called “kickbacks”) are scattered, partly inaccessible, and less reliable. Information now available to the Committee suggests the ISG Report estimate that kickbacks totaled \$1,512 million may be low by as little as \$200 million or as much as \$1 billion.

There can be no question that bribes and other abuses, including shipments of overpriced or substandard goods, provided many opportunities for illicit gains, often as part of a deliberate effort by Iraq to “reward friends” or cultivate political influence. What is not clear is the extent to which those illicit financial gains benefited middlemen participating in the Programme and corrupt individual Iraqi officials rather than the Iraqi Regime.

What does appear clear is that the major source of external financial resources to the Iraqi Regime resulted from sanctions violations outside the Programme’s framework. These illicit sales, usually referred to as “smuggling,” began years before the Programme started. Exports of Iraqi oil to both Jordan and Turkey and imports from those countries generally took place within the terms of trade agreements (“protocols”) negotiated with Iraq. The existence, but not necessarily the amounts, of sales and purchases under these protocols was brought to the attention of the 661 Committee and at least in the case in Jordan, it was “noted.” United States law requires that assistance programs to countries in violation of United Nations sanctions be ended unless continuation is determined to be in the national interest. Such determinations were provided by successive United States administrations for both Jordan and Turkey.

In the later stages of the Programme, substantial Iraqi sales of oil were made to Syria and small sales to Egypt under similar “protocols.” There are indications that, in some instances, oil was also smuggled from Iraq under the cover of shipments authorized by the Programme.¹⁵ The Committee will investigate whether there was any dereliction of duty on the part of those administering the Programme in identifying and reporting breaches of the sanctions and taking steps to prevent them.

The Committee’s website (www.iic-offp.org) provides a more detailed table of these estimates and the basis used to calculate these amounts.

¹⁵ Certain information relevant to this investigation has been withheld by the United States Department of Homeland Security.

PART TWO

CHAPTER 1 – INTRODUCTION TO PART TWO OF INTERIM REPORT

CHAPTER 1

I. OVERVIEW

Part Two of this Interim Report reviews in detail the Committee's evidence and findings as follows:

- Chapter 2 – Overview of the Oil-for-Food Programme;
- Chapter 3 – Initial Procurement in 1996 of the Major Programme Contractors;
- Chapter 4 – Benon Sevan and Oil Allocations;
- Chapter 5 – The Internal Audit Department's Role in the Programme; and
- Chapter 6 – Management of the Programme's Administrative Account.

To place in context the manner in which the information is presented in this Report, this Chapter briefly summarizes the Committee's investigative approach, sources of information, and various policies and procedures.

PART TWO

CHAPTER 1 – INTRODUCTION TO PART TWO OF INTERIM REPORT

This page is intentionally left blank

PART TWO

CHAPTER 1 – INTRODUCTION TO PART TWO OF INTERIM REPORT

II. THE INVESTIGATION

A. STAFF AND INVESTIGATIVE APPROACH

The Committee's staff is led by Executive Director Reid Morden. At present, the staff includes more than seventy-five persons from twenty-eight countries, with a wide variety of professional backgrounds, including but not limited to accountants, attorneys, and former law enforcement personnel.

Staff teams are actively investigating the following areas in order to come to a view on the effectiveness and appropriateness of the design, administration, and oversight of the Programme, including: (1) its initiation by the United Nations and supervision by the Security Council and its 661 Committee; (2) the retention and monitoring of inspection and banking services providers and the value and adequacy of the services provided; (3) the quality of project management provided first by the Department of Political Affairs ("DPA") and by the Office of the Iraq Programme ("OIP"); (4) the effectiveness of the Programme in the three northern governorates of Iraq and the value provided by the UN-related agencies; and (5) the appropriateness of administrative expenditures by the United Nations and the UN-related agencies. In addition, an overarching focus of the Committee is the investigation of potential corruption or other illegal payments to the Government of Iraq or to other persons and entities in connection with any Programme-related contracts or activities.

B. WITNESS INTERVIEWS

The Committee and its staff have conducted approximately 400 interviews in about twenty-five countries. Except where otherwise noted, this Report attributes by name information received from witnesses and also notes the date or dates of interview. The Committee has balanced the need for disclosure of witnesses' names against the concerns it expects many individuals interviewed by the Committee will have when seeing their names in print. However, the interests of transparency require that the Committee identify witnesses by name whenever it is possible to do so.

The Committee nonetheless emphasizes that the fact that the name of a witness appears in this Report is *not* in itself any indication that the witness has engaged in wrongdoing. In addition, the fact that one witness's recollection may differ from the recollection of another witness, or from a particular document, does not indicate—unless otherwise noted—a view of the Committee that the witness has been intentionally dishonest in statements made during interviews. The Committee praises the witnesses for offering their time and perspectives to enhance the Committee's understanding of the Programme.

To date, the Committee has interviewed approximately 150 current and former employees of the United Nations. The Secretary-General has required all employees of the United Nations to cooperate with the Committee's inquiry and provide it with unrestricted access to all documents and information relating to the Programme. Failure to do so could result in disciplinary action by the United Nations.

PART TWO

CHAPTER 1 – INTRODUCTION TO PART TWO OF INTERIM REPORT

In addition, primarily through the Committee's Baghdad office, staff members have conducted extensive meetings and interviews of present and former Iraqi officials involved in virtually every aspect of the former regime and the Programme. Except as noted, this Report does not disclose the names of Iraqi officials and citizens who have furnished information. To do so would jeopardize their health and safety.

Moreover, the Committee's interviews have included present and former officials from many member states of the United Nations other than Iraq. Some member states have requested and negotiated with the Committee written Memoranda of Understanding governing the terms of their cooperation; other member states have cooperated with the Committee without requesting a written memorandum of understanding. The Committee has required that all interviews with government officials be "on the record," such that the Committee may cite in its reports the information related by an official during the course of the interview, unless the specific information concerns classified, confidential, or otherwise legally protected information. As a condition of making present and former officials available for interview by the Committee, some member states have required the Committee not to identify by name officials who have been interviewed. As a result, for countries that have imposed this requirement, interviews of present and former government officials are cited by the name of the country and not by the name of the person interviewed.

From time to time, the Report refers to the "Committee" having interviewed a particular person. These references signify that the person was interviewed by two or more staff members of the Committee. It does not indicate that the person was interviewed by the three Committee members of the Independent Inquiry Committee. However, each of the three members of the Committee has participated in certain witness interviews, and the participation of an individual Committee member is noted in the Report where the Committee member's presence is significant to the context of the interview.

C. DOCUMENTARY AND ELECTRONIC EVIDENCE

The Committee has had unprecedented access to the United Nations' current and archived records relating to the Programme. The Committee's document review has included an analysis of both paper and electronic records. To facilitate that review, the Committee has electronically scanned more than five million pages of United Nations documents in order to allow targeted electronic text-search queries. As a part of the process of capturing all relevant information, the Committee's forensic team has also imaged the computers of scores of United Nations staff members, thus providing the Committee staff with access to stored electronic information including electronic mail, without restriction.

The Committee has obtained extensive records from the Government of Iraq. This includes records from the Ministry of Oil, the State Oil Marketing Organization ("SOMO"), and numerous other ministries of Iraq that were involved in activities under the Programme.

In addition, the Committee has received or conducted on-site review of large numbers of documents from other sources worldwide. With the assistance of numerous member states and other sources, the Committee has acquired telephone records as well as financial records from

PART TWO

CHAPTER 1 – INTRODUCTION TO PART TWO OF INTERIM REPORT

approximately thirty financial institutions in seven countries, and it continues to obtain additional financial, communications, and corporate records. With serious allegations of fraud and corruption, and claims of substantial illicit funds being channeled to the former Iraq regime, the Committee has aggressively pursued the identification and tracing of illicit funds generated in connection with the Programme.

This Report cites some of the documents reviewed by the Committee. Moreover, it identifies the source of documents if not clear from the context and if doing so is consistent with any confidentiality restrictions.

PART TWO

CHAPTER 1 – INTRODUCTION TO PART TWO OF INTERIM REPORT

This page is intentionally left blank

PART TWO

CHAPTER 1 – INTRODUCTION TO PART TWO OF INTERIM REPORT

III. COMMITTEE POLICIES AND PROCEDURES

A. ADVERSE NOTICE PROCESS

Throughout the investigation process, issues of fairness have guided the Committee's approach. All individuals and institutions approached and interviewed by Committee staff have been invited to produce any information and documents relevant to the Committee's consideration of these serious matters. Consistent with its Investigation Guidelines, prior to making an adverse finding against an individual or corporation that has submitted to an interview, the Committee advised the individual or corporation of the proposed finding and provided the individual or corporation with an opportunity to produce any additional information prior to the release of the Committee's findings. An individual or corporation receiving notice from the Committee had the opportunity to make a written submission or to meet with the Committee. In those instances in which an individual or corporation elected to provide the Committee with additional information, it has been considered by the Committee.

If an individual or corporation is contacted by the Committee, but declines to consent to interview and to produce all relevant records and materials, the individual or corporation will *not* receive advance notice of any adverse findings that the Committee may make in the future. Furthermore, the Committee may note in a future report the decision of the individual or corporation not to cooperate with the Committee's inquiry.

B. LAW ENFORCEMENT COOPERATION

The Committee remains interested in any and all evidence—no matter where located—of illicit behavior by any individuals and entities involved in the Programme. Since the appointment of the Committee, some national authorities in member states have undertaken their own investigations into certain aspects of the Programme, and several of these authorities are presently cooperating with the Committee. The Committee stands ready to cooperate, in a manner consistent with its investigative goals, with national law enforcement authorities that may have a particular interest in investigating possible criminal violations of national law. However, it expects reciprocal cooperation by those agencies with the continuing work of the Committee.

PART TWO

CHAPTER 1 – INTRODUCTION TO PART TWO OF INTERIM REPORT

This page is intentionally left blank

PART TWO

CHAPTER 2 – AN OVERVIEW OF THE OIL-FOR-FOOD PROGRAMME

CHAPTER 2

I. ESTABLISHMENT OF THE OIL-FOR-FOOD PROGRAMME

A. HISTORICAL CONTEXT

In the early morning hours of August 2, 1990, Saddam Hussein sent thousands of Iraqi soldiers across the desert to invade and occupy Kuwait. Four days later in New York City, the United Nations Security Council responded with a landmark measure—Resolution 661—to prohibit most forms of trade and financial transactions with Iraq. After a multilateral coalition of forces liberated Kuwait in February 1991, the Security Council continued the sanctions subject to Saddam Hussein’s compliance with conditions for disarmament and his cooperation with international weapons inspections.¹⁶

Saddam Hussein did not comply. The broad sanctions regime remained through the first half of the 1990s, and Iraq’s twenty million people suffered greatly. In the eyes of many, humanitarian concerns compelled a response. It came on April 14, 1995, when the Security Council passed Resolution 986 to authorize Iraq to sell oil in return for the purchase of food, medicine, and other essential civilian goods. “Henceforth,” observed one United Nations ambassador, “the most comprehensive coercive economic measures ever devised by the UN were tempered by the largest humanitarian relief operation in the UN’s history.”¹⁷

And so began the Oil-for-Food Programme (“the Programme”). Cast by the Security Council as “a temporary measure” for the Iraqi people, the Programme endured for seven years through the fall of Saddam Hussein’s regime in 2003.

B. RESOLUTION 986

Under Resolution 986, Iraq could sell petroleum and petroleum products for 180 days in an amount not to exceed \$2 billion. Later resolutions of the Security Council successively re-

¹⁶ Michael R. Gordon, “Iraq Army Invades Capital of Kuwait in Fierce Fighting,” *New York Times*, Aug. 2, 1990, p. A1. Resolution 661 exempted the sale to Iraq of “supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs.” S/RES/661, para. 3(c) (Aug. 6, 1990). After the restoration of Kuwait’s sovereignty, the Security Council passed Resolution 687 to continue the sanctions regime subject to Iraq’s compliance with disarmament and weapons inspections requirements and subject again to humanitarian exemptions. S/RES/687 (Apr. 3, 1991).

¹⁷ Peter van Walsum, “The Iraq Sanctions Committee,” in *The UN Security Council: From the Cold War to the 21st Century* (David Malone ed., Lynne Rienner Publishers, 2002), p. 182. Van Walsum was the Dutch ambassador who chaired the Security Council’s Iraqi sanctions committee from 1999 to 2000. Prior to Resolution 986, two earlier Security Council resolutions that authorized the sale of Iraq’s oil for the purchase of humanitarian goods were not implemented because of Iraq’s refusal to participate. See S/RES/706 (Aug. 15, 1991); S/RES/712 (Sept. 19, 1991).

PART TWO

CHAPTER 2 – AN OVERVIEW OF THE OIL-FOR-FOOD PROGRAMME

authorized the Programme in 180-day “phases,” resulting in a total of thirteen phases by the Programme’s end. Resolution 986 required each sale of oil to be at “fair market value” and subject to the approval and monitoring requirements of the Security Council’s “661 Committee” – a sanctions oversight committee that was created under Resolution 661 and comprised of representatives from each of the fifteen members of the Security Council.¹⁸

Resolution 986 did not authorize Saddam Hussein to receive money directly from oil sales. That is because its purpose was not to enrich Saddam Hussein, but to help those he harmed. Accordingly, Resolution 986 directed the Secretary-General to establish an escrow account to receive the oil sales proceeds. In accordance with a distribution plan to be proposed by Iraq and approved by the Secretary-General, approximately two-thirds of the money in the escrow account could be used to buy medicine, health supplies, foodstuffs, and essential civilian needs for the Iraqi people—53 percent for the population in south and central Iraq and 13 percent for the Kurds in northern Iraq. The remainder was devoted to compensate victims of the war with Kuwait, for the costs of weapons inspections, and for other administrative and assistance costs. This included 2.2 percent for the United Nations’ administration of the Programme. The United Nations’ management and use of these administrative funds is the subject of Chapter 6 of this report.¹⁹

C. MEMORANDUM OF UNDERSTANDING

After Resolution 986 was passed in April 1995, more than a year and a half elapsed before the first sale and purchase transactions occurred under the Programme. Initially, Iraq balked and showed no interest in the Programme.

But then in early 1996, Iraq elected to negotiate with the United Nations to develop procedures for the Programme’s implementation, and Secretary-General Boutros Boutros-Ghali designated Hans Corell, the Under-Secretary-General for Legal Affairs, to conduct these negotiations. This resulted in a final Memorandum of Understanding between Iraq and the United Nations on May 20, 1996.²⁰

D. PROGRAMME CONTRACTORS

Next in 1996 came the hiring of the Programme’s three prime contractors: a bank to manage the escrow account; an inspection company to inspect the oil leaving Iraq; and an inspection company to inspect the goods arriving in Iraq under the Programme. On June 18, 1996,

¹⁸ S/RES/986, paras. 1, 4, 6 (Apr. 14, 1995).

¹⁹ *Ibid.*, para. 8. In 2000, the allocations would change to allow 59 percent of oil sales to be used for goods in southern and central Iraq and to reduce the percentage devoted to the victims of the Iraq-Kuwait war. S/RES/1330, para. 12 (Dec. 5, 2000).

²⁰ Memorandum of understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of Security Council resolution 986 (1995), S/1996/356 (May 20, 1996) (hereinafter “MOU” or “Iraq-UN MOU”).

PART TWO

CHAPTER 2 – AN OVERVIEW OF THE OIL-FOR-FOOD PROGRAMME

Secretary-General Boutros-Ghali selected a French bank—Banque Nationale de Paris (“BNP”)—to manage and administer the escrow account. This was followed on July 31, 1996, by the selection of a Dutch company—Saybolt Eastern Hemisphere BV (“Saybolt”)—to inspect and monitor oil exports from Iraq. Finally, on August 23, 1996, the United Nations selected a British firm—Lloyd’s Register Inspection Ltd. (“Lloyd’s”)—to inspect and monitor the humanitarian goods that would enter Iraq under the Programme. The manner in which these three contractors were selected is the subject of Chapter 3 of this report.

In December 1998, the United Nations selected a Swiss company, Cotecna Inspection SA (“Cotecna”), to replace Lloyd’s Register. Secretary-General Kofi Annan’s son, Kojo Annan, was affiliated with Cotecna at the time that Cotecna was selected to receive this inspection services contract. The selection of Cotecna has been the subject of intensive investigation by the Committee, and the Committee expects to issue a second interim report on this issue.

E. RULES AND PROCEDURES

As the United Nations was completing its selection of the initial Programme contractors, the 661 Committee acted, on August 12, 1996, to approve internal rules to govern its own review of contracts under the Programme.²¹ These rules, in conjunction with the requirements of the Memorandum of Understanding and with later resolutions of the Security Council, established the basic framework for the day-to-day review and approval of contracts that were to be authorized under the Programme. However, the Government of Iraq imposed additional restrictions on the operation of the Programme.

1. Oil Contracts

A company that wished to buy oil could negotiate and enter into a contract with Iraq’s State Oil Marketing Organization (“SOMO”). Once an agreement was reached between the company and SOMO, then the company sought approval of the contract from the United Nations. In the ordinary course, the company had to register or already be registered with the United Nations through the diplomatic mission of its home country. This registration allowed the company to deal directly with and secure approval of its contract from expert oil overseers who worked at the United Nations and advised the 661 Committee. The overseers’ job was to negotiate on a monthly basis a fair market oil pricing formula with SOMO. The overseers then submitted their recommendation for approval of the monthly pricing mechanism to the 661 Committee. Once the 661 Committee approved the pricing mechanism, two or more overseers could approve jointly any particular contract between a company and SOMO if the contract terms included the approved pricing mechanism, the details of a confirmed irrevocable letter of credit, and a quantity

²¹ “Procedures to be Employed by the Security Council Committee Established by Resolution 661 (1990) Concerning the Situation between Iraq and Kuwait in the Discharge of its Responsibilities as Requested by Paragraph 12 of Security Council Resolution 986 (1995),” S/1996/636 (Aug. 12, 1996) (hereinafter “661 Rules”).

PART TWO

CHAPTER 2 – AN OVERVIEW OF THE OIL-FOR-FOOD PROGRAMME

of oil that would not result in exceeding the overall quantity limitations authorized under the Programme.²²

Once a contract was approved, the oil was “lifted” by seagoing oil tankers from one of two approved oil port terminals: the port of Ceyhan in Turkey (the terminal point for the Kirkuk-Yumurtalik pipeline from Iraq to Turkey) and Mina al Bakr (an offshore loading platform in the Persian Gulf). Each transfer of oil from Ceyhan and Mina al Bakr was subject to on-site monitoring by Saybolt’s inspectors. A company purchasing oil under the Programme was required to pay the full amount of the contract price by means of a letter of credit from its bank in favor of the escrow account maintained by BNP.²³

2. Humanitarian Goods Contracts

A company that wished to provide humanitarian goods under the Programme contracted with a domestic ministry of the Government of Iraq or, for most goods intended to be distributed in northern Iraq, with one of the UN-related distribution agencies. The goods were required to be identified in advance on a distribution plan that was approved for each phase by the Secretary-General. The contract was forwarded through the company’s home country mission to a contracts processing office at the United Nations where it was subject to review for the details of pricing and value. If the contract paperwork was in order, the contract was then subject to the 661 Committee’s review and approval under a “no objection” procedure (i.e., the contract was deemed approved if no member of the Committee lodged an objection within a prescribed time period).²⁴

While the administration and distribution of humanitarian goods in southern and central Iraq was undertaken by the Government of Iraq, because of Saddam Hussein’s mistreatment of and animosity towards the Kurds in northern Iraq, a separate administration, procurement, and distribution system existed for goods furnished to the northern governorates of Dohuk, Erbil, and

²² Beginning in the fall of 2001, the United States and United Kingdom began a practice of putting holds on the approval of oil pricing mechanisms in the 661 Committee until the end of the monthly cycle and then approving the pricing mechanism only to the extent that it retrospectively corresponded to actual market prices. This effectively accomplished a “retroactive pricing,” restricting the margins for the payment of illegal surcharges by oil purchasers to the Iraqi Regime. This subject will be addressed in the Committee’s final report.

²³ S/RES/986, paras. 1(b), 6 (Apr. 14, 1995).

²⁴ *Ibid.*, para. 8 (distribution plan for south and central Iraq); Iraq-UN MOU, paras. 5-11 & Annex 1 (distribution plan requirements); 661 Rules, paras. 26-38 (contract submission and review requirements). Over time the Security Council approved measures to reduce the scope of contracts for which review and approval would be formally required by the 661 Committee. See S/RES/1284, para. 17 (Dec. 17, 1999) (approving “green list” procedure to exempt certain Programme-financed contracts—including foodstuffs, pharmaceutical, medical, agricultural, and education items—from 661 Committee review); S/RES/1409 (May 14, 2002) (instituting “goods review list” procedure to require only that certain potential “dual use” goods be subject to 661 Committee review).

PART TWO

CHAPTER 2 – AN OVERVIEW OF THE OIL-FOR-FOOD PROGRAMME

Suleimaniyah. This system was administered in the name of the United Nations Inter-Agency Humanitarian Programme and involved the following UN-related agencies: the Food and Agricultural Organization (“FAO”), the International Telecommunication Union (“ITU”), the United Nations Development Programme (“UNDP”), the United Nations Educational, Scientific and Cultural Organization (“UNESCO”), United Nations Human Settlements Programme (“UN-Habitat”), the United Nations Children’s Fund (“UNICEF”), the United Nations Office for Project Services (“UNOPS”), the World Food Programme (“WFP”), and the World Health Organization (“WHO”).²⁵

Upon the 661 Committee’s approval of a goods contract, the goods could be transported into Iraq. The goods were required to be certified for entry by Lloyd’s Register (by Cotecna beginning in January 1999) at one of four border inspection points: Zakho on the border of Turkey; Trebil on the border of Jordan; Al-Waleed on the border of Syria; and the port of Umm Qasr on the Persian Gulf. Once entry was approved, BNP could make payment to the supplier of the goods from the escrow account.

3. Rules Imposed by the Iraqi Regime

In addition to the official Programme rules established by the United Nations, there was another set of rules: unofficial but nonetheless binding on the companies participating in the Programme. These unofficial rules were developed by the Iraqi Regime as part of its efforts to obtain additional advantages from the Programme. The advantages sought by the regime were both political—for example to rally support for easing of sanctions—and economic—for example to extract hard currency from oil purchasers and import vendors.

The additional rules imposed by the Iraqi Regime are featured prominently in Chapter 4 of this Report. There, it is evident that the Iraqi Regime attempted to gain favor by granting oil allocations to persons the Programme did not recognize as oil purchasers and also that it attempted to extract economic benefits from the entities officially enrolled.

This difference—between the official rules and rules imposed unilaterally by the Iraqi Regime—will be apparent also in later reports, including when the Committee addresses the oil and humanitarian transactions as well as the evasion of sanctions by Iraq in trading oil outside the Programme. A central task the Committee will undertake in future reports will be to assess how the design and execution of the Programme, in effect, permitted the rules imposed by the Iraqi Regime to operate more or less openly.

²⁵ Independent Inquiry Committee into the United Nations Oil-for-Food Programme, “Briefing Paper,” p.4, <http://www.iic-offp.org/documents/Briefing%20Paper21October04.pdf> (Oct. 21, 2004) (hereinafter “Initial Briefing Paper”); United Nations Office of the Iraq Programme, “About the Programme,” <http://www.un.org>.

PART TWO

CHAPTER 2 – AN OVERVIEW OF THE OIL-FOR-FOOD PROGRAMME

This page is intentionally left blank

PART TWO

CHAPTER 2 – AN OVERVIEW OF THE OIL-FOR-FOOD PROGRAMME

II. EVOLUTION OF THE PROGRAMME

A. OVERVIEW

The Programme lasted for thirteen phases of approximately 180-day periods from December 1996 to May 2003. Oil was first lifted under the Programme in December 1996, and the first shipment of humanitarian goods arrived in Iraq in March 1997. Initially, Iraq could export only \$2 billion of oil per phase. Beginning in February 1998, the Security Council more than doubled the amount to allow Iraq to sell up to \$5.256 billion of oil per 180-day phase. Then, in December 1999, the Security Council removed any limitation on the amount of oil that Iraq could sell under the Programme.²⁶

In the meantime, the Security Council also expanded the range of goods that could be imported into Iraq. In June 1998, the Security Council authorized an “oil spare parts” program to allow Iraq to import up to \$300 million of parts and equipment for the maintenance and improvement of its oil production and transport facilities. In March 2000, the Security Council doubled the “oil spare parts” exemption to \$600 million.²⁷

A recurring issue of controversy throughout the Programme involved the amount of time that it took for contracts to be processed within the United Nations and the large number of “blocks” and “holds” placed by the United States and the United Kingdom on the 661 Committee’s approval of contracts for humanitarian goods and oil spare parts. An oft-stated reason for the blocks and holds was the “dual use” potential of certain items—the possibility that Iraq might put a contract item to use for military or weapons purposes. The delays in contract approvals were the subject of frequent dispute and much discussion at all levels concerning measures to expedite the flow of goods into Iraq.²⁸

In the fall of 2000, reports emerged that Iraq was demanding that oil buyers pay surcharges of between \$.10 and \$.50 per barrel to Iraqi-controlled bank accounts in Jordan. This practice

²⁶ S/RES/986, para. 1 (Apr. 14, 1995) (\$1 billion every 90 days); S/RES/1153, para. 2 (Feb. 20, 1998) (\$5.256 billion); S/RES/1284, para. 15 (Dec. 17, 1999) (removing quantity limitation). Although the final phase of the Programme terminated in May 2003, the Programme continued to exist until November 2003 for the processing of previously authorized contracts.

²⁷ S/RES/1175, paras. 1-3 (June 19, 1998) (authorizing use of \$300 million from the escrow account to import “parts and equipment to enable Iraq to increase the export of petroleum and petroleum products”); S/RES/1293, para. 1 (Mar. 31, 2000) (increasing “oil spare parts” exemption to \$600 million).

²⁸ See, for example, the remarks of the Secretary-General and Security Council members at Provisional record of Security Council meeting, S/PV.4120 (Mar. 24, 2000). The 661 Committee regularly issued reports that described the number of contracts approved and placed on hold. See, e.g., “Report of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait on the implement of the arrangements in paragraphs 1, 2, 6, 8, 9 and 10 of resolution 986 (1995),” S/2001/321 (Mar. 22, 2001).

PART TWO

CHAPTER 2 – AN OVERVIEW OF THE OIL-FOR-FOOD PROGRAMME

persisted in varying degrees, at least until the middle of 2002.²⁹ Meanwhile, as early as November 1999, Iraq required many of the companies that supplied humanitarian goods under the Programme to make side payments to Iraq-controlled companies and bank accounts.³⁰ The Committee has acquired significant documentation substantiating payments outside of the Programme; this topic will be addressed more fully in the Committee’s final report.

From 1996 to 2003, Iraq sold more than \$64.2 billion of oil under the Programme. Of these proceeds, approximately \$32.6 billion was spent for goods for southern and central Iraq, and approximately \$6.1 billion was spent by the UN-related agencies for the goods distributed to northern Iraq. After the fall of Saddam Hussein’s regime, the Security Council terminated the economic sanctions against Iraq on May 22, 2003, and it directed the phase-out of ongoing operations of the Programme.³¹

B. UNITED NATIONS ADMINISTRATION OF THE PROGRAMME

Although the Security Council and its 661 Committee exercised combined supervisory and operational oversight of the Programme, the Secretariat of the United Nations administered its day-to-day operations. Shortly after the signing of the MOU with Iraq, Secretary-General Boutros-Ghali formed the Iraq Steering Committee, a group of high-level United Nations officials tasked with ensuring the timely and effective administrative implementation of the Programme.³² For the initial seventeen months of the Programme, until October 1997, the Programme was administered by staff from the Department of Humanitarian Affairs (“DHA”) and the Department of Political Affairs (“DPA”), based out of the United Nations headquarters in New York. For DPA, Joseph Stephanides, Chief of the Sanctions Branch and Deputy Director of the Security Council Affairs Division, acted as liaison between the 661 Committee and the Steering Committee.

On October 15, 1997, Secretary-General Annan transferred the administration of the Programme to a single, specialized division—the Office of the Iraq Programme (“OIP”). The Secretary-General appointed Benon V. Sevan to be Executive Director of OIP. Mr. Sevan supervised the

²⁹ See, e.g., “Iraqi Oil Premium Could Lead to Sanctions Busting, UN Official Says,” *Agence France Presse* (Nov. 16, 2000); “SOMO to Enforce 50 Cents/B Surcharge Thursday Midnight, Threatening Stoppage of Exports,” *MEES News Flash* (Nov. 30, 2000); “Iraq Halts Oil Exports, Demands Surcharge,” *Washington Post* (Dec. 2, 2000).

³⁰ See “U.S. Says some Iraqis get ‘Oil-for-Food’ Kickbacks,” *Reuters* (Nov. 17, 1999); “Iraq is Running Payoff Racket, U.N. Aides Say,” *New York Times*, (Mar. 7, 2001).

³¹ “Initial Briefing Paper,” pp. 2-4 (calculating amounts transacted); S/RES/1483, paras. 10, 16 (May 22, 2003).

³² Boutros Boutros-Ghali memorandum to Yasushi Akashi, Joseph Connor, Hans Corell, Chinmaya Gharekhan, Marrack Goulding, and Yukio Takasu (May 28, 1996); “Interim Report of the Secretary-General on the Implementation of Security Council Resolution 986 (1995),” S/1996/978, para. 3 (Nov. 25, 1996).

PART TWO

CHAPTER 2 – AN OVERVIEW OF THE OIL-FOR-FOOD PROGRAMME

Programme's operations through its termination in 2003, overseeing the activities of the United Nations Office of the Humanitarian Coordinator for Iraq ("UNOHCI") and managing thousands of locally-engaged staff in Iraq. Today, Mr. Sevan no longer performs duties for the United Nations and is receiving a nominal annual salary of \$1 until such time as the United Nations determines his future employment status.

PART TWO

CHAPTER 2 – AN OVERVIEW OF THE OIL-FOR-FOOD PROGRAMME

This page is intentionally left blank

PART TWO

CHAPTER 2 – AN OVERVIEW OF THE OIL-FOR-FOOD PROGRAMME

III. UNITED NATIONS RULES OF EMPLOYEE CONDUCT

All United Nations staff must comply with the “UN Staff Regulations and Rules” and the “Standards of Conduct for International Civil Servants.” On December 10, 1998, the Secretary-General circulated a Bulletin to all staff that included both of these sets of rules as well as the “Status, Basic Rights and Duties of United Nations Staff Members.” Among other things, the Regulations and Rules prohibit staff from accepting gifts and other remuneration from governments and admonish them to avoid financial conflicts of interest with the Organization.³³

On May 24, 1999, Stephani Scheer, who was Mr. Sevan’s principal assistant and Chief of the OIP Office, circulated to “All OIP Managers” and copied to Mr. Sevan, a memorandum drawing their attention to the Secretary-General’s December 1998 Bulletin and particularly to Staff Regulations 1.2(j), (k), and (l), regarding the “acceptance of honours, gifts or remuneration from government and non-government sources.” Ms. Scheer reminded OIP staff that they are precluded from accepting any remuneration or gift from any government.³⁴

Four years later, on November 1, 2002, the Secretary-General circulated a Bulletin to all staff that updated the 1998 requirements. The Bulletin appended revised “Standards of Conduct for International Civil Servants,” which contained a conflicts-of-interest section prohibiting any conduct that would assist private bodies or persons in their dealings with their organization where this might lead to actual or perceived preferential treatment.³⁵

Consistent with these obligations, Mr. Sevan executed an Oath of Office when first hired by the United Nations. Among other things, he promised to discharge his duties only in the interests of the United Nations.³⁶ Moreover, Mr. Sevan—like other United Nations employees—was obliged

³³ ST/SGB/1998/19 (Dec. 10, 1998). One the regulations in this Bulletin provides: “Staff members shall not be actively associated with the management of, or hold a financial interest in, any profit making business or other concern, if it were possible for the staff member or the profit making business or other concern to benefit from such association or financial interest by reason of his or her position with the United Nations.” UN Staff Regulation 1.2(m) (Conflict of Interest); see also UN Staff Rule 101.2(j) and (n).

³⁴ Stephani Scheer memorandum to All OIP Managers (May 24, 1999).

³⁵ ST/SGB/2002/13 (Nov. 1, 2002). This Bulletin provided: “[A] conflict of interest includes circumstances, in which international civil servants, directly or indirectly, would appear to benefit improperly, or allow a third party to benefit improperly, from their association in the management or holding of a financial interest in an enterprise that engages in any business or transaction with the organization . . . international civil servants should avoid assisting private bodies or persons in their dealings with their organization where this might lead to actual or perceived preferential treatment. . . . They should perform their official duties and conduct their private affairs in a manner that preserves and enhances public confidence in their own integrity and that of the organization.” Ibid.

³⁶ Benon Sevan oath of office (June 14, 1965): “I solemnly swear (undertake, affirm, promise) to exercise in all loyalty, discretion and conscience the functions entrusted to me as an international civil servant of the United Nations, to discharge these functions and regulate my conduct with the interests of the United

PART TWO

CHAPTER 2 – AN OVERVIEW OF THE OIL-FOR-FOOD PROGRAMME

to execute his duties in a manner reflecting the highest standards of efficiency, competence, and integrity.³⁷

Nations only in view and not to seek or accept instructions in regard to the performance of my duties from any Government or other authority external to the Organization.” See UN Staff Regulation 1.1(b) (noting that staff also agree to respect their obligations as set forth in the Staff Regulations and Rules).

³⁷ UN Charter, art. 101; Staff Regulation 1.2(b).

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

CHAPTER 3

I. INTRODUCTION

On May 20, 1996, the United Nations and Iraq concluded the Memorandum of Understanding (“Iraq-UN MOU”) to implement the Oil-for-Food Programme.³⁸ Once the terms of the agreement had been finalized, the Secretariat’s attention promptly turned to the hiring of three contractors to provide services that would be essential to the implementation of the Programme: (1) a *bank* to manage the escrow account through which billions of dollars in Programme funds would flow; (2) an *oil inspection company* to engage in on-site monitoring of the quantity and quality of oil exported from Iraq under the Programme; and (3) a *commercial goods inspection company* to monitor the entry into Iraq of the humanitarian goods that were financed under the Programme.

The Iraq-UN MOU delegated the selection of all three of these contractors to the Secretary-General. As to the selection of a bank, the Iraq-UN MOU stated that “[t]he Secretary-General, after consultations with the Government of Iraq, will select a major international bank and establish there the escrow account,” and “[t]he Secretary-General will negotiate the terms of this account with the bank and will keep the Government of Iraq fully informed of his actions in choosing the bank and opening the account.”³⁹ The Iraq-UN MOU further provided that oil sales will be monitored by “experts appointed by the Secretary-General of the United Nations,” and that “[t]he arrival of goods in Iraq purchased under the [distribution] plan will be confirmed by independent inspection agents to be appointed by the Secretary-General.”⁴⁰

On June 18, 1996, Secretary-General Boutros Boutros-Ghali selected a French bank – Banque Nationale de Paris (“BNP”) – to manage and administer the escrow account. This was followed on August 1, 1996, by the selection of a Dutch company – Saybolt Eastern Hemisphere BV (“Saybolt”) – to inspect and monitor oil exports from Iraq. Finally, on August 23, 1996, the United Nations selected a British firm – Lloyd’s Register Inspection Ltd. (“Lloyd’s”) – to inspect and monitor the humanitarian goods that would enter Iraq under the Programme.

³⁸ “Memorandum of understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of Security Council resolution 986 (1995),” S/1996/356 (May 20, 1996) (hereinafter “Iraq-UN MOU”).

³⁹ *Ibid.*, para. 12; see also S/RES/986, para. 7 (Apr. 14, 1995) (authorizing the Secretary-General to “establish an escrow account . . . [and] keep the Government of Iraq fully informed”).

⁴⁰ Iraq-UN MOU, para. 25, and Annex II, para. 4; see also S/RES/986, para. 6 (Apr. 14, 1995) (requiring “independent inspection agents [be] appointed by the Secretary-General” to monitor oil exports); *ibid.*, para. 8(a)(iii) (specifying the Programme’s requirement that the “Secretary-General receives authenticated confirmation” of the arrival of goods).

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

Like other large organizations, the United Nations has competitive bidding requirements. These rules are in place to ensure the integrity of the international contracting process and the sound expenditure of funds entrusted by member states to the administration of the United Nations.

The Committee has been advised by the United Nations Office of Legal Affairs (“OLA”) that the Secretary-General is committed to follow the United Nations Financial Regulations and Rules, which (as discussed in the next section below) required the award of contracts to the lowest acceptable bidder. There is no language in Resolution 986 or the Iraq-UN MOU that exempted the United Nations from applying its competitive bidding rules to the selection of a bank and inspection contractors for the Programme, and OLA has advised the Committee that it is not aware of any action taken by the Secretary-General to exempt procurement activities under the Programme.

In this Chapter of the Report, the Committee addresses the following questions:

1. Was the selection of the Programme’s major contractors in 1996 conducted in accordance with the United Nations’ financial regulations and competitive bidding rules?
2. Was the selection of the Programme’s major contractors in 1996 conducted in a fair and transparent manner?
3. Were these selection processes free from improper or illicit influence?

In Section II below, the Committee describes the relevant United Nations’ financial regulations and competitive bidding requirements as they applied in 1996. Section III discusses the Secretary-General’s formation in 1996 of the Iraq Steering Committee—a group of six high-level officials who would facilitate the initial implementation of the Programme. Sections IV, V, and VI then review the results of the Committee’s investigation concerning the manner in which the three major contractors—BNP, Saybolt, and Lloyd’s—were selected to participate in the Programme in 1996. Finally, Section VII presents the Committee’s findings and conclusions.

This Interim Report covers only the Programme’s initial selection of major contractors. The Committee’s investigation concerning additional procurement matters is ongoing and will be the subject of future reports.

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

II. THE UNITED NATIONS PROCUREMENT RULES

By 1996, the requirement of competitive bidding was well-established at the United Nations. This basic requirement was set forth in the Financial Regulations and Rules of the United Nations (“Financial Rules”) that generally governed the administration of all financial activities of the United Nations, including the selection of the bank and the inspection contractors under the Oil-for-Food Programme.⁴¹

The Financial Rules made clear that inviting proposals or seeking bids could be performed “only by officials duly authorized for the purpose.”⁴² The Financial Rules further required that contracts for services “shall be let after competitive bidding or calling for proposals”⁴³ and that the award must generally be made to the “lowest acceptable bidder.”⁴⁴

One notable exception to the “lowest acceptable bidder” requirement existed “where the *interests of the Organization* so require,” in which case “all bids may be rejected.”⁴⁵ The Financial Rules did not define the “interests of the Organization.” But the rules made clear that if the “interests of the Organization” exception were invoked, the justification was required to be set forth *in writing* by a high-level official of the United Nations. The responsible official “shall record in writing

⁴¹ “Financial Regulations and Rules of the United Nations (Series 100),” ST/SGB/Financial Rules/1/Rev.3 (1985) (hereinafter “Financial Rules”), Rule 101.1. Since 1996, the United Nations has amended the Financial Rules. See “Financial Regulations and Rules of the United Nations,” ST/SGB/2003/7 (May 9, 2003). Except where otherwise noted, all references to “Financial Rules” are to the version applicable in 1996.

⁴² Financial Rule 110.16(a). The terms “bid” and “proposal” are used interchangeably within this Report, just as they are used interchangeably by the Financial Rules. While the United Nations procurement manual made some distinction between bids and proposals, that distinction is not applicable to the particular procurement rules discussed herein.

⁴³ *Ibid.*, 110.18 (Calling for Bids or Proposals).

⁴⁴ *Ibid.*, 110.21 (Awarding of Contracts). This rule states in relevant part:

Contracts shall be awarded to the lowest acceptable bidder, . . . provided that where the interests of the Organization so require, all bids may be rejected. In the latter instance, the Assistant Secretary-General for General Services or such other official authorized under rule 110.16 shall record in writing the reasons for rejection of the bids and determine whether to invite new competitive tenders or enter into a negotiation contract.

⁴⁵ *Ibid.* (emphasis added). The Financial Rules authorized a similar exception to the requirement that bids be requested in the first place. See *ibid.*, 110.19(h) (exception to seeking bids where Assistant Secretary-General for General Services or other authorized official “determines that competitive bidding or calling for proposals will not give satisfactory results” and “[i]n such cases, appropriate reasons shall be recorded in writing”).

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

the reasons for rejection of the bids and determine whether to invite new competitive tenders or enter into a negotiated contract.”⁴⁶

In cases of large contracts like those initially awarded under the Programme, the Financial Rules required a review of a proposed contract award by the Headquarters Committee on Contracts (“HCC”).⁴⁷ The composition of the HCC was to be determined by the Secretary-General.⁴⁸

Finally, in keeping with the interests of fairness and transparency in the bidding process, the Financial Rules further required that “each determination or decision required of an authorized purchasing officer” be “supported by the written findings of such officer.” Moreover, the “written findings shall be placed in the appropriate case file maintained by the responsible department or office,” and for contracts of \$2,500 or more, the written findings “shall also accompany the related obligating documents submitted to the Controller.”⁴⁹

The United Nations Treasury office was responsible for administering the selection of a bank to hold the escrow account for the Programme. For the selection of major bank contractors, by the mid-1990s, it was the practice of the Treasury to conduct a formal competitive bidding process in accordance with the requirements of the Financial Rules. This process involved the issuance of requests for proposal to prospective banking institutions, the collection of sealed bids, the confidential evaluation of those bids on the basis of technical cost, credit and service criteria, and the recommendation of an award.⁵⁰ The Treasury’s recommendation for the escrow account would be subject to review by the HCC, in accordance with the Financial Rules.⁵¹

As for the selection of the oil and goods inspectors for the Programme, this process was administered in the first instance by the United Nations procurement department (which was then known as the Procurement and Transportation Division or PTD).⁵² The procurement department’s selection process was subject not only to the Financial Rules but also to the specific rules set forth in the department’s then-existing procurement manual (“Procurement Manual”).⁵³

⁴⁶ Ibid., 110.21.

⁴⁷ Ibid., 110.17(a)(i), (e)(i), (g) (Committee on Contracts) (involving the HCC’s review of contracts greater than certain dollar amounts).

⁴⁸ Ibid., 110.17.

⁴⁹ Ibid., 110.24.

⁵⁰ Suzanne Bishopric interviews (Sept. 3, 2004 and Jan. 25, 2005). Ms. Bishopric was the Deputy Treasurer in 1996 and is currently the United Nations Treasurer.

⁵¹ Financial Rule 110.17.

⁵² In July 1997, PTD was renamed the Procurement Division. See “Procurement Reform: Report of the Secretary-General,” A/53/271 (Aug. 18, 1998). This Report refers to the name of the entity—PTD—that existed at the time that procurement activity at issue took place in 1996.

⁵³ In 1996, these procurement rules were in a notebook volume entitled “Purchase and Transportation Service Procurement Manual” and were revised as of April 13, 1988. See Kiyohiro Mitsui interview (Feb.

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

If a United Nations department—such as the Department of Political Affairs (“DPA”)—needed to procure services from an outside services contractor, it was required to do so through the procurement department. Under this procedure, the DPA would make a request for procurement action, and the DPA would become a “client” or a “requisitioner” of the procurement department.⁵⁴ In consultation with the client (in this case DPA), the procurement department would develop a formal Request for Proposal (“RFP”) to set forth, among other things, the technical requirements for the services to be provided.⁵⁵

Once an RFP was prepared, the procurement department was required to identify prospective service providers. It could do so by reference to its worldwide database of qualified contractors that had previously expressed interest in doing business with the United Nations.⁵⁶ The department would send the RFP to potential service providers with an invitation to submit a bid proposal by a specified date.⁵⁷ The RFP was required to provide terms of reference and other information about the services that were needed in order to guide contractors in the preparation of bid proposals.⁵⁸

Once the date arrived for the bid proposals to be received, all bids received by the procurement department were required to be time-stamped upon receipt and maintained in a locked compartment.⁵⁹ To ensure an open and competitive bid process, no information of a material nature, such as the number of bids received, the names of bidders or the amount of bids could be revealed to any individual or the general public prior to the time of the bid opening.⁶⁰ Consistent with these principles, the bids or proposals received were required to be “publicly opened at the time and place specified in the invitation to bid, and an immediate record” was to be made.⁶¹

After the bid proposals were opened, the procurement department determined in the first instance which of them were “acceptable” for further consideration. A bid was “acceptable” only if it “offer[ed] items with fundamental characteristics meeting or exceeding those in the invitation

1, 2005). Since that time, the United Nations has revised substantially its financial and procurement rules. See Procurement Manual (Jan. 2004). Except where otherwise noted, all references to “Procurement Manual” are to the version applicable in 1996.

⁵⁴ Allan Robertson interview (Jan. 27, 2005).

⁵⁵ Procurement Manual 7.003.

⁵⁶ *Ibid.*, 5.02.001-004.

⁵⁷ *Ibid.*, 7.003 (describing methods for advertising bids or proposals); *ibid.*, 7.008 (describing recommended time allowed for bid responses.) The Procurement Manual’s use of the term “bids” applied equally to “proposals” in response to a Request for Proposal. Kiyohiro Mitsui interview (Feb. 1, 2005) (Chief Support Services Section, Procurement Services – United Nations).

⁵⁸ *Ibid.*, 7.003.

⁵⁹ *Ibid.*, 8.002.

⁶⁰ *Ibid.*, 8.007.

⁶¹ *Ibid.*, 8.001 (incorporating United Nations Financial Rule 110.20); *ibid.*, 8.003.

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

specifications.” Also, “[a]ny qualification which a bidder makes in the specifications of his bid not provided for in the invitation shall be carefully examined to ensure that the bid is responsive to the terms of the invitation to bid.”⁶²

In the ordinary course, after bids were received, the procurement department would consult with the “client” department about the merits of the various bids. But to ensure the integrity of the competitive bid process, the Procurement Manual prohibited any United Nations personnel from “tipping off” a company before the formal award of a contract: “Prior to making an award, no information with respect to probable acceptance or rejection of any offer may be made available to any person other than an official of the organization.”⁶³

In a similar manner, unless properly requested to do so by the procurement department, a bidder was not free to amend its bid in a substantive manner after the bids had been opened. Subject to specific exceptions set forth in the Procurement Manual, “no correction or other alteration in the prices or terms of a bid shall be permitted after the time of opening,” and “[t]his rule applies equally to bidders and to United Nations officials.”⁶⁴

The Procurement Manual made clear—under a heading titled “Basic Considerations”—that “[t]he first consideration in the procurement process is to ensure that the United Nations requirements are procured at the best price in accordance with the Financial Regulations and Rules.” Among other “Basic Considerations” was that “[a]bsolute impartiality must be shown to all bidders” and, to prohibit favoritism, “[i]nformation concerning any bid should be available to every bidder.”⁶⁵

⁶² Ibid., 9.005.

⁶³ Allan B. Robertson interview (Sept. 10, 2004); Procurement Manual 9.0016.

⁶⁴ Ibid., 8.0014.

⁶⁵ Ibid., 9.002.

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

III. THE IRAQ STEERING COMMITTEE

After the successful negotiation on May 20, 1996, of the Iraq-UN MOU, Secretary-General Boutros-Ghali decided to create a special, high-level committee—the Iraq Steering Committee—in order “to ensure the timely and effective implementation” of the Oil-for-Food Programme and that “will report to me on a regular basis.” The Steering Committee did not have formal terms of reference, mandate, or limitations.⁶⁶

The Committee was chaired by Chinmaya Gharekhan, Under-Secretary-General and Senior Adviser to the Secretary-General, and it included five other high-level United Nations officials:

- Yasushi Akashi, Under-Secretary-General for Humanitarian Affairs;
- Joseph E. Connor, Under-Secretary-General for Administration and Management;
- Hans Corell, Under-Secretary-General for Legal Affairs;
- Marrack I. Goulding, Under-Secretary-General for Political Affairs; and
- Yukio Takasu, Assistant Secretary-General and Controller.⁶⁷

No formal rules of order governed the meetings, and decisions were reached by consensus without formal voting.⁶⁸

The Steering Committee’s proceedings were not a model of transparency. Despite the influence of the Committee over the Programme’s early implementation, the Committee members did not keep official records or minutes of proceedings and determinations. Chairman Gharekhan did not maintain possession of any documents relating to the activities of the Steering Committee, and the United Nations archives are devoid of records of the Steering Committee.⁶⁹

What records remain derive from detailed, typewritten meeting notes of two former assistants to Mr. Gharekhan—Wolfgang Weisbrod-Weber and Lisa Buttenheim.⁷⁰ Quite fortuitously they

⁶⁶ Boutros Boutros-Ghali memorandum to Yasushi Akashi, Joseph Connor, Hans Corell, Chinmaya Gharekhan, Marrack Goulding, and Yukio Takasu (May 28, 1996).

⁶⁷ Ibid.

⁶⁸ Chinmaya Gharekhan interview (Nov. 30, 2004).

⁶⁹ Ibid. Ramesh Chandroth, an assistant to Mr. Gharekhan, stated that he does not recall any meeting notes or any files being kept in Mr. Gharekhan’s office. The Secretariat’s custodian of archives (Jenny Thomas) stated that there were no Steering Committee minutes or records. See Jenny Thomas e-mail to the Committee (Sept. 22, 2004).

⁷⁰ Chinmaya Gharekhan interview (Nov. 30, 2004); Wolfgang Weisbrod-Weber interview (Oct. 4, 2004); Lisa Buttenheim interviews (Nov. 2 and Dec. 3, 2004). Mr. Weisbrod-Weber is currently the Deputy

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

turned up in the files of Wolfgang Weisbrod-Weber at the United Nations.⁷¹ For the early months of the Programme from May to August 1996, the meeting notes of Mr. Weisbrod-Weber and Ms. Buttenheim describe proceedings of meetings on the following dates: May 29 and 30; June 4, 7, 11, 17, 19, 21, 25, and 28; July 9, 18, and 31; and August 9, 12, 13, 19, 21, 27, 29, and 30. But interviews of Steering Committee members and other collateral sources indicate the fact or likelihood of other meetings on many other dates: June 6,⁷² June 13,⁷³ June 14,⁷⁴ July 2,⁷⁵ July 30,⁷⁶ August 6,⁷⁷ August 8,⁷⁸ August 15,⁷⁹ August 20,⁸⁰ and August 23⁸¹. For these latter dates, no written record remains. In any event, what these notes may lack in coverage they make up for in candor, as this Chapter will make clear.

One of the first issues discussed by the Steering Committee was whether the selection of the Programme's inspection contractors should conform to standard competitive bidding rules. The Steering Committee requested advice on this matter from OLA (which was headed by Steering Committee member Hans Corell), and it was told that "[p]rocurement of goods and services by the United Nations should be done in accordance with the United Nations Financial Regulations and Rules." OLA further noted that "[n]umerous General Assembly resolutions have called for transparency in procurement and for the awarding of contracts on the basis of competitive bidding."⁸²

Director of the Office of Operations of the Department of Peacekeeping Operations. Ms. Buttenheim is the Director of the Asia and Middle East Division of the Department of Peacekeeping Operations.

⁷¹ Wolfgang Weisbrod-Weber interview (Oct. 4, 2004).

⁷² Marrack Goulding interview (Oct. 13, 2004). In his desk diary, Mr. Goulding found sixteen assigned meetings of the "986 committee," which he understood as likely references to the Iraq Steering Committee.

⁷³ Hans Corell interview (Oct. 26, 2004). Mr. Corell identified this date by consulting his 1996 calendar, but he acknowledged that the calendar may not accurately reflect Steering Committee meetings.

⁷⁴ Yukio Takasu interview (Nov. 30, 2004); Hans Corell interview (Oct. 26, 2004); Marrack Goulding interview (Oct. 13, 2004). Mr. Takasu identified this date by consulting his 1996 calendar, but he cautioned that the calendar might not accurately reflect Steering Committee meetings.

⁷⁵ Yukio Takasu interview (Nov. 30, 2004).

⁷⁶ Marrack Goulding interview (Oct. 13, 2004).

⁷⁷ Hans Corell interview (Oct. 26, 2004).

⁷⁸ Ibid.; Marrack Goulding interview (Oct. 13, 2004).

⁷⁹ Hans Corell interview (Oct. 26, 2004).

⁸⁰ Ibid.; Lisa Buttenheim interview (Dec. 3, 2004). Ms. Buttenheim identified this date by consulting her 1996 calendar, but she could not say with certainty that the calendar accurately reflected the dates of all Steering Committee meetings.

⁸¹ Hans Corell interview (Oct. 26, 2004); Lisa Buttenheim interview (Dec. 3, 2004); Yukio Takasu interview (Nov. 30, 2004); Allan B. Robertson fax to Joseph Stephanides (Aug. 23, 1996).

⁸² OLA/GLD note, "The Engagement of Contractors to Supervise the Sale of Iraqi Oil" (May 29, 1996).

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

One week later, on June 7, 1996, the Steering Committee met and again discussed the procurement process for the oil and humanitarian goods inspection companies. According to notes of this meeting, the Steering Committee “discussed again the question whether to use the normal HCC or whether to establish itself as a special contracts committee.” The issue was left undecided at this meeting. However, the notes of discussion make clear the Steering Committee’s intent to have “political” input into the Programme’s procurement process:⁸³

The Steering Committee discussed again the question whether to use the normal Headquarters Committee on Contracts (HCC) or whether to establish itself as a special contracts committee.

The main arguments in favour of using the normal HCC were:

No special treatment is needed or desired,
the HCC is fast enough (decision in 24 hours), and
the Steering Committee can have its (political) input through the presentation of the proposals to the HCC.

The main arguments in favour of the Steering Committee taking on the role of a special contracts committee were:

The HCC might not have the necessary expertise (especially on the political considerations),
the procedure has been used in the past, and
the Steering Committee will be faster than the HCC.

The question was put aside for later decision.

Iraq Steering Committee meeting notes (June 7, 1996) (excerpt). *Source: UN Records.*

⁸³ Iraq Steering Committee meeting notes (June 7, 1996).

PART 2
CHAPTER 3 - INITIAL PROCUREMENT

This page is intentionally left blank

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

IV. SELECTION OF A BANK – BANQUE NATIONALE DE PARIS

A. TOWARD SELECTION OF BNP

The first major contractor selected for the Programme was a bank to handle the immense sums of money that would result from the sale of Iraqi oil. The manner in which the escrow bank would be selected had been a significant issue during negotiations between Iraq and the United Nations on the terms of the Iraq-UN MOU. Hans Corell had led the negotiations on behalf of the United Nations and, according to his detailed notes, Iraq sought to have the right to “propose” the escrow bank to the United Nations, but the United Nations refused this arrangement. Ultimately, the parties agreed that the Secretary-General would select a bank but only after consulting with Iraq.⁸⁴

On May 20, 1996, immediately after the signing of the Iraq-UN MOU, France’s Permanent Representative to the United Nations was informed by the Secretary-General’s Chef de Cabinet that the Secretary-General wished to know whether France could propose the name of a French bank with a branch in New York that would be suitable for the handling of the escrow account. The French Ambassador conveyed this request to the French authorities in Paris, while specifying that he thought a similar request may have been made by the Secretary-General to other countries. The French Ambassador also stated to the French authorities that an Iraqi diplomat who had negotiated the Iraq-UN MOU (and who had not been advised by the Ambassador of the Secretary-General’s request to the Ambassador) had told him that Iraq had approached several French banks, but they refused. The French Ambassador expected that several banks let it be known, directly or through their home country governments, of their interest in managing the escrow account.⁸⁵

Two days later, on May 22, 1996, the Secretary-General told the French Ambassador—emphasizing that the information should be kept confidential—that Iraq proposed the following three banks: Banque Paribas, BNP, and Credit Lyonnais. Without committing that he would select a French bank, the Secretary-General asked the French Ambassador to inform Mr. Corell which French banks (who were aware of the signing of the MOU) were candidates to handle the escrow account and indicated that Mr. Corell would advise him of all the possible candidate banks from different countries in order for the Secretary-General to make a choice.⁸⁶

In the meantime, an Iraqi official in Paris who served as Chief of the Section of Iraqi interests (France had no diplomatic relations with Iraq at that time) advanced the name of another potential bank candidate: Crédit Suisse. On May 29, 1996, the French Permanent Mission forwarded to the

⁸⁴ Hans Corell memorandum to Boutros Boutros-Ghali, para. 4 (May 31, 1996) (detailing the fourth round of Iraq-UN MOU negotiations from May 6 to May 15, 1996).

⁸⁵ France official #1 interview (Jan. 6, 2005).

⁸⁶ Ibid.

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

United Nations a list of five French banks: Caisse des Dépôts et Consignations, Crédit Lyonnais, BNP, Banque Française du Commerce Extérieur, and Banque Paribas.⁸⁷

In the meantime, on May 24, 1996, the Secretary-General's Steering Committee decided that "the most urgent action is the selection of the bank for the ESCROW account, which should precede other actions" and occur "by the end of the first week in June."⁸⁸ In light of his financial expertise, Yukio Takasu, the United Nations Controller and member of the Steering Committee, was requested by the Secretary-General to oversee the bank selection process. Mr. Takasu met with David Wengert, Director of the Accounts Division, and Deputy Treasurer Suzanne Bishopric. It was decided among them that the proper way to proceed was to solicit offers from banking institutions through a formal competitive bidding process.⁸⁹ Mr. Takasu informed the Secretary-General that a few international banks had already approached his office to express interest in the Programme's escrow account.⁹⁰

The Treasury office initiated work on developing a list of potential escrow banks. It appears that the first list, which is not dated and was found within the Secretariat's files, identified seventeen banks under a heading entitled "Secretary-General's List of Potential Banks for the Iraq Escrow Account." Next to the names of each of the seventeen banks were hand-noted IBCA ratings of "A," "A/B," "B," or "B/C" for each bank. At the bottom of this list of banks it was stated that "[t]hose banks [listed] have high credit quality and have capital in excess of US \$8.0 billion." Among this list of seventeen banks, BNP and the Bank of Tokyo-Mitsubishi ranked at the bottom with credit ratings of "B/C." The Bank of Tokyo-Mitsubishi had equity of \$33.2 billion—almost three times the equity of BNP's \$12.1 billion.⁹¹

The IBCA ratings were a measure of the creditworthiness of financial institutions. As noted in the United Nations records, a rating of "A" signified a bank of "impeccable financial condition," and a "B" rating signified a bank with a "sound credit profile and without significant problems." On the other hand, a "C" rating signified a "bank which has an adequate credit profile but possesses one or more troublesome aspects, giving rise to the modest possibility of risk developing, or which has generally failed to perform in line with its peers."⁹²

Four days later, on May 28, 1996, Mr. Takasu issued a second note to the Secretary-General setting forth a three-part procedure for selecting the bank to manage the escrow account. The

⁸⁷ Ibid.; see also List of banks received from France (May 29, 1996) (United Nations files).

⁸⁸ Yukio Takasu note to Boutros Boutros-Ghali (May 24, 1996).

⁸⁹ David Wengert interview (Sept. 23, 2004); Suzanne Bishopric interview (Sept. 3, 2004).

⁹⁰ Yukio Takasu note to Boutros Boutros-Ghali (May 24, 1996).

⁹¹ Ibid.; Suzanne Bishopric interview (Sept. 3, 2004) (referring to the IBCA ratings chart of May 13, 1996).

⁹² Banking Statistics, data print-out obtained from United Nations Treasury records (June 12, 1996). In 1996, the rating system was issued by IBCA Limited of London, which merged with Fitch Ratings in 1997. See Fitch Ratings, "The History of Fitch Ratings," <http://www.fitchibca.com/corporate/aboutFitch.cfm?detail=2>.

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

first step would be preparation of “an initial list of 16 major international banks, following criteria according to credit quality, capital and operational capacities.” Consistent with the Iraq-UN MOU’s requirement of consultation with Iraq, this “long list” of sixteen banks would be furnished to Iraq for its comments. The second step would be consideration of comments from Iraq and issuance of a “short list of 4 or 5 banks” from which information would be solicited and received concerning how each bank would service the account and price its services. This information would also be shared with Iraq. The third step would be the Secretary-General’s selection of the bank, “taking into account the advice of the Steering Committee which will have reviewed the short list.”⁹³

Attached to Mr. Takasu’s note of May 28 was the “long list” of sixteen prospective banks that had been generated by Ms. Bishopric and approved by Mr. Wengert. As with the previous list of seventeen banks, each bank was assigned an IBCA rating. Each bank was now also identified explicitly by a column indicating nationality. BNP with its “B/C” rating did not make this “long list.” The only “B/C” bank listed was the Bank of Tokyo-Mitsubishi. Credit Agricole, with a rating of “B,” was the only French bank on the “long list.”⁹⁴

On May 30, Mr. Takasu furnished the long list to Ambassador Nizar Hamdoon, Iraq’s Permanent Representative to the United Nations, and he invited the views of Iraq on the list, while cautioning the Ambassador that responsibility for the selection of the bank resided with the Secretary-General.⁹⁵

On June 1, the Deputy Permanent Representative of the Iraq Mission met with Mr. Takasu to state his wish that the Secretary-General select from the following French and Swiss banks: BNP, Credit Agricole, Credit Suisse, and Union Bank of Switzerland. BNP had surfaced on Iraq’s list despite the fact that it was not on the “long list” that Mr. Takasu had sent the day before to Iraq.⁹⁶

Mr. Takasu reported this communication by note to the Secretary-General. According to this note, Mr. Takasu told the Iraq representative that “[t]he Secretary-General will make the selection on the basis of criteria such as credit quality, capital, operational capacities, services and pricing,” that “the bank to be selected should meet all those conditions,” and that “[p]articularly, it is important that the bank can provide the best services at the most competitive price.”⁹⁷

On June 2, Mr. Takasu issued a “short list” of six banks rather than just “4 or 5 banks” as he had indicated in his memorandum of May 28. The sixth bank listed was BNP—with the lowest credit

⁹³ Yukio Takasu note to Boutros Boutros-Ghali (May 28, 1996).

⁹⁴ Ibid. (attaching the Secretary-General’s List of Potential Banks for the Iraq Escrow Account).

⁹⁵ Yukio Takasu note to Boutros Boutros-Ghali (May 30, 1996).

⁹⁶ Yukio Takasu note to Boutros Boutros-Ghali (June 1, 1996). During this meeting, Iraq requested the selection of *both* a French and Swiss bank, but Mr. Takasu replied that selection of two banks would not be consistent with the Iraq-UN MOU. Ibid.

⁹⁷ Ibid.

PART 2
CHAPTER 3 - INITIAL PROCUREMENT

rating at “B/C.” Above BNP on the list were two Swiss banks (Union Bank of Switzerland (UBS) and Credit Suisse), a German bank (Deutsche Bank), and two American banks (Citibank and Chase Manhattan). The list included a column indicating by “yes” an “Iraqi preference” for the two Swiss banks and BNP. Mr. Takasu’s memorandum reflected that BNP was below the otherwise required credit quality of “minimum A or B” but “has been included because of the preference of the Iraq Government.”⁹⁸

NOTE TO THE SECRETARY-GENERAL

Iraq Escrow Account

1. In the light of comments received from the Government of Iraq yesterday, I suggest that the following banks be included in the short-list of the Secretary-General.

	IBCA Rating	Equity	Country	Iraqi preference
Union Bank of Switzerland	A	\$20.6 billion	Switzerland	Yes
Deutsche Bank	A	\$15.6 billion	Germany	
Credit Suisse	A/B	\$11.4 billion	Switzerland	Yes
Citibank	A/B	\$19.6 billion	USA	
Chase Manhattan	B	\$21.0 billion	USA	
Banque Nationale de Paris	B/C	\$12.1 billion	France	Yes

Schneider 415 9600 in NY

2. These banks have been selected for the short list, irrespective of their nationality, on the basis of their high credit quality (minimum A or B), capital (minimum \$11 billion), operational capacity to meet the requirements of the Escrow Account, and taking into account the preference expressed by the Government of Iraq. It is noted that although BNP has a B/C rating, it has been included because of the preference of the Iraq Government. Credit Agricole has not been included, even though preferred by Iraq, because of its specificity and because the French Government had not recommended it.

Yukio Takasu note to Boutros Boutros-Ghali (June 2, 1996) (excerpt). *Source: UN Records.*

On the next day, June 3, each of the six banks on the “short list” was invited to submit a proposal for services by June 10. Iraqi diplomats twice contacted Mr. Takasu to advise of their continuing desire to have one of the French or Swiss banks selected, and Mr. Takasu forwarded this

⁹⁸ Yukio Takasu note to Boutros Boutros-Ghali (June 2, 1996). Credit Agricole was omitted from the short list, “because of its specificity and because the French Government had not recommended it.” Ibid.

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

information by note to the Secretary-General. Two days later, Ambassador Hamdoun of Iraq called Mr. Takasu to state again Iraq's "strong preference" for any one of the Swiss banks (Credit Suisse, UBS) or the French bank (BNP), and now included the German bank (Deutsche Bank).⁹⁹

Only four banks submitted proposals for the Programme's escrow account contract by the deadline of June 10, 1996. These banks were: BNP, Chase, Credit Suisse, and UBS. On June 12, Ms. Bishopric's office performed an analysis of the proposals and rated them according to four categories: banking services for oil exports, banking services for humanitarian purchases, investment income, and quarterly maintenance. According to this analysis, the results of which were summarized in a June 13 chart (below) produced by Treasury, Credit Suisse ranked the highest in all four categories: investment income, banking service for oil sales, banking service for purchases, and bank office services and account support. By contrast, BNP was second-to-last of the banks in cumulative ranking. Credit Suisse became Treasury's clear bank of choice.¹⁰⁰

Credit Suisse won the competition but not the contract.¹⁰¹ On June 18, Mr. Takasu advised BNP that it had been selected to manage the escrow account.¹⁰²

⁹⁹ Yukio Takasu note to Boutros Boutros-Ghali (June 4, 1996); Yukio Takasu note to Boutros Boutros-Ghali (June 6, 1996).

¹⁰⁰ David Wengert interview (Sept. 23, 2004); Suzanne Bishopric spreadsheet, "UN SCR 986 Implementation Proposals" (June 12, 1996); UN Treasury chart, "Iraq Escrow Account" (June 13, 1996). In contrast to the information provided by David Wengert, the Committee notes that Ms. Bishopric recalls that BNP was preferred in light of doubts about Credit Suisse's ability to service letters of credit for oil companies from weaker-credit countries. See David Wengert interview (Sept. 23, 2004); Suzanne Bishopric interviews (Sept. 3 and Dec. 6-7, 2004). The Committee's further inquiry, however, indicates that Credit Suisse specifically responded to these concerns in writing. Richard Dunn fax to Suzanne Bishopric (June 12, 1996); Richard Dunn interview (Oct. 8, 2004). In addition, the concerns stated by Ms. Bishopric are not reflected on Treasury's final comparison chart.

¹⁰¹ The Committee does not address the merits of the United Nations' evaluation of the banks. However, it attaches as an Annex to this report a letter submitted by BNP, dated February 1, 2005, in which it represents its position as to its qualifications.

¹⁰² Yukio Takasu letter to Pierre Schneider (June 18, 1996). Mr. Schneider was BNP's President.

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

13/16/96

IRAQ ESCROW ACCOUNT

Bank	IBCA Rating	Equity (billion)	Country	Investment Income (Ranking)	Banking Service for Oil Sale	Banking Service for Purchases	Bank Office Services and Account Support
Union Bank of Switzerland	A	\$20.6	Switzerland	3	3	4	1/2
Credit Suisse	A/B	\$11.4	Switzerland	1	1	1	1
Chase Manhattan	B	\$21.0	USA	4	3	2	1
Banque Nationale de Paris	B/C	\$12.1	France	2	2	3	4
*Deutsche Bank	A	\$15.6	Germany				
*Citibank	A/B	\$19.6	USA				

* Deutsche Bank & Citibank declined to submit a proposal.

UN Treasury chart, "Iraq Escrow Account" (June 13, 1996). *Source: UN Records.*

B. QUESTIONS REMAINING

The reason why BNP was awarded the contract does not appear in any documents of the United Nations that have been made available to the Independent Inquiry Committee. Although Mr. Takasu's memorandum of May 28 stated that the Secretary-General's choice would "tak[e] into account the advice of the Steering Committee," there are no minutes or other records of the Steering Committee that reflect its recommendation or reasons for recommendation to the Secretary-General.

Nor is there any note or memorandum of Secretary-General Boutros-Ghali to explain why he made the choice that he did. On November 25, 1996, the Secretary-General issued an "Interim Report" on the implementation of Resolution 986, in which he described the selection of BNP as based on "a careful consideration of the proposals received" from the short list of banks:

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

32. In order to select a bank to be the holder of the escrow account, a working list was prepared of major banks in all parts of the world with the necessary credit quality ratings, strong capital positions and the capabilities to provide the services necessary for the account. After consultations with the Government of Iraq, a small number of those banks were asked to submit written proposals outlining their services and pricing. After careful consideration of the proposals received, Banque nationale de Paris was selected as the holder of the escrow account; the account has been opened at the bank's branch in New York.

Interim Report of the Secretary-General, para. 32 (Nov. 25, 1996)¹⁰³

The report did not disclose that the lowest acceptable bidder was not chosen, and it did not record reasons, under Financial Rule 110.21, for why the choice of BNP was in “the interests of the Organization.”

In the absence of appropriate documents of the United Nations to explain why the choice was made, the Committee has been left to sift for the truth from collateral documents and the fading recollections of those officials who were involved in the process. Evidence from Iraqi witnesses is conflicting. On the one hand, Amer Muhammad Rashid, the former Oil Minister of Iraq, stated that a French bank was selected over a Swiss bank because of Iraq's stated preference for a country more friendly to Iraq on sanctions.¹⁰⁴ On the other hand, the former Governor of Iraq's Central Bank, Isam Rashid Al-Huwaysh, has stated that Iraq did not exert influence to have BNP chosen over a Swiss bank or a German bank, and indeed the communications to Mr. Takasu reflect a stated preference for either a French or Swiss bank.¹⁰⁵

On June 14, 1996—just four days before BNP was awarded the contract—the United States expressed concern about selecting a Swiss bank to manage the escrow account. Madeleine Albright, who was then the United States Permanent Representative to the United Nations, went to meet with the Steering Committee's chairman, Chinamaya Gharekhan, to state that in the view of the United States it would be a “big mistake” to select any Swiss bank for three reasons: (1) because Swiss banking laws at that time lacked transparency to maintain accurate oversight regarding the escrow account and letters of credit; (2) because Switzerland was not then a member of the United Nations, which would make it difficult to enforce a Security Council resolution; and (3) because Saddam Hussein and his family maintained their accounts in Switzerland and a situation where their personal assets and the escrow account could overlap should be avoided. These concerns were set forth in a contemporaneous “Note to the File” by Mr. Gharekhan's assistant:¹⁰⁶

¹⁰³ “Interim Report of the Secretary-General on the Implementation of Security Council Resolution 986 (1995), S/1996/978, para. 32 (Nov. 25, 1996)

¹⁰⁴ Amer Rashid interview (Oct. 10, 2004).

¹⁰⁵ Isam Rashid al-Huwaysh interview (Oct. 22, 2004).

¹⁰⁶ Lisa Bутtenheim note-to-file (June 14, 1996); Madeleine Albright interview (Dec. 22, 2004). Madeleine Albright later served as United States Secretary of State from January 23, 1997 to January 20, 2001.

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

Note to the File

Ambassador Albright called on Mr. Gharekhan to convey the following in connection with implementation of Security Council resolution 986:

1. **Escrow Account.** The US was aware that the Steering Committee was prepared to recommend a Swiss Bank. "We believe this will be a big mistake," she said. Swiss banking laws lacked the transparency necessary to maintain accurate oversight regarding the escrow account and letters of credit. "Everyone uses Swiss banks for the reasons we think such a choice would be inappropriate." Furthermore, Switzerland was not a member of the United Nations, making it difficult to enforce a UN resolution. Finally, Saddam Hussein and his family maintained their personal bank accounts in Switzerland; a situation where their personal assets and the escrow account could overlap should be avoided.

Mr. Gharekhan sought clarification that Ambassador Albright was referring to Swiss Banks in general and not to a specific bank. She agreed that this was the case, in view of Swiss banking laws.

Lisa Buttenheim note-to-file (June 14, 1996) (excerpt).

Mr. Gharekhan stated that the selection of a Swiss bank was "ruled out" by the United States. Although Mr. Gharekhan did not recall specifically discussing the matter within the Steering Committee or with the Secretary-General, he stated that BNP emerged as the "compromise candidate," because Iraq would not accept an American bank and the United States would not accept a Swiss bank.¹⁰⁷

Another Steering Committee member, Marrack Goulding, recalled some discussion in the Steering Committee of Swiss banks and the possibility that Saddam Hussein could transfer funds from the escrow account to his personal account. But he added that he disagreed with the American view and did not know that concerns about a Swiss bank were the reason that BNP was selected.¹⁰⁸

Mr. Takasu did not recall any general concern about Swiss banks. To the contrary, he agreed that "on paper" Credit Suisse should have been awarded the contract, and there was "no reason to dispute" that Credit Suisse had the lowest bid. Mr. Takasu recalled that "another member" on the Steering Committee said it would be "inadvisable" to select Credit Suisse; it was not a general

¹⁰⁷ Chinmaya Gharekhan interview (Nov. 30, 2004).

¹⁰⁸ Marrack Goulding interview (Oct. 13, 2004).

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

objection to Swiss banks. Mr. Takasu could not remember who said this and why Credit Suisse was “inadvisable.”¹⁰⁹

As for the possibility that any minutes of the Steering Committee (if they exist) could address this issue, Mr. Takasu did not believe that the reason Credit Suisse was rejected would be reflected in any Steering Committee minutes. The information about Credit Suisse being “inadvisable” had been passed along to him “at the beginning or end” of a Steering Committee meeting in an informal aside. Mr. Takasu had not pressed other members of the Steering Committee for more information.¹¹⁰

Joseph E. Connor, another member of the Steering Committee, did not recall any concern about the selection of a Swiss bank or the lack of transparency with Swiss banking laws. Mr. Connor acknowledged that he may have heard some fleeting rumors that the escrow bank was picked on a sole-source basis and not through a competitive bidding process. But Mr. Connor did not see this as unusual given the political nature of the Programme. Interviews of the remaining Steering Committee members do not cast light on the reason BNP prevailed over Credit Suisse.¹¹¹

After BNP was selected as the escrow bank, Steven Katz, a Senior Legal Officer with OLA, was assigned to assist with negotiating a contract with BNP. On July 1, 1996, Mr. Katz attended a meeting at which Mr. Takasu advised that: (1) BNP had been selected as a result of a competitive selection process involving five banks; (2) the proposals were reviewed by the Steering Committee; and (3) the Secretary-General chose BNP. Mr. Katz then requested formal documentation of this process for purposes of conducting contract negotiations with BNP and in order to determine that the selection had been in compliance with the United Nations Financial Regulations and Rules. Mr. Takasu said that the minutes of this high-level committee were confidential and that he would have to provide Mr. Katz with a briefing on them at a later date. Despite repeated inquiries, neither the briefing nor the documentation was provided.¹¹²

On December 12, 2004, the Committee interviewed former Secretary-General Boutros-Ghali about the selection of BNP. “I ha[d] many other problems so Oil for Food was not the priority,” said the former Secretary-General.¹¹³ When asked why he chose BNP, the former Secretary-General stated that he allowed Iraq to make the choice of the bank from the “short list” of banks:

¹⁰⁹ Yukio Takasu interview (Nov. 29, 2004).

¹¹⁰ Ibid.

¹¹¹ Joseph E. Connor interview (Nov. 15, 2004). Other Steering Committee members who were interviewed did not provide information concerning what led to the selection of BNP over Credit Suisse. See Hans Corell interviews (Oct. 26 and Dec. 3-4, 2004); Yasushi Akashi interview (Nov. 19, 2004).

¹¹² Steven R. Katz interview (Oct. 6, 2004); Steven R. Katz note-to-file (July 1, 1996); Bruce Rashkow memorandum to David Wengert (July 16, 1996); Bruce Rashkow memorandum to Suzanne Bishopric (July 30, 1996).

¹¹³ Boutros Boutros-Ghali interview (Dec. 12, 2004).

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

“And when I have this short list, I get in contact with the Iraqi. And said what is your choice? And they said we want this bank. It’s okay. And this is how the choice was done.”¹¹⁴

Concerned with Iraq’s prior refusals to participate in the Programme, the former Secretary-General stated that he was willing to give Iraq the “maximum concession” by selecting BNP: “So I was ready to offer the maximum of concession to the Iraq. Along with the concession was, after all the bank [that] will deal with them. It is normal—that they choose the bank which they like.”¹¹⁵

The former Secretary-General stated that he had “no idea” how BNP got on the “short list” from which Iraq was permitted to select the bank. In contrast to the information provided by France, the former Secretary-General did not recall speaking with the French Ambassador about selecting a French bank:

Q. Do you recall ever talking to [the French Ambassador] about giving the escrow account business to a French bank?

A. No. Once the escrow account was given, he was informed that the French bank would have the escrow account. But not before.¹¹⁶

The former Secretary-General did not recall any concern expressed by Ambassador Albright about the selection of a Swiss bank. He could not remember the existence of a Steering Committee or meeting with its chairman, Mr. Gharekhan.¹¹⁷

On January 20, 2005, the Independent Inquiry Committee learned that the former Secretary-General now recalled that he had more information he would be willing to share with the Independent Inquiry Committee about the selection of BNP. In view of the imminent release of this Report, he was promptly interviewed again over the telephone. At the outset of the conversation, the former Secretary-General was asked what had prompted his recollection of new information. He said it was prompted by a conversation with his former Chef de Cabinet, Jean-Claude Aimé, when they recently spoke to exchange New Year’s greetings.¹¹⁸ Mr. Aimé, during his interview with the Committee, stated that he did not recall anything about the manner in which the former Secretary-General selected a bank.¹¹⁹

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid. Mr. Gharekhan was identified in the May 28 memorandum of the former Secretary-General as the Secretary-General’s “Senior Adviser.”

¹¹⁸ Boutros Boutros-Ghali interview (Jan. 20, 2005).

¹¹⁹ Jean-Claude Aimé interview (Dec. 16, 2004).

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

During the course of the telephone interview of January 20, the former Secretary-General said that he chose a French bank because Madeleine Albright was opposed to a Swiss bank. He said that he did not recall speaking to Ambassador Albright about this issue but had learned in some manner that the United States was not in favor of a Swiss bank. He did not know what the United States' concern was but he thought it might be because Saddam Hussein's brother lived in Geneva. The former Secretary-General said that he chose BNP because it was acceptable to Iraq, the United States, the United Kingdom, and France. Choosing a bank was a "third class problem" compared to the other issues occupying his time, and the choice of BNP was a "political choice" because it satisfied the major parties that were interested in the matter. When asked if he was aware which of the banks on the short list was the low bidder, the former Secretary-General said he did not know—cost was not important in relation to ensuring that there was political agreement about the selection of a bank. The former Secretary-General did not recall documenting his decision in the form of any note, memorandum, or other declaration stating why he chose BNP rather than Credit Suisse.¹²⁰

On January 27, 2005, in response to an "adverse findings" notice letter from the Committee, the former Secretary-General faxed the following statement, in handwriting, to the Committee: "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."¹²¹

¹²⁰ Boutros Boutros-Ghali interview (Jan. 20, 2005).

¹²¹ Boutros Boutros-Ghali letter to the Committee (Jan. 27, 2005).

PART 2
CHAPTER 3 - INITIAL PROCUREMENT

This page is intentionally left blank

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

V. SELECTION OF OIL INSPECTORS - SAYBOLT EASTERN HEMISPHERE BV

The next major contractor chosen for the Programme was a company to perform inspections of the oil to be exported from Iraq. Resolution 986 authorized the Secretary-General to appoint independent inspections agents to conduct on-site monitoring in Iraq of oil exported via the Kirkuk-Yumurtalik pipeline from Iraq to Turkey and via the Mina al-Bakr loading terminal in the Persian Gulf. The Iraq-UN MOU provided that these experts would conduct “quality and quantity verification” and would “authorize the loading” of an oil shipment after being informed by the oil overseers that the United Nations had approved “the relevant contract.”¹²²

A. BEFORE FORMAL BIDDING

As part of its role in administering the Programme during its early months, the Department of Political Affairs (“DPA”) was involved in the procurement of oil inspectors. Joseph Stephanides led DPA’s involvement in this process as well in the selection of the humanitarian goods inspectors.¹²³ Because of his central role, it is worth pausing to summarize his professional background.

Mr. Stephanides, a lawyer, served as Deputy Permanent Representative for the Cyprus Mission to the UN. In 1980, he joined the United Nations as a Human Rights Officer. When the Programme launched in 1996, Mr. Stephanides was serving within DPA as Chief of the Sanctions Branch and Deputy Director of the Security Council Affairs Division. In this capacity, Mr. Stephanides advised and supported the 661 Committee, and he served as the liaison between the 661 Committee and the Steering Committee, which included one of Mr. Stephanides’s superiors, Mr. Goulding, Under-Secretary-General of DPA. Since 1999, Mr. Stephanides has served as Director of the Security Council Affairs Division in DPA.¹²⁴

On April 4, 1996, Mr. Stephanides said that he was hoping to avoid competitive bidding from companies to conduct the oil inspection work.¹²⁵ He eventually approached the Dutch Ministry of Foreign Affairs and requested technical guidance on implementing oil inspections under Resolution 986. When he was interviewed by the Committee, Mr. Stephanides stated that he contacted the Netherlands because of its commitment to enforcing the sanctions regime.¹²⁶ After

¹²² S/RES/986, para. 6 (Apr. 14, 1995); Iraq-UN MOU, Annex II, para. 4.

¹²³ Steering Committee meeting notes (May 29, 1996); Steering Committee meeting notes (June 4, 1996).

¹²⁴ Joseph Stephanides personnel file, United Nations Department of Human Resources.

¹²⁵ The statement was made to a diplomat of the United Kingdom in a meeting at the United Kingdom’s Mission in New York. See United Kingdom official #1 interview (Jan. 24, 2005). In accordance with the Committee’s memorandum of understanding with the United Kingdom, the Committee cannot attribute the official’s interview statements by name.

¹²⁶ Joseph Stephanides interview (Jan. 17, 2005).

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

Mr. Stephanides's inquiry, a Dutch Ministry official contacted experts from major oil companies and the government, attempting to identify possible candidates for the oil inspections. This official, who presently works for Saybolt, encountered only three or four possibilities, one of which—Saybolt—was a Dutch company.¹²⁷

Saybolt submitted a proposal to Mr. Stephanides on April 22, 1996. There is no evidence that any other company submitted a proposal in the spring of 1996. Although Saybolt never received any formal reply, on May 6, 1996, Saybolt learned from the Dutch official that Saybolt's proposal "was well received" by the United Nations and that "Mr. Stephanides was enthusiastic." Moreover, the Dutch official informed a Saybolt executive, Peter Boks, that the United Nations might waive its normal procurement rules and select Saybolt without a competitive bidding process. Saybolt expressed interest in sending company representatives to visit the United Nations, but the Dutch official advised against this.¹²⁸

By the end of May 1996, on advice from OLA, the Steering Committee had decided that the selection of the oil and goods inspection companies would be through a competitive bid process.¹²⁹ On June 4, 1996, the Steering Committee meeting was attended by Mr. Stephanides who advised that he already had contacted firms providing these services. There is no evidence, however, that Mr. Stephanides had contacted any oil inspection firms other than Saybolt (and he was also corresponding with Lloyd's regarding the humanitarian goods inspections as discussed in the next section of this report).¹³⁰

At some point in June 1996, Mr. Stephanides met in his office with Alexander Yakovlev and Sanjay Bahel of the procurement department. Mr. Yakovlev was the desk officer dealing with the selection process of the independent oil inspectors, and Mr. Bahel was his supervisor. According to Mr. Yakovlev, Mr. Stephanides told Mr. Yakovlev and Mr. Bahel that "it was decided" that Lloyd's and Saybolt should receive the goods and oil inspection contracts because they were

¹²⁷ Dutch official interview (Dec. 7, 2004); Peter Boks notes (Apr. 18, 1996) (translated from Dutch). In accordance with the Committee's memorandum of understanding with the Dutch government, the Committee cannot attribute the official's interview statements by name.

¹²⁸ Peter Boks notes (May 6 and 24, 1996) (translated from Dutch); Peter Boks interview (Nov. 2, 2004).

¹²⁹ Iraq Steering Committee meeting notes (May 29, 1996); OLA/GLD note, "The Engagement of Contractors to Supervise the Sale of Iraqi Oil" (May 29, 1996). Similarly, Mr. Boks's notes reflect that he was later advised that a competitive bidding process would be used. Peter Boks notes (June 11, 1996) (translated from Dutch).

¹³⁰ Iraq Steering Committee meeting notes (June 4, 1996). Three officers from Petrak, one of the other eventual bidders, confirmed that no one had contacted Petrak before it received the RFP for oil inspections, dated June 11, 1996 RFP, "completely out of the blue." Henry Tesseyre, E. Clive Rumens, and David Large interview (Dec. 2, 2004). A former officer of SGS, another bidder, confirmed the same. Michel Gisiger interview (Oct. 26, 2004). Moreover, in contrast to the statement of Mr. Stephanides before the Steering Committee on June 4, when Mr. Stephanides was interviewed by the Committee on January 17, 2005, he stated that "there was no specific discussion with any particular company" before June 11, 1996, including Saybolt, when the RFP issued. Joseph Stephanides interview (Jan. 17, 2005).

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

trustworthy and had significant experience working for the United Nations.¹³¹ When Mr. Bahel was interviewed, he did not recall Mr. Stephanides stating that “it was decided” that Lloyd’s and Saybolt would be selected; however, Mr. Bahel stated that he understood at the time that the “powers to be” had decided on Lloyd’s and Saybolt.¹³² Mr. Yakovlev advised Mr. Stephanides that some situations allow for an exception to the competitive bidding rules, but no exception seemed to fit the circumstances of this case.¹³³ Mr. Stephanides said that he would get back to Mr. Yakovlev and Mr. Bahel, and the next day he told Mr. Bahel that the procurement department should handle the selection under its normal bidding procedures.¹³⁴

When interviewed by the Independent Inquiry Committee, Mr. Stephanides stated that he did not recall meeting with Mr. Yakovlev and Mr. Bahel, and he denied telling them that the choice of contractor was decided: “It would have been factually incorrect and therefore it would have been also hilarious. . . . How can I say anything like that when you know there’s a procedure to be gone through?”¹³⁵ Mr. Stephanides further stated: “Let the record show I vehemently deny any notion of corruption, impropriety or anything that can suggest [that I] deviated from the sacred responsibility we had in preserving the sanctity of the sanctions regime in which I was involved.”¹³⁶

B. THE INITIAL BIDDING PROCESS

As the “requesting department,” DPA enumerated technical requirements for the RFP.¹³⁷ On June 11, 1996, the procurement department distributed the RFP to eight companies.¹³⁸ By the deadline of June 18, 1996, six of the eight invitees submitted proposals. The procurement department evaluated the proposals based on costs, financial acceptability, compliance with the RFP’s requirements, and overall assessment. It concluded that only the bid of one company—Société Générale de Surveillance S.A. (“SGS”), a Swiss company—was fully acceptable; the bids

¹³¹ Alexander Yakovlev interviews (Aug. 20 and 26, 2004).

¹³² Sanjay Bahel interview (Aug. 30, 2004).

¹³³ Alexander Yakovlev interviews (Aug. 20 and 26, 2004). Financial Rule 110.19 allows for contracts to be awarded without calling for proposals, advertising, or formal invitation in some cases involving commitments of less than \$10,000. This rule clearly was not applicable for this multi-million dollar contract.

¹³⁴ Alexander Yakovlev interviews (Aug. 20 and 26, 2004).

¹³⁵ Joseph Stephanides interview (Jan. 17, 2005); see also *ibid.* (“I recall no meeting with Mr. Bahel and Mr. Yakovlev in discussion of this matter.”).

¹³⁶ *Ibid.*

¹³⁷ Allan Robertson interview (Jan. 27, 2005).

¹³⁸ Sanjay Bahel memorandum to Joseph Stephanides (June 20, 1996); Request for Proposal for the Provision of “Independent Experts in International Oil Trade,” Annex A (June 11, 1996). The procurement department sent this RFP to companies listed on its vendor roster.

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

of Saybolt and Petrak were acceptable only with limitations, and the remaining bids were not acceptable.¹³⁹

Saybolt's bid was higher than the bids of SGS and Petrak. SGS proposed a bid price of approximately \$2.1 million, and Petrak proposed a price of \$3.3 million. Saybolt proposed a price of more than \$2.9 million and did not include a significant component (the cost of oil overseers) that would have driven its price well beyond the other two companies. All of these bids were for inspection services for only six months, subject to potential extension if the Security Council extended the Programme beyond its first phase.

Ultimately, the procurement department concluded that SGS—the lowest bidder and the only one that had submitted an acceptable bid—should be awarded the contract.¹⁴⁰ But Mr. Stephanides disagreed. In a memorandum to the procurement department on June 21, 1996, he asserted that SGS—unlike Saybolt—failed to address quality verification in its proposal, as he believed the RFP required. Specifically, the RFP provided that “on-site inspectors will be responsible for monitoring the movement of petroleum and petroleum products” and that “[s]uch monitoring will be based on the documents received from the overseers, as well as on quality and quantity verification.” Moreover, Mr. Stephanides endorsed Saybolt's bid because, in his view, Saybolt offered more international agents with better experience—while SGS proposed more locally hired inspection agents with limited experience. However, Mr. Stephanides recommended that the procurement department assess the fairness of Saybolt's proposed price and consider negotiating with Saybolt to seek a reduced price.¹⁴¹

In fact, there was little difference in the number of international agents included in the two proposals. Including the oil overseers, Saybolt proposed personnel with ten nationalities, and SGS proposed personnel with eight nationalities. More fundamentally, however, the RFP did not specify criteria about the inspectors' nationalities.¹⁴²

¹³⁹ Sanjay Bahel memorandum to Joseph Stephanides (June 20, 1996) (including appendices with the procurement department's analysis of the various proposals).

¹⁴⁰ Sanjay Bahel memorandum to Joseph Stephanides (June 20, 1996); SGS Proposal for the Provision of Independent Experts in International Oil Trade (June 18, 1996); Petrak Proposal for the Provision of Independent Experts in International Oil Trade (undated); Saybolt Proposal for the Provision of Independent Experts in International Oil Trade (June 17, 1996).

¹⁴¹ Joseph Stephanides memorandum to Sanjay Bahel (June 21, 1996); Request for Proposal for the Provision of “Independent Experts in International Oil Trade” (June 11, 1996). Paragraph 1.2 of the RFP referred to the need for monitoring based on quality testing, but it did not indicate clearly the party responsible for conducting the quality testing. *Ibid.*

¹⁴² Saybolt Proposal for the Provision of Independent Experts in International Oil Trade (June 17, 1996); SGS Proposal for the Provision of Independent Experts in International Oil Trade (June 18, 1996); Peter Boks notes (June 22, 1996) (translated from Dutch); Allan B. Robertson memorandum to Joseph Stephanides (July 11, 1996).

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

The next day, June 22, 1996, Mr. Boks and the Dutch official spoke on the phone about the bidding process. The Dutch official informed Mr. Boks that the procurement department was considering Saybolt along with Petrak and SGS. The Dutch official told Mr. Boks that Petrak had little chance of obtaining the contract, but that SGS's bid was \$1.5 million lower than Saybolt's bid.¹⁴³ In addition, the Dutch official assured Mr. Boks that he had been informed that Saybolt's proposal had the "right context," which "was not the case with SGS's proposal," and SGS offered only Egyptian staff. It is not known from whom at the United Nations the Dutch official received this information.¹⁴⁴

C. REVISION OF THE RFP

On June 25, 1996, the procurement department notified Saybolt and SGS that they were short-listed for the contract, and it distributed to each of them a revised "Statement of Requirement," which requested updated pricing proposals. The fax sent by the procurement department was signed by Allan B. Robertson, who was officer-in-charge of the Procurement and Transportation Division. This revised "Statement of Requirement" (referred to also as the "updated RFP") clarified, among other things, that proposals should include both oil quantity and quality verifications and that the requirement of providing oil overseers had been eliminated. The updated RFP did not address the issue of inspector nationality.¹⁴⁵

Both companies responded to the updated RFP with revised bids, but again Saybolt was the most expensive. For the six-month contract term, SGS was the lowest bidder at \$1.9 million, and Saybolt proposed \$2.4 million (approximately twenty-five percent more than SGS's bid).¹⁴⁶

¹⁴³ The \$1.5 million difference would be explained by the approximate \$800,000 difference in initial bid price, plus SGS's costs of \$ 684,000 for oil overseers, which had been part of its initial bid price. See "Proposals Evaluation Summary" (attached to Sanjay Bahel memorandum to Joseph Stephanides (June 20, 1996)).

¹⁴⁴ Peter Boks notes (June 22, 1996) (translated from Dutch); Peter Boks interview (Nov. 2, 2004); Dutch diplomat interview (Dec. 7, 2004).

¹⁴⁵ Commodity Procurement Section fax to Saybolt Eastern Hemisphere BV (June 25, 1996); Jeffrey Newell interviews (Sept. 24, 2004 and Oct. 27, 2004); Michel Gisiger interview (Oct. 26, 2004); Revised Proposal by SGS (June 28, 1996). It is unclear precisely what precipitated these revisions. However, on the same day, Mr. Sevan informed the Steering Committee that Mr. Stephanides preferred Saybolt and that, in any event, it was necessary to obtain a new pricing proposal from SGS, which had not included the full cost of oil testing (a significant cost component in Saybolt's proposal). Iraq Steering Committee meeting notes (June 25, 1996). It is unclear whether the procurement department issued the revised RFP to Petrak and, in any event, Petrak did not play a role in the future selection process. See Headquarters Committee on Contracts, paras. 3.3-3.4 (July 30, 1996) (indicating that Petrak was disqualified); Henry Teysseyre, E. Clive Rumens, and David Large interview (Dec. 2, 2004) (indicating that Petrak submitted a revised bid).

¹⁴⁶ Saybolt Eastern Hemisphere BV fax to United Nations Bid Opening Unit (June 28, 1996); SGS fax to United Nations Commodity Procurement Section (June 28, 1996).

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

As Mr. Robertson noted in a memorandum to Mr. Stephanides, SGS remained not just the lowest bidder, but also owned laboratory facilities in Turkey and would guarantee its experts' performance and replace them at no cost to the United Nations. Regarding Mr. Stephanides's concern about the inspectors' nationalities, Mr. Robertson commented that either company was sufficient. Moreover, consistent with the requirement of Financial Rule 110.21, Mr. Robertson advised Mr. Stephanides that the procurement department would need "strong and comprehensive written justification" in order to recommend to the HCC any company other than the lowest bidder.¹⁴⁷

On July 5, Mr. Boks spoke again with the Dutch official. Mr. Boks's notes reflect that he was told by the Dutch official that the procurement department "seems to have a notable charm for SGS," but that Mr. Stephanides remained "optimistic" about Saybolt being selected. It is apparent that the information from the Dutch official came from a United Nations official, but it is not known which United Nations official imparted this information to the Dutch official.¹⁴⁸

On July 8, 1996, Mr. Stephanides sent a memorandum to the procurement department, contending again that Saybolt should be selected, because SGS included an extra cost item (for oil overseers) that "should not have been included," because Saybolt's costs were easier to calculate, and because Saybolt offered to provide a crude assay in its proposal, which was a "welcome additional service" not required in the RFP.¹⁴⁹ More broadly, Mr. Stephanides argued that price should not necessarily trump other considerations and that members of the 661 Committee had significant concerns regarding "the effective implementation of the sanctions regime."¹⁵⁰

On July 11, 1996, Mr. Robertson sent a reply memorandum to Mr. Stephanides, reiterating the procurement department's view that SGS should be awarded the contract as the lowest bidder. Mr. Robertson underscored that "the guidelines of the Financial Regulations and Rules of the United Nations and other applicable procedures" provide "that proposals can be assessed/evaluated only against the scope of the requirements stipulated in the RFP document, for sake of fairness, transparency and objectivity of the process." In that regard, the RFP did not require flat pricing or specify any requirements relating to the inspectors' nationalities. Even if this were the case, SGS not only had the lowest man-day rate, but also the lowest price for quality

¹⁴⁷ Allan B. Robertson memorandum to Joseph Stephanides (June 28, 1996); see Procurement Manual 9.00.003 (regarding the tabulation of bids).

¹⁴⁸ Peter Boks notes (July 5, 1996) (translated from Dutch); Peter Boks interview (Nov. 2, 2004).

¹⁴⁹ Joseph Stephanides memorandum to Allan B. Robertson (July 8, 1996). At that point, Saybolt proposed a flat rate of \$820 per man, per day ("man-day"), which covered both local and delegated inspectors. SGS suggested a mixture of "delegated" and "local" inspectors at a rate of: \$500 per man-day at Ceyhan (four local inspectors); \$750 per man-day at Mina al Bakr (six local inspectors); and \$975 per man-day at the meter station at the Turkish border (four delegated inspectors). For the suggested mix of local and delegated inspectors, SGS's flat rate would have been \$743 per man-day, still substantially lower than Saybolt's rate.

¹⁵⁰ Joseph Stephanides memorandum to Allan B. Robertson (July 8, 1996).

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

testing. Both companies had submitted internationally mixed inspection teams, with ten nationalities for Saybolt and eight nationalities for SGS. Moreover, Mr. Robertson asserted that doing business with Saybolt would have a “slightly higher than average risk,” in light of a Dun & Bradstreet report rating SGS’s financial standing higher than Saybolt’s and the fact that SGS was more specialized in inspection services than Saybolt. In its last analysis, the procurement department again recommended awarding the contract to SGS, and it emphasized that, if DPA still recommended Saybolt, it was necessary for DPA to identify a justification outside the normal procurement criteria.¹⁵¹

D. THE STEERING COMMITTEE’S INTERVENTION

On July 12, 1996, Mr. Stephanides informed the procurement department that he was seeking guidance from the Iraq Steering Committee on the selection of the oil inspectors, and he requested that the procurement department refrain from submitting its award recommendation to the HCC until he received an answer from the Steering Committee. That day, Mr. Stephanides sent a memorandum to Mr. Goulding of the Steering Committee, reiterating his concern about the nationalities of SGS’s proposed inspectors. Mr. Stephanides added: “I believe that I am in a position to assess accurately and advise you, the Iraq Steering Committee and the Secretary-General on arrangements that can be acceptable to the Committee.” Three days later, Mr. Stephanides informed the procurement department that the Steering Committee had agreed with him and that the department should ask SGS to provide “additional names of qualified on-site inspectors with no links to the region.”¹⁵²

The Steering Committee—through Mr. Stephanides—requested that only SGS be asked for this additional information. But Mr. Bahel and Mr. Robertson preferred to request additional CVs from both SGS and Saybolt “in order to ensure ‘equality.’” Mr. Yakovlev disagreed—he thought that additional CVs should be requested only from SGS and not Saybolt given that DPA seemed satisfied with Saybolt’s proposal, and Mr. Yakovlev documented this disagreement with his superiors in a “note-to-file” dated July 15, 1996. By fax dated July 15, 1996, the procurement

¹⁵¹ Allan B. Robertson memorandum to Joseph Stephanides (July 11, 1996). Regarding Mr. Stephanides’s claim that Saybolt’s flat rate was easier to understand than SGS’s scaled rates, the procurement department noted that even if a flat rate were required, “it would be more accurate to compare Saybolt’s flat rate (\$820 [which covers local as well as delegated inspectors] with [SGS’s] average rate of . . . \$742.”

¹⁵² Joseph Stephanides memorandum to Allan B. Robertson (July 12, 1996); Joseph Stephanides memorandum to Marrack Goulding (July 12, 1996); Joseph Stephanides memorandum to Allan B. Robertson (July 15, 1996). Regarding Mr. Stephanides’s memorandum to Mr. Goulding, he presumably is referring to arrangements that the 661 Committee likely would accept (not the Iraq Steering Committee). Mr. Stephanides suggested as much when interviewed by the Committee. Joseph Stephanides interview (Jan. 17, 2005).

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

department requested that both SGS and Saybolt—“in order to ensure maximum integrity of inspectors”—submit the names and CVs of additional candidates without “links to the region.”¹⁵³

Both SGS and Saybolt responded to the request for CVs, but Saybolt also took the opportunity to do far more. Saybolt furnished new CVs for inspectors, and it substituted less expensive wage inspectors, resulting in a lower bid price. Even with this reduced price, however, Saybolt’s bid was still higher than SGS by nearly \$100,000. To close this gap, Saybolt then offered a further price reduction for the cost of its oil quality testing. This cost component was not related to the procurement department’s request for inspector CVs, but it had the effect of lowering the price by \$38,124 below the price that had been previously proposed by SGS.¹⁵⁴

Saybolt’s move provoked a dispute at the procurement department. As Mr. Yakovlev recorded in another note-to-file, he met with his supervisor, Mr. Robertson, to discuss Saybolt’s reply, and he contended that Saybolt’s reduction in price for oil quality testing—in response to a request only for additional CVs of inspectors—was “a serious violation by Saybolt of bidding procedures in the attempt to get an award of this contract.”¹⁵⁵ But Mr. Robertson disagreed. He instructed Mr. Yakovlev to contact SGS and permit it to update its price for quality testing. Mr. Yakovlev replied “that this action would not be in exact compliance with procedures and may lead to a new round of price reviews.” Mr. Yakovlev recommended seeking advice from OLA, but Mr. Robertson replied that this was “a confidential procurement issue and decisions must be taken by PTD.”¹⁵⁶

On July 22 and 23, 1996, the procurement department faxed messages to both SGS and Saybolt, respectively, requesting confirmation of pricing information with respect to the inspectors and oil quality testing. The fax to Saybolt stated: “First of all, quality testing has nothing to do with the

¹⁵³ Alexander Yakovlev fax to SGS (July 15, 1996) (authorized by Allan B. Robertson); Fax from Saybolt to procurement department (July 18, 1996); Alexander Yakovlev note-to-file (July 15, 1996) (summarizing discussions he had with Mr. Robertson and Mr. Bahel). Mr. Yakovlev told the Committee that he provided Mr. Robertson and Mr. Bahel with a copy of this note-to-file and that he also placed a copy in the main procurement file. Alexander Yakovlev interview (Jan. 24, 2005).

¹⁵⁴ Saybolt Eastern Hemisphere BV fax to the United Nations (July 18, 1996); SGS fax to the United Nations (July 18, 1996). Relative to its earlier proposal, Saybolt reduced its bid price by \$360,000 with the substitution of cheaper labor, and it reduced its bid price by another \$132,000 for oil quality testing. Saybolt Eastern Hemisphere BV, “Proposal for the Provision of Independent Experts in the International Oil Trade,” (June 17, 1996); Saybolt fax to the United Nations (June 28, 1996).

¹⁵⁵ As noted in Section 2 above, the Procurement Manual prohibited a bidder from amending its price in the absence of an invited request to do so. See Procurement Manual 8.0014.

¹⁵⁶ Alexander Yakovlev note-to-file (July 22, 1996); Alexander Yakovlev interviews (Aug. 26, 2004 and Jan. 24, 2005). Mr. Yakovlev told the Committee that he provided Mr. Robertson with a copy of this note-to-file and that he placed a copy in the main procurement file. Alexander Yakovlev interview (Jan. 24, 2005).

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

additional inspectors. Therefore, please explain the reason for this reduction.” Both faxes bear the authorizing signature of Mr. Robertson as officer-in-charge.¹⁵⁷

On July 24, 1996, SGS confirmed its bid price as unchanged, and Saybolt also reconfirmed its lower price.¹⁵⁸ Saybolt’s reply explained that the reduction for oil quality testing was possible because Saybolt now planned to “sell the assays [of crude oil testing] to interested third parties” in order to “recover” part of the costs of testing.¹⁵⁹

The procurement department then recommended to the HCC that the contract be awarded to Saybolt on the ground that Saybolt was now the lowest acceptable bidder.¹⁶⁰ When interviewed by the Committee, Mr. Robertson did not provide a reason why he accepted Saybolt’s lower bid only two days after he had informed Saybolt that quality testing was unrelated to the issue of inspectors’ nationalities. Although Mr. Robertson acknowledged that he always read documents that he signed, he emphasized that he relied on his staff to ensure the documents’ accuracy and to raise with him any contentious issues.¹⁶¹

In a memorandum recommending the selection of Saybolt, the procurement department misstated the basis for Saybolt’s oil testing price change. Rather than stating Saybolt’s intent to accomplish a price reduction by selling its test data to third parties, the procurement department stated that Saybolt had “advis[ed] that there was no actual reduction in price of quality testing, but rather *the testing process was modified.*”¹⁶²

On July 30, 1996, the HCC recommended the award of the contract to Saybolt. The Committee, however, detected that the basis for Saybolt’s price reduction for oil quality testing was invalid, because the United Nations’ general conditions of contract prohibited Saybolt from selling test data that constituted United Nations property. Mr. Yakovlev drafted a memorandum, which was signed by Mr. Robertson, and was faxed to Saybolt, stating that Saybolt’s intent to sell the oil testing results “to interested parties” was “unacceptable as it is in contradiction with the UN General Conditions for General Contacts,” and Saybolt was required to confirm that “all results of crude oil testing . . . shall remain the property of the UN” and “shall not be disclosed, sold,

¹⁵⁷ Allan B. Robertson fax to Saybolt Eastern Hemisphere BV (July 23, 1996); Allan B. Robertson fax to SGS Switzerland (July 23, 1996).

¹⁵⁸ Allan B. Robertson memorandum to Committee on Contracts (July 19, 1996). Although the memorandum is dated July 19, it refers to the correspondence discussed above of July 23 and bears fax marks indicating that it was sent on July 24, 1996.

¹⁵⁹ Erik Pluimers fax to Allan B. Robertson (July 24, 1996).

¹⁶⁰ Allan B. Robertson memorandum to Committee on Contracts (July 19, 1996) (see footnote above concerning date of this memorandum).

¹⁶¹ Allan B. Robertson interview (Jan. 27, 2005).

¹⁶² Allan B. Robertson memorandum to Committee on Contracts (July 19, 1996) (emphasis added) (see footnote above concerning date of this memorandum). The memorandum reflects that it was drafted and initialed by Mr. Yakovlev and signed by Mr. Robertson.

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

shared or made known to any third party.” Saybolt sent a replying fax confirming that it would not disclose, sell, or share the test results.¹⁶³

It was now clear that there was no longer a proper basis for the final component of Saybolt’s reduction in bid price. But the United Nations elected to proceed with the contract, and the United Nations and Saybolt signed a contract on August 16, 1996.¹⁶⁴

E. EXPLANATION OF ALLAN B. ROBERTSON

Mr. Robertson has not satisfactorily explained why he authorized acceptance of Saybolt’s revised bid. When questioned about Mr. Yakovlev’s meeting with him to express his concerns, Mr. Robertson stated that he did not recall this meeting (despite Mr. Yakovlev’s contemporaneous note-to-file), and he stated that he did not believe that it occurred.¹⁶⁵ When Mr. Robertson was first interviewed, he conceded that if the facts in Mr. Yakovlev’s note were accurate, he would have agreed with Mr. Yakovlev’s assessment that Saybolt’s submission of a new bid for quality testing violated the procurement rules.¹⁶⁶

After Mr. Robertson was advised of the Committee’s intention to enter an adverse finding against him, he stated that his conduct did not violate the prohibition of Procurement Rule 8.0014 because that rule applies only to “bids” and not “proposals.”¹⁶⁷ He has repeated this argument in a letter to the Committee dated February 2, 2005, which is attached in the Appendix to this Report. The Committee is not persuaded. The 1996 Procurement Manual’s use of the term “bid” extended to “proposals”; there were no separate provisions of the rules, at that time, dealing with “proposals” as distinct from “bids.” This is consistent with the fact that the United Nations Financial Rules, as in force in 1996, used the terms “bids” and “proposals” interchangeably.¹⁶⁸

Mr. Robertson’s letter claims that “it was permissible to ask proposers for clarifications, and naturally clarifications can lead to changes in prices.” But far more happened in the case of Saybolt. A request for inspector CVs was made, and Mr. Robertson permitted Saybolt to respond with a dramatic change in its price for oil testing, which had nothing to do with the request for

¹⁶³ Headquarters Committee on Contracts minutes, paras. 3.18-3.19 (July 30, 1996); Alexander Yakovlev interview (Jan. 24, 2005); Commodity Procurement Section, PTD fax to Saybolt-Eastern Hemisphere BV (July 31, 1996); Saybolt Eastern Hemisphere BV fax to Sanjay Bahel and Alexander Yakovlev (July 31, 1996).

¹⁶⁴ UN Contract, PTD/127/0065-96 (Aug. 16, 1996).

¹⁶⁵ Allan Robertson interviews (Sept. 10, 2004 and Jan. 27, 2005).

¹⁶⁶ Allan Robertson interview (Sept. 10, 2004); Alexander Yakovlev interview (Jan. 24, 2005).

¹⁶⁷ Allan Robertson interview (Jan. 31, 2005). Procurement Rule 8.0014 states in pertinent part that “no correction or alternation in the prices or terms of a bid shall be permitted after the time of opening.”

¹⁶⁸ Kiyohiro Mitsui interview (Feb. 1, 2005) (Chief Support Services Section, Procurement Services – United Nations); see, e.g., Financial Rule 110.18 (Calling for Bids or Proposals); *ibid.*, 110.19 (Exceptions to Calling for Bids or Proposals).

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

clarification that was made; it was also based on an impermissible reason for reducing Saybolt's cost basis for the bid.

The Committee appreciates that Mr. Robertson initially withstood efforts to favor Saybolt. In the end, however, Mr. Robertson surrendered to a clear violation of the bidding rules and basic fair play, and he did so despite being warned by Mr. Yakovlev not to accept Saybolt's amended bid. The contemporaneous notes of Mr. Yakovlev are compelling evidence against Mr. Robertson, and Mr. Robertson's efforts to attack the credibility of Mr. Yakovlev are as unsupported as they are unconvincing.

Last, Mr. Robertson's letter claims that "the Steering Committee selected Saybolt." It is true that the Steering Committee favored Saybolt, but Mr. Robertson has not claimed that the Steering Committee required him to break the rules. In fact, his claim is that he did not break any rules. As the responsible official in charge of the procurement department, Mr. Robertson was required to abide by the procurement rules and not to recommend a contract award on grounds and for reasons he knew to be improper.¹⁶⁹

¹⁶⁹ Mr. Robertson incorrectly asserts that "Annex A to the RFP specifically said selection of the inspectors would be done by the Steering Committee." There is no such reference to the Steering Committee in Annex A to the RFP; Annex A refers only to the Security Council's 661 Committee and its operational oversight function of the oil inspectors and overseers.

PART 2
CHAPTER 3 - INITIAL PROCUREMENT

This page is intentionally left blank

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

VI. SELECTION OF GOODS INSPECTORS – LLOYD’S REGISTER INSPECTION LTD.

The third and final of the Programme’s major initial procurement actions was the hiring of a company to conduct inspections of the humanitarian goods to enter Iraq. The contract was ultimately awarded to Lloyd’s. Since 1994, Lloyd’s had been performing on-site inspections of goods arriving at the port of Aqaba in Jordan. Lloyd’s had been hired by shipping companies to conduct on-shore inspections of their goods at Aqaba, as an alternative to shipboard inspections by the Multinational Interception Force (“MIF”) that enforced the economic sanctions against Iraq.¹⁷⁰ Although the inspections by Lloyd’s at Aqaba were not arranged by the United Nations, Lloyd’s participated—along with the MIF—in making regular reports to the 661 Committee.¹⁷¹

Lloyd’s was from the United Kingdom, and the United Kingdom believed that Lloyd’s was doing a very effective job of inspections at Aqaba.¹⁷² Accordingly, more than two months before the signing on May 20, 1996, of the Iraq-UN MOU, the United Kingdom was assisting Lloyd’s in its effort to be awarded the prospective inspection contract for Iraq.¹⁷³

Mr. Stephanides met with an official at the United Kingdom Mission on April 4, 1996, and he discussed the potential participation of Lloyd’s as the goods inspection contractor.¹⁷⁴ He stated that other companies were approaching him but he would have to turn them down, because he felt he could trust Lloyd’s.¹⁷⁵ At some point during this timeframe, Howard Earnshaw and other employees of Lloyd’s went to the United Nations to discuss with Mr. Stephanides the proposal that Lloyd’s had submitted.¹⁷⁶ On May 9, 1996, Mr. Earnshaw faxed to the United Kingdom Mission a revised proposal for the inspection contract, and he referenced in the cover sheet discussions with “Mr. Stephanides’ team.”¹⁷⁷ Six days later, a United Kingdom official from the United Nations Mission sent Mr. Earnshaw comments on his proposal and cautioned that “you

¹⁷⁰ John M. Goshko, “U.S., Jordan Set New Inspection System; Iraq-Bound Cargoes Would Be Searched for Sanctions Violations on Land, Not at Sea,” *Washington Post*, Apr. 25, 1994, p. A11.

¹⁷¹ Howard Earnshaw interview (Oct. 14, 2004); see, e.g., Provisional record of 661 Committee meeting, S/AC.25/SR.131 (Jan. 25, 1996) (presentation by Lloyd’s officials to the 661 Committee concerning inspection activities at Aqaba).

¹⁷² United Kingdom official #1 interview (Jan. 24, 2005); United Kingdom official #3 interview (Jan. 5, 2005).

¹⁷³ Lloyd’s record, Howard Earnshaw fax to United Kingdom Mission official (Mar. 13, 1996) (enclosing the proposal of Lloyd’s).

¹⁷⁴ United Kingdom official #1 interview (Jan. 24, 2005); United Kingdom official #3 interview (Jan. 5, 2005).

¹⁷⁵ United Kingdom official #1 interviews (Jan. 25 and 26, 2005).

¹⁷⁶ Howard Earnshaw interview (Oct. 14, 2004).

¹⁷⁷ Lloyd’s record, Howard Earnshaw fax to United Kingdom Mission to the United Nations (May 9, 1996).

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

should avoid a suggestion in the preface that the UN has officially approached you since other companies might complain that they were not similarly approached.”¹⁷⁸

As noted in the discussion of Saybolt above, at some point in June 1996, Mr. Stephanides told Mr. Yakovlev that it was “decided” that Lloyd’s would receive the inspection contract. However, he later said to Mr. Bahel that the procurement department should handle the selection under its normal bidding procedures.¹⁷⁹

A. THE INITIAL BID PROCESS

On July 22, 1996, the procurement department issued a request for proposal to seventeen humanitarian goods inspection companies in nine countries. The RFP called for a six-month inspection services contract involving thirty-two inspection agents deployed at three entry points on Iraq’s borders. The RFP called for a response from bidders, within just eight days, by July 30, 1996.¹⁸⁰ Five companies responded with six-month services bids that were accepted for consideration on July 30, 1996. The lowest bidder—by far—was Bureau Veritas (“Veritas”) of France at a price of approximately \$4.3 million. Lloyd’s was the second lowest bidder at \$5.4 million, which was \$1.1 million more than Veritas.¹⁸¹

On the basis of Veritas’s lowest acceptable proposal, the procurement department promptly recommended awarding the contract to Veritas.¹⁸² Again, however, Mr. Stephanides did not agree with the procurement department, and he recommended Lloyd’s. This was consistent with the position of some members of the Security Council that—in light of the selection of BNP and a French oil overseer—a French company should not be selected for the goods inspection contract.

By memorandum dated August 6, 1996, Mr. Stephanides wrote to Mr. Robertson to support the selection of Lloyd’s over Veritas, contending that Lloyd’s had “proven credentials” in carrying out work “on behalf of the 661 committee.” Mr. Stephanides contended that Lloyd’s had inspectors with “extensive experience over time in the region” and some inspectors with “customs backgrounds and commercial investigatory expertise.” While acknowledging that Veritas was the lowest bidder, Mr. Stephanides said that “I am not reassured as to its readiness and reliability to undertake such a crucial sanctions enforcement role....” In particular, Mr. Stephanides suggested that the proposed inspectors should have no links to the region, and he claimed that more than half of the inspectors proposed by Veritas did not meet this crucial

¹⁷⁸ Lloyd’s record, United Kingdom Mission letter to Howard Earnshaw (May 15, 1996).

¹⁷⁹ Alexander Yakovlev interviews (Aug. 20 and 26, 2004).

¹⁸⁰ Request-for-Proposal setting out the requirements for Independent Experts in International Authentication of Goods (Humanitarian Goods Inspectors) (July 22, 1996). The Procurement Manual did not specify binding times allowed for responses to RFP, but suggests a period of four to six weeks for contracts involving highly detailed specifications.

¹⁸¹ Allan B. Robertson memorandum to Joseph Stephanides (Aug. 8, 1996).

¹⁸² Allan B. Robertson memorandum to Joseph Stephanides (Aug. 2, 1996) (including Annex A).

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

requirement. Mr. Stephanides further contended that Veritas's bid proposal did not conform to the RFP because it proposed "risk analysis" inspection rather than inspection of "each and every consignment of goods purchased from the escrow account."¹⁸³

By reply memorandum of August 8, Mr. Robertson maintained that Veritas was less expensive and had a strong credit rating. Veritas was a "minimum risk operation"—a better risk rating compared to Lloyd's "low risk" rating—and both companies guaranteed the performance of their inspectors under an internationally accepted performance standard. Additionally, Mr. Robertson noted that, according to the financial and technical evaluation prepared by the procurement department comparing the nationalities of the inspectors for both companies, the differences between the companies were minimal. As to Mr. Stephanides's concern about the nature of Veritas's inspections, Mr. Robertson determined that Veritas's quantity and quality inspection proposals were "compliant." Regarding concerns about the nationality of the inspectors, Mr. Robertson noted that, to the extent that some of Veritas's candidates were from Turkey and Pakistan, Veritas "has stated that they are able to offer additional qualified candidates or replace the ones already offered at the request of the UN," and "[f]or this reason, it would appear that the candidates are acceptable in terms of the composition of nationalities."¹⁸⁴

B. ALERTING THE UNITED KINGDOM

After learning of the procurement department's recommendation, Mr. Stephanides decided to enlist the assistance of the United Kingdom Mission to the United Nations. Mr. Stephanides contacted a diplomat at the Mission and told the diplomat that it looked like a tender from a competitor of Lloyd's would be approved despite the fact that the competitor's tender proposed to use local national inspectors (such as from Pakistan, Jordan, and Turkey). Mr. Stephanides said that he was concerned that these in-region inspectors would be less trustworthy than inspectors from other countries. Mr. Stephanides also described what the diplomat called a "whopping" difference in price between the higher bid of Lloyd's and the lower bid of its competitor. Mr. Stephanides and the diplomat spoke about having Lloyd's submit a lower bid, and Mr. Stephanides told the diplomat how much lower the bid needed to be.¹⁸⁵

¹⁸³ Joseph Stephanides memorandum to Allan B. Robertson (Aug. 6, 1996); Regina Leviel interview (Nov. 14, 2004).

¹⁸⁴ Allan B. Robertson memorandum to Joseph Stephanides (Aug. 8, 1996) (including Annex A).

¹⁸⁵ United Kingdom official #2 interview (Dec. 6, 2004).

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

The diplomat recalled informing Lloyd's of the bid information. According to the diplomat, Mr. Stephanides thought there should be a letter sent to the procurement department. The United Kingdom decided that it would be better to communicate the lower bid information in the form of a letter to the Steering Committee. On August 9, 1996, the United Kingdom's Permanent Representative to the United Nations gave a letter to the Steering Committee stating Lloyd's agreement to lower its bid by \$900,000.¹⁸⁶



United Kingdom Mission
to the United Nations
New York

One Dag Hammarskjöld Plaza
(885 Second Avenue)
New York, NY 10017

Mailing Address:
PO Box 5258
New York, NY 10150-5258

Telephone: (212) 745-9200
Facsimile: (212) 745-9316

FROM THE PERMANENT REPRESENTATIVE

████████████████████
08 August 1996

Ambassador Gharekhan
Under-Secretary-General
United Nations

Dear Chinmaya

IRAQ: IMPLEMENTATION OF SCR 986

I am writing to you in your capacity as Chairman of the Steering Committee, who I understand will be taking a decision tomorrow about whom to appoint as independent experts in the international authentication of goods as required under the arrangements agreed to implement SCR 986 in Iraq.

I am authorised to state to the Steering Committee through you that Lloyd's Register are ready to carry out the work involved for a sum of \$4.5 million.

I hope this will enable the Steering Committee to come to the right decision.

Letter from United Kingdom Ambassador to Chinmaya Gharekhan (Aug. 9, 1996) (excerpt)

¹⁸⁶ Iraq Steering Committee meeting notes (Aug. 9, 1996) (noting receipt of the United Kingdom Ambassador's letter).

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

C. INTERVENTION OF THE IRAQ STEERING COMMITTEE

As noted, on August 9, 1996, the Lloyd's issue went before the Steering Committee, along with the United Kingdom Ambassador's letter offering to lower Lloyd's bid. The meeting notes, which are reproduced in Annex 1 of this Chapter, state that "[t]he purpose of the meeting was to review the dilemma caused by the bid by Veritas, a French company, for the contract to provide independent inspection agents to authenticate the arrival of goods in Iraq." Mr. Corell noted the view expressed by the procurement department and personally to him by Mr. Robertson that "the UN should award the contract to Veritas since its bid was \$1.1 million less expensive than that of Lloyd's." But the Steering Committee decided that selecting a French company was politically problematic:

This posed significant political problems, a view shared by all principals present. An 'overseer' post had been assigned to a French national, and the banking contract had been accorded to a French company. It would be unacceptable to award the contract for goods inspection agents to a French company.¹⁸⁷

Given these political concerns, the Steering Committee tentatively decided to terminate the competitive bidding process and, for this purpose, circulated a draft memorandum for the chairman, Mr. Gharekhan, to transmit to the procurement department. The Steering Committee deferred further action until an absent Steering Committee member—Mr. Connor, the Under-Secretary-General for Administration and Management—could be present.¹⁸⁸

Three days later, on August 12, 1996, the Steering Committee convened but, again, without Mr. Connor. At this meeting, the participants were Mr. Akashi, Mr. Corell, Mr. Gharekhan, and Mr. Takasu. They discussed how the United Nations procurement rules prohibited a bidding party—like Lloyd's—from amending its bidding price after its initial bid was accepted. The members wondered aloud—as reflected in the meeting notes reproduced in Annex 2 of this Chapter—how Saybolt had been permitted to amend its bid for the oil inspection contract, but then terminated further discussion with an observation that "the rules were very strict in this regard":

Mr. Gharekhan recalled that negotiations had taken place with the two lowest bidders for the contract on oil inspection agents – PTD had reverted with queries to SAYBOLT, the second lowest bidder (which was strongly preferred by some members of the 661 Committee), and SGS, the lowest bidder. In the process, SAYBOLT's bid went down and the Headquarters Committee on Contracts ultimately awarded the contract to this firm. How had such negotiations been possible? Mr. Corell had not discussed this specific issue with Mr. Robertson,

¹⁸⁷ Iraq Steering Committee meeting notes (Aug. 9, 1996). Mr. Akashi, Mr. Corell, Mr. Gharekhan, and Mr. Goulding attended the meeting.

¹⁸⁸ Iraq Steering Committee meeting notes (Aug. 9, 1996). Mr. Akashi, Mr. Corell, Mr. Gharekhan, and Mr. Goulding attended the meeting.

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

but Mr. Miller of OLA had informed him that the rules were very strict in this regard.¹⁸⁹

Next the Steering Committee turned to discussing how the contract could be awarded to Lloyd's without violating the rules of procurement. It was decided to "invoke" the "interests of the Organization" exception to competitive bidding under United Nations Financial Rule 110.21. This led to a background explanation from Mr. Corell to Mr. Takasu (who had not been present at the last meeting) about "the fact that on political grounds it may be necessary to halt the process" that would award a contract to the lowest bidder Veritas:

Mr. Corell recounted for Mr. Takasu, who had not been present, the decision which took place on 9 August, and the fact that on political grounds it may be necessary to halt the process launched by the RFPs, by informing all companies that their bids were rejected. He felt Mr. Sevan (on leave) should be present for this discussion because he would have to convey this to the bidders. Authorization would then be requested from the Headquarters Committee on Contract to enter into negotiations with one firm – which obviously should be Lloyd's (although this could not explicitly be stated by the Steering Committee).¹⁹⁰

Later in the meeting, Mr. Gharekhan queried why the problem could not be addressed simply by having Lloyd's submit a new bid. But "Mr. Corell noted that one could not be sure Lloyd's bid would emerge lower than Veritas." Therefore, according to Mr. Corell, "[i]t was preferable to be straightforward and, adopting the extraordinary measure outlined earlier [Financial Rule 110.21], enter into negotiations with Lloyd's only." The Steering Committee members decided to defer action one more day until Mr. Connor could be present.¹⁹¹

On the next day, August 13, 1996, the Steering Committee convened again—now with the presence of Mr. Connor and all other members (Mr. Akashi, Mr. Corell, Mr. Gharekhan, and Mr. Takasu). The meeting notes, which are appended as Annex 3 to this Chapter, reflect the presence of Mr. Aimé, the former Secretary-General's Chef de Cabinet, "briefly, toward the end."

Mr. Connor said that he "had been unaware that nationality was an issue in awarding contracts." But Mr. Gharekhan rejoined that "everything" about the Oil-for-Food Programme was "political" and that this was why Saybolt had gotten the last contract despite not being the lowest bidder:

Mr. Gharekhan explained that everything about implementation of 986 was 'political', and no aspect could be assessed purely on its merits. The Secretariat had come under terrible pressure from Member States; the selection of [oil]

¹⁸⁹ Iraq Steering Committee meeting notes (Aug. 12, 1996).

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

overseers, the bank, and the firm to supply oil inspection agents had all been political. In fact SAYBOLT had not been the lowest bidder in the latter context.

Mr. Connor decided to “go along with the formula” and remarked that “the Steering Committee was getting DAM [Mr. Connor’s Department of Administration and Management] ‘off the hook.’” The Steering Committee then decided that “France would be informed about the decision after it was implemented, and that the Secretary-General himself did not need to be brought into the process.” It was decided that “a memo would be sent by Mr. Gharekhan on its behalf to Mr. Sevan” to instruct him to have the procurement department reject all bids and “seek authorization from the Headquarters Committee on Contracts to enter into negotiations with Lloyd’s.”¹⁹² The memorandum of Mr. Gharekhan has not been found by the Committee in the records of the United Nations.

D. REJECTING ALL BIDS AND THE “INTERESTS OF THE ORGANIZATION”

The next day, on August 14, 1996, Mr. Sevan drafted a “Strictly Confidential” memorandum to Mr. Bahel of the procurement department, directing him to reject all bid proposals as permitted by Financial Rule 110.21. Significantly, the memorandum did not provide any reason for its order to reject all bids except that this decision was the will of the Steering Committee.¹⁹³

The memorandum was also contradictory on its face. On the one hand, it instructed the procurement department to enter into a contract with the company that the department “considers is best for the discharge of the duties,” but then in the next paragraph it stated without further explanation that the “obvious conclusion” was that that the procurement department “should enter into negotiations with Lloyd’s Register, and seek the best terms of a contract.”¹⁹⁴


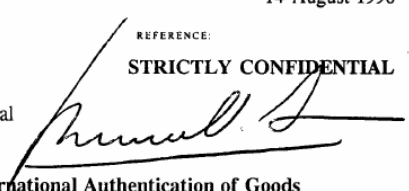
¹⁹² Iraq Steering Committee meeting notes (Aug. 13, 1996). The reference to “Mr. Sevan” is to Benon Sevan, who was then the Assistant Secretary-General for Conference and Support Services; this was more than a year before he became Executive Director of OIP in October 1997 and engaged in the activities that are the subject of the next Chapter of this report.

¹⁹³ Benon Sevan memorandum to Sanjay Bahel (Aug. 14, 1996).

¹⁹⁴ Ibid.

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

		
United Nations	Nations Unies	
INTEROFFICE MEMORANDUM	MEMORANDUM INTERIEUR	
	A4	
TO:	Mr. Sanjay Bahel, Officer-in-Charge	DATE: 14 August 1996
A:	Procurement and Transportation Division	
THROUGH:		REFERENCE:
S/C DE:		STRICTLY CONFIDENTIAL
FROM:	Benon V. Sevan, Assistant Secretary-General	
DE:	for Conference and Support Services	
SUBJECT:	<u>Provision of Independent Experts in International Authentication of Goods</u>	
OBJET:		

In a strictly confidential memorandum dated 14 August 1996 from the Chairman of the Steering Committee on Security Council resolution 986 (1995) addressed to me, I have been informed of the unanimous decision taken by the Committee to recommend the rejection of all proposals made in response to the RFP on the above subject, in the interest of the United Nations, as permitted by Financial Rule 110.21. Accordingly, you are directed to reject all proposals concerned.

The Steering Committee has also recommended that the Procurement and Transportation Division (PTD) seek the authorization from the Committee on Contracts, pursuant to the above mentioned Rule, to enter into a negotiated contract with the contractor that PTD considers is the best for the discharge of the duties.

In light of the considerations of, and the recommendations made by the Steering Committee, the obvious conclusion is that PTD should enter into negotiations with Lloyd's Register, and seek the best terms of a contract.

cc: Mr. Gharekhan, Chairman of the Steering Committee
Members of the Steering Committee:

Mr. Akashi
Mr. Connor
Mr. Corell
Mr. Goulding
Mr. Takasu

Benon Sevan memorandum to Sanjay Bahel (Aug. 14, 1996). *Source: UN Records.*

This contradiction resulted from questions raised by the procurement department about an earlier draft of the memorandum that did not make clear which company the Steering Committee was requiring to get the contract; the Independent Inquiry Committee has not located this earlier draft. With the understanding that the Steering Committee wished the contract to be with Lloyd's, the

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

procurement department requested written clarification from Mr. Sevan that it must negotiate with Lloyd's rather than the lowest bidder Veritas.¹⁹⁵

Mr. Yakovlev had a "serious concern" with this unusual course of events. He promptly set about drafting a note-to-file on August 15, 1996, to reflect what happened and to record that he had not been complicit in any effort to deny a contract to the lowest bidder Veritas. His note-to-file indicated that "the last paragraph was added [to the Sevan memorandum], in order to reflect the fact that it was not PTD but the Iraq Steering Committee, who has selected Lloyd's for this contract." Moreover, his note-to-file indicated that Mr. Sevan's memorandum did not contain the required written statement of reasons for invoking the "interests of the Organization" exception under Financial Rule 110.21.¹⁹⁶

On August 15, 1996, the HCC held a conference call to discuss the potential Lloyd's contract. Minutes from this meeting indicate the Steering Committee's instructions:

The committee was informed that, in a strictly confidential memo from the [C]hairman of the Iraq Steering Committee, dated August 14, 1996, a unanimous decision had been taken by the Steering Committee to recommend the rejection of all proposals made in response to the RFP, in the interest of the UN, as permitted by FR 110.21.¹⁹⁷

Mr. Yakovlev's note-to-file further reflects that he was required against his will to present the case to the HCC "without necessary price information" and to explain "that it was based on the orders received from Mr. B. Sevan." Mr. Yakovlev concluded that he had had no choice but to go along with a violation of the United Nations Financial Rules:

This note for the file serves, therefore, the reason to explain this, rather unusual course of events with an award of the contract to Lloyd's Register and to reflect the fact that all actions taken by myself were based on strict orders received from my superiors, which I had no possibility not to comply with.¹⁹⁸

¹⁹⁵ Sanjay Bahel interview (Aug. 30, 2004).

¹⁹⁶ Alexander Yakovlev note-to-file (Aug. 15, 1996).

¹⁹⁷ Committee on Contracts, Telephonic Meeting HCC/96/59 (A only) (Aug. 15, 1996).

¹⁹⁸ Alexander Yakovlev note-to-file (Aug. 15, 1996).

PART 2

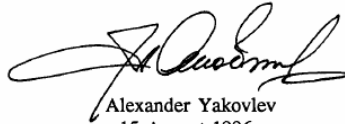
CHAPTER 3 - INITIAL PROCUREMENT

NOTE FOR THE FILE

Mr. Benon Sevan's strictly confidential memorandum dated 14 August 1996 addressed the decision of the Iraq Steering Committee to reject all proposals and to enter into negotiated contract with Lloyd's. When I was given a copy of this memorandum, I expressed my concern to Mr. Sanjaya Bahel regarding paragraph 2, which puts the initiative and responsibility for selecting "the best proposer for the discharge of the duties" on PTD. I have explained to Mr. Bahel, that if it was the case, then an award should have been given to Bureau Veritas, France, the lowest and technically acceptable proposer. Mr. Bahel explained, that this wording of paragraph 2 was taken by Mr. Sevan from a strictly confidential memorandum of the Iraq Steering Committee to him, dated 14 August 1996. But the last paragraph was added, in order to reflect the fact that it was not PTD but the Iraq Steering Committee, who has selected Lloyd's for this contract.

I have further drawn Mr. Bahel's attention to the FR 110.21, based on which the decision to reject proposals was taken. According to this rule, "...the ASG (Mr. B. Sevan) or such other official authorized under Rule 110.16 shall record in writing the reasons for rejection of the bids and determine whether to invite new competitive tenders or enter into a negotiated contract" (emphasis added). However, Mr. Sevan's memorandum of 14 August 1996 to Mr. Bahel, does not contain any justification/reasons for rejecting the proposals. Therefore, despite of reference to the Financial Rule 110.21, this decision of the Steering Committee is not exactly in compliance with this Rule.

Furthermore, I have addressed my concern regarding the presentation of this case to the HCC. Based on the orders received from Mr. Bahel, I have not included any price information (such as abstract of proposal, financial evaluation, etc.) to the presentation. In fact, the information given to the HCC does not allow for consideration or a recommendation. Despite of my serious concern about this way of action, Mr. Bahel requested me to proceed with the presentation to the HCC without necessary price information, explaining that it was based on the orders received from Mr. B. Sevan. This note for the file serves, therefore, the reason to explain this, rather unusual course of events with an award of the contract to Lloyd's Register and to reflect the fact that all actions taken by myself were based on strict orders received from my superiors, which I had no possibility not to comply with.



Alexander Yakovlev
15 August 1996

RECEIVED
1996 AUG 15 P 1:50
GENERAL SECRETARIAT
UNITED NATIONS

Alexander Yakovlev note-to-file (Aug. 15, 1996). *Source: UN Records.*

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

Following the directions of Mr. Sevan and the Steering Committee, the procurement department faxed a notice to all bidders that all the bids had been rejected. When Mr. Earnshaw of Lloyd's received his faxed notice, he wrote on the back of the fax notice: "This appears to be the first stage of assigning the contract to LR [Lloyd's Register] on political grounds – or is it?"¹⁹⁹

On August 20, 1996, Lloyd's confirmed a reduced price of \$4.5 million, and the HCC recommended approval of the contract on August 21, 1996.²⁰⁰ On the same day, Mr. Sevan accepted by signature the recommendation of the HCC.²⁰¹ On August 23, 1996, two days after HCC approval, the procurement department advised Lloyd's by fax that it had been awarded the goods inspection contract.²⁰²

E. EXPLANATION OF JOSEPH J. STEPHANIDES

The Procurement Rules required that Mr. Stephanides act with "absolute impartiality" towards all bidders and that he not disclose outside the United Nations organization any information with respect to probable acceptance or rejection of a bid offer.²⁰³ When Mr. Stephanides was first interviewed by the Independent Inquiry Committee on September 27, 2004, he was asked about the letter from the United Kingdom Ambassador to the Steering Committee that offered a \$900,000 reduction in the bid of Lloyd's. Mr. Stephanides said that he was not involved in these negotiations as the financial aspects did not fall within his responsibility.²⁰⁴ When Mr. Stephanides was interviewed again, on January 17, 2005, he denied telling representatives of the United Kingdom that Lloyd's needed to lower its bid in order to obtain the inspection contract.²⁰⁵

On February 2, 2005, Mr. Stephanides appeared again before the Committee.²⁰⁶ In contrast to his prior interviews, Mr. Stephanides admitted that he had contacted the United Kingdom delegation

¹⁹⁹ Lloyd's record, Alexander Yakovlev fax to Howard Earnshaw (Aug. 15, 1996) (backside).

²⁰⁰ Alexander Yakovlev note-to-file (Aug. 26, 1996); Sanjay Bahel interview (Aug. 30, 2004); Allan B. Robertson memorandum to Hans Corell (Aug. 21, 1996).

²⁰¹ Committee on Contracts, Telephonic Meeting HCC/96/59 (A only) (August 15, 1996).

²⁰² Allan B. Robertson fax to Howard Earnshaw (Aug. 23, 1996).

²⁰³ Procurement Rules 9.0002, 9.0016.

²⁰⁴ Joseph Stephanides interview (Sept. 28, 2004).

²⁰⁵ Joseph Stephanides interview (Jan. 17, 2005).

²⁰⁶ Mr. Stephanides appeared with his counsel. Prior to his meeting with members of the Committee, on January 26, 2005, Mr. Stephanides was advised of the Committee's proposed findings and invited to provide the Committee with any additional information for its consideration prior to the issuance of its Report. Following this notice, Mr. Stephanides was provided with the opportunity to review relevant United Nations records relating to the Lloyd's selection, and he did so. Mr. Stephanides has also provided a written submission that he has requested not be published—though its contents may be summarized in this Report. The Committee will publish the written submission on its website upon written request from Mr. Stephanides.

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

to engage its assistance in having Lloyd's lower its bid. Mr. Stephanides viewed his action as a technical violation of the procurement rules. However, he contended that he acted to benefit the United Nations by negotiating for the lowest price and not for any personal gain. According to Mr. Stephanides, the competitive bidding process "collapsed" on August 8, 1996, when the Steering Committee met and decided that due to political considerations it could not award the contract to the lowest bidder, Bureau Veritas.²⁰⁷ Mr. Stephanides maintained that he contacted the United Kingdom with the full knowledge of all who were involved in this process and the belief that it had been determined that Lloyd's would receive the contract and that the object was to obtain as low a price as possible.

The difficulty with Mr. Stephanides's version is that the award of the contract to Lloyd's was not settled as of August 8, 1996, and there is no evidence that any person authorized him to solicit a revised bid from Lloyd's. The letter of August 8 from the United Kingdom Ambassador, which was considered by the Steering Committee on August 9, made clear that the contract award was not yet decided: "I understand that you will be taking a decision tomorrow about whom to appoint as independent experts," that Lloyd's would be willing to do the job for \$4.5 million, and that "I hope this [lower bid price] will enable the Steering Committee to come to the right conclusion."²⁰⁸ The Steering Committee met three more times—on August 9, 12, and 13—before it finally reached a conclusion to terminate the bidding process and to direct the procurement department to enter into exclusive negotiations with Lloyd's. Accordingly, Mr. Stephanides shared information with and enlisted the United Kingdom's assistance in an effort to win the contract for Lloyd's, not simply to obtain a better price from Lloyd's for a contract award that already had been decided.

The Committee does not doubt the sincerity of Mr. Stephanides's view that Lloyd's was the best company for the contract or that this view was shared by high-ranking officials of the United Nations and some members of the Security Council. However, there were procurement rules to follow, and Mr. Stephanides violated these rules by the manner in which he sought an advantage in the process for Lloyd's.

²⁰⁷ The Independent Inquiry Committee does not have meeting notes for any meeting of the Steering Committee that may have occurred on August 8, 1996; the meeting notes for August 9, 12, and 13 are attached as appendices to this Chapter.

²⁰⁸ United Kingdom Permanent Representative letter to Chinmaya Gharekhan (Aug. 8, 1996).

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

VII. FINDINGS AND CONCLUSIONS

As outlined in the Introduction, the Committee set out to answer the following three questions:

1. Was the selection of the Programme's major contractors in 1996 conducted in accordance with the United Nations' financial regulations and competitive bidding rules?
2. Was the selection of the Programme's major contractors in 1996 conducted in a fair and transparent manner?
3. Were these selection processes free from improper or illicit influence?

Findings:

1. The investigatory record reviewed herein is replete with convincing and uncontested evidence that the selection process for each of the three United Nations contractors selected in 1996 (namely, Banque Nationale de Paris, Saybolt Eastern Hemisphere BV, and Lloyd's Register Inspection Ltd.) did not conform to established financial and competitive bidding rules.
 - a. In the case of the escrow bank, BNP, the decision taken—ultimately by the former Secretary-General Boutros Boutros-Ghali—did not conform to the requirement to accept the “lowest acceptable bidder.” Moreover, neither the former Secretary-General nor any other appropriate official justified in writing the rejection of the lowest acceptable bidder—in “the interests of the Organization”—as required by Rule 110.21 of the Financial Regulations and Rules of the United Nations. In its interviews and review of United Nations records, the Committee has not found any record justifying the Secretary-General's decision “in the interests of the Organization.”
 - b. While an expedited competitive bidding process for the oil inspection contract was put in place, fully credible evidence demonstrates that this process was in practice frustrated and preempted. With the acquiescence of the Steering Committee, and the ultimate approval of Allan B. Robertson, as officer-in-charge of the procurement department, Saybolt prevailed because of the procurement department's acceptance of an invalidly amended bid to lower Saybolt's contract price.
 - c. An expedited competitive bidding process also was initiated in the case of the contract to inspect humanitarian goods. However, the Steering Committee—with the active participation of Mr. Stephanides—prejudiced and preempted the competitive process in a manner that rejected the lowest qualified bidder in favor of an award to Lloyd's Register. The bid process was terminated for political reasons, but without a written record of reasons—as required under Financial Rule 110.21—to justify that decision in the “interests of the Organization.”

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

2. The investigatory record clearly and repeatedly demonstrates that in deviating from the established financial and procurement rules, the decision-making process in 1996 for the United Nations contractors did not meet reasonable standards of fairness and transparency.
 - a. For the selection of BNP, a competitive bid process was initiated but then not completed, as the former Secretary-General chose a bank that was not the lowest acceptable bidder, and he did so for reasons that were not appropriately disclosed at the time.
 - b. For the selection of Saybolt, there was a clear early preference for Saybolt, and the procurement process was manipulated by the officer-in-charge of the procurement department and with the acquiescence of the Iraq Steering Committee to allow Saybolt to amend its bid to become the lowest bidder. The process was neither fair nor transparent in its operation.
 - c. For the selection of Lloyd's, there was a clear early preference for Lloyd's, and the regular competitive bidding process was tainted by Mr. Stephanides's contacts with a member state mission and preempted for political reasons dictated by the Iraq Steering Committee, and—contrary to fairness and transparency—these reasons were not adequately disclosed.
3. The consistent violations of prescribed procurement procedures, engaging in unfair practices and failing to appropriately document decision-making processes, reflect adversely on one area of the United Nations' administration. Evidence bearing upon motivation is partly conflicting and incomplete. However, one influence bearing on the decision was an effort to achieve a balance among broadly "political" interests of some member states.

Conclusion:

The United Nations' established procurement process was strongly tested by the need to quickly obtain qualified contractors to implement an urgent, complex, and unprecedented program combining humanitarian relief for the Iraqi population with strong sanctions against a corrupt Iraqi governing regime. While the details differ for the three contracts awarded in 1996, common themes emerge.

In each case, preferred contractors emerged at an early stage of the selection process, even predating any organized competitive bidding process. Formal financial regulations and rules set out by procurement officials were repeatedly and knowingly short-circuited and violated, without a clear and consistent written rationale. The result was a selection process that, whatever the motivation, failed to meet the organization's own standards of fairness, objectivity, and transparency.

One pervasive, but not exclusive, influence was broadly "political": accommodating the concerns of Iraq reflected in the Memorandum of Understanding that it be consulted with respect to the

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

escrow bank; accommodating the concerns of the United States about the selection of a Swiss bank; and avoiding concentration of contractors domiciled in one member state.

Objective criteria, such as the financial and procurement rules are designed to protect the integrity and effectiveness of the organization. At the same time, the decision-makers are influenced by a need to reconcile political concerns of some member states and to achieve a reasonable political balance.

As its investigation proceeds, the Committee will make recommendations concerning greater institutional transparency and accountability in making such important financial decisions.

PART 2
CHAPTER 3 - INITIAL PROCUREMENT

This page is intentionally left blank

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

VIII. ANNEX

1. Iraq Steering Committee meeting notes (Aug. 9, 1996). *Source: UN Records.*

CONFIDENTIAL

STEERING COMMITTEE ON IMPLEMENTATION OF SCR 986

Meeting of Principals - 9 August 1996

Present: Mr. Akashi, Mr. Corell, Mr. Gharekhan, Mr. Goulding

The purpose of the meeting was to review the dilemma caused by the bid by Bureau Veritas, a French company, for the contract to provide independent inspection agents to authenticate arrival of goods in Iraq. The bid was significantly lower than that of Lloyd's, a British company with experience (Aqaba) in upholding the sanctions regime against Iraq. At that morning's meeting of the Steering Committee, Mr. Robertson of PTD had held firmly to the view that both companies were qualified to fulfil the requirements and, consequently, on purely technical grounds and in accordance with UN procedures, he recommended that the contract should be offered to Veritas.

OLA had carefully reviewed the rules; if the interests of the Organization so required, and the lowest bid could not be accepted, then all bids should be rejected. In these circumstances, PTD could be requested by the Headquarters Committee on Contracts to enter into negotiations with a firm which was judged to meet the necessary qualifications. Mr. Corell said that Mr. Robertson had, in a subsequent meeting with him, reiterated his professional assessment that the UN should award the contract to Veritas since its bid was \$1.1 million less expensive than that of Lloyd's.

This posed significant political problems, a view shared by all principals present. An "overseer" post had been assigned to a French national, and the banking contract had been accorded to a French company. It would be unacceptable to award the contract for goods inspection agents to a French company.

Mr. Corell distributed for consideration a draft memo to PTD which could be signed by Mr. Gharekhan in the name of the Steering Committee. All members agreed that this should be the approach. (Mr. Goulding sided with the majority, because he did not wish his nationality to be perceived as influencing his decision against Veritas). However, it was felt that Mr. Connor should be a party to the decision, and that his views on the matter should be solicited. A meeting would be convened the following week.

It was agreed that Mr. Goulding should convey to Ambassador Weston the negative view of the Steering Committee regarding his letter. The fact that Ambassador Weston had handed a letter to Mr. Gharekhan, in his capacity as Chairman of the Steering Committee, indicating that Lloyd's would reduce its bid by

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

\$900,000 did not ameliorate matters; in fact it was counterproductive, because the Government was seen to be interfering in a commercial process. Mr. Gharekhan asked whether the situation would be different if Lloyd's itself had conveyed a lower bid. Mr. Corell undertook to check the rules on this.

Lisa Buttenheim
Lisa Buttenheim
9 August 1996

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

2. Iraq Steering Committee meeting notes (Aug. 12, 1996). *Source: UN Records.*

CONFIDENTIAL

STEERING COMMITTEE ON IMPLEMENTATION OF SCR 986

Meeting on 12 August 1996

Present: Mr. Akashi, Mr. Corell, Mr. Gharekhan, Mr. Takasu
(Though informed of the meeting, Mr. Connor could not attend.)

Reverting to a question raised at the previous meeting, Mr. Corell said that it would not be appropriate for a company to submit a second and lower bid once it had responded with a bid to the UN's request for proposals (RFPs). This would only be permissible if all companies participating in the process were requested to submit new bids. Mr. Gharekhan recalled that negotiations had taken place with the two lowest bidders for the contract on oil inspection agents -- PTD had reverted with queries to SAYBOLT, the second lowest bidder (which was strongly preferred by some members of the 661 Committee), and SGS, the lowest bidder. In the process, SAYBOLT's bid went down and the Headquarters Committee on Contracts ultimately awarded the contract to this firm. How had such negotiations been possible? Mr. Corell had not discussed this specific issue with Mr. Robertson, but Mr. Miller of OLA had informed him that the rules were very strict in this regard.

Mr. Gharekhan recalled that at their meeting on 9 August, the principals had agreed unanimously that the extraordinary procedure envisaged under Financial Rule 110.21 should be invoked to cope with the Veritas/Lloyd's problem. Mr. Corell had requested today's meeting to explore if it was at all possible to pursue the current RFPs without resorting to this measure. Mr. Corell recounted for Mr. Takasu, who had not been present, the decision which took place on 9 August, and the fact that on political grounds it may be necessary to halt the process launched by the RFPs, by informing all companies that their bids were rejected. He felt Mr. Sevan (on leave) should be present for this discussion because he would have to convey this to the bidders. Authorization would then be requested from the Headquarters Committee on Contracts to enter into negotiations with one firm -- which obviously should be Lloyd's (although this could not explicitly be stated by the Steering Committee).

In response to Mr. Takasu's query about the political considerations, Mr. Gharekhan pointed out that contracts were to be awarded to a French overseer and a French bank. In this connection, Mr. Akashi sought clarification on the estimated \$4

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

million in service charges which Banque Nationale de Paris (BNP) would gain from its maintenance of the Iraq escrow account. Mr. Takasu recounted that it was normally a simple procedure for the UN to open an account with the New York branch of a given bank; obtaining a license from the US Treasury Department took a few days. However, because the escrow account would be connected to Iraq, the Treasury Department had declined the UN's request for a license, conveyed some six or seven weeks previously, until it had a chance to review the UN contract with BNP. Mr. Takasu added that such contracts were thick legal documents, and often not finalized until months after an account had been opened. (Mr. Gharekhan noted that none of Mr. Takasu's colleagues had kept the Steering Committee abreast of this delay during his absence.) At present, three lawyers from OLA, three officers from the Controller's Office, and three representatives of BNP were working full time on the contract. As for Mr. Akashi's question, the \$4 million would be charges for certification of letters of credit; such charges were customary. Not mentioned in the Secretary-General's report would be the money the Secretariat would gain in interest from maintaining the escrow account. Mr. Akashi hoped some of these additional funds could be allocated to cover costs of the DHA observers. Mr. Takasu raised an issue concerning the escrow account: who would be the beneficiary? The UN? Government of Iraq? People of Iraq? Mr. Corell stated that the objective was to adapt normal banking language to the special circumstances of the Iraq escrow account.

Reverting to the main point of the discussion, and the \$1.1 million difference between the bid of Veritas and Lloyd's, Mr. Akashi said he hoped that this difference could be reduced by at least half. Mr. Gharekhan recalled once again that SAYBOLT and SGS had been approached by PTD after their original bids had been submitted. Couldn't the same procedure be followed with the two lowest bidders in this case? Mr. Corell noted that one could not be sure Lloyd's bid would emerge lower than Veritas. It was preferable to be straightforward and, adopting the extraordinary measures outlined earlier, enter into negotiations with Lloyd's only.


Mr. Takasu observed that a memo from the Steering Committee would relieve DAM of its responsibility. But what would the French reaction be? Mr. Gharekhan informed the latter of Ambassador Weston's letter, which had been ignored *de jure* by the Steering Committee. Mr. Corell said that if the letter had come directly from Lloyd's it would, according to Mr. Miller, still be incorrect. All companies should be permitted to submit new bids. Mr. Robertson had been instructed by the Steering Committee to follow normal UN procurement rules, and to exercise his professional judgement. The purpose of the memo drafted by OLA was to protect Mr. Robertson's integrity.

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

It was agreed that the Steering Committee principals would meet the following day so that Mr. Connor could be present; his views would be essential in formulating the final decision about the path to take.

It was noted that the Secretary-General's report would be delayed anyway, and that Iraq itself did not seem in a rush for it to be issued.


Lisa Bittenheim
12 August 1996

PART 2

CHAPTER 3 - INITIAL PROCUREMENT

3. Iraq Steering Committee meeting notes (Aug. 13, 1996). *Source: UN Records.*

CONFIDENTIAL

STEERING COMMITTEE ON IMPLEMENTATION OF SCR 986

Meeting of Principals - 13 August 1996

Present: Mr. Akashi, Mr. Connor, Mr. Corell, Mr. Gharekhan, Mr. Takasu, Mr. Aimé (briefly, towards the end)

Mr. Gharekhan informed that he would provide an oral briefing to the Security Council the next day on steps taken thus far towards implementation of SCR 986; various issues were still to be finalized before the Secretary-General would be in a position to submit his report in accordance with paragraph 13.

Mr. Connor, having read OLA's memo, said he concluded that the Steering Committee was "getting DAM off the hook". If it were an American company, he said, "we'd have a hard time taking the programme away from them". He had been unaware that nationality was an issue in awarding contracts, and wondered if France would consider the selection of Banque Nationale de Paris (BNP) more valuable than if Veritas were to be selected.

Mr. Gharekhan explained that everything about implementation of 986 was "political", and no aspect could be assessed purely on its merits. The Secretariat had come under terrible pressure from Member States; the selection of overseers, the bank, and the firm to supply oil inspection agents had all been political. In fact SAYBOLT had not been the lowest bidder in the latter context. To this point, Mr. Connor replied that, in contractual terms, specifications required by the UN had changed, and this fact had been conveyed to the bidders, which "got us over the hurdle". In a separate, recent case, a low American bid, had been disqualified on strong contractual terms, not political grounds.

Mr. Corell explained that none of the Steering Committee members was happy with the state of affairs; the Committee did not want to compromise UN bidding procedures. Unless the Committee determined that political considerations were paramount -- and at the last two meetings, this had been the unanimous view -- then the contract would be awarded to Veritas.

To Mr. Connor's query as to whether Iraq's position was a factor, Mr. Gharekhan informed that Iraq expected the contract to be awarded to Lloyd's, although he had been non-committal on this issue in his most recent meeting with Ambassador Hamdoon.

Mr. Connor said that had he been aware earlier of these political considerations, PTD could have been instructed not to include Dutch and French companies in its RFPs. Unfortunately, the RFPs for all the contracts had been sent out at the same

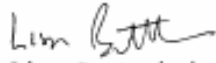
PART 2

CHAPTER 3 - INITIAL PROCUREMENT

time. He wondered how France would react. Mr. Gharekhan said the French might not be satisfied with the outcome but "probably won't make our life difficult". He informed about Ambassador Weston's letter on the lower Lloyd's bid.

Mr. Connor stated that DAM could go along with the formula; the Steering Committee was getting DAM "off the hook". (Mr. Gharekhan reminded him that he was a member of the Steering Committee).

It was agreed that France would be informed about the decision after it was implemented, and that the Secretary-General himself did not need to be brought into this process. The Steering Committee decided that a memo would be sent by Mr. Gharekhan on its behalf to Mr. Sevan. Mr. Aimé suggested that Mr. Gharekhan, in his capacity as Chairman of the Committee, should inform the French of this decision. The Committee was unanimously of the view that PTD should seek authorization from the Headquarters Committee on Contracts to enter into negotiations with Lloyd's.


Lisa Buttenheim
13 August 1996

PART 2
CHAPTER 3 - INITIAL PROCUREMENT

This page is intentionally left blank

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

CHAPTER 4

I. INTRODUCTION: OIL ALLOCATIONS AND BENON SEVAN

The Committee's investigation of Benon Sevan involves allegations that he requested oil "allocations" on behalf of African Middle East Petroleum Co. Ltd. Inc. ("AMEP"), a small trading company, from the Government of Iraq—while he served as Executive Director of the United Nations Office of the Iraq Programme ("OIP")—and that the Government of Iraq granted his requests in the form of oil allocations sold to AMEP. In this report, the Committee addresses the following questions:

1. Did Mr. Sevan on behalf of AMEP request and receive one or more allocations of oil from Iraq for purchase by AMEP while employed as Executive Director of OIP?
2. Did Mr. Sevan's solicitation of oil allocations as Executive Director of OIP amount to a conflict of interest and violate the United Nations Charter and staff conflict-of-interest rules?
3. Was Mr. Sevan forthcoming to the Committee concerning the circumstances surrounding his requests for oil allocations on behalf of AMEP?
4. Is Mr. Sevan's explanation regarding cash income he received in addition to his United Nations salary supported by information available to the Committee?

Section II of this Chapter discusses the professional background of Mr. Sevan and his responsibilities during the Programme. Section III describes Iraq's oil "allocation" process during the Oil-for-Food Programme. Section IV discusses AMEP and the start of its participation as a contractor in the Programme.

Section V focuses on the information bearing on whether Mr. Sevan obtained for AMEP allocations of oil under the Programme, while simultaneously exercising official influence over areas of administration of the Programme that were significant to the interest of Iraq. Section VI discusses Mr. Sevan's statements and explanations for the matter under investigation as well as the evidence to date concerning financial benefits received by Mr. Sevan, which have not been adequately explained. Finally, Section VII sets forth the Committee's formal findings.

The narrative in this Chapter is particularly but necessarily complex. It touches upon other areas of the operation of the Oil-for-Food Programme and related activities only to the extent necessary to provide context to the following findings. Although a substantial amount of information has been gathered by the Committee in these areas, they remain subjects of the ongoing investigation and shall be discussed in future reports.

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

This page is intentionally left blank

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

II. BACKGROUND OF BENON SEVAN

Benon Vahe Sevan, a native of Cyprus, began his career with the United Nations in 1965 and has held numerous positions through forty years of employment. He was appointed Assistant Secretary-General in May 1989 and served as the Secretary-General's Personal Representative in Afghanistan and Pakistan. Subsequent appointments have included Assistant Secretary-General and Deputy Head of the Department of Political Affairs; Assistant Secretary-General in the Department of Administration and Management; Assistant Secretary-General with the Office of Conference and Support Services; and United Nations Security Coordinator.²⁰⁹

With his appointment as Under-Secretary-General and Executive Director of OIP, Mr. Sevan assumed responsibility for overall implementation of the multi-billion dollar humanitarian Programme in Iraq. This was a position of immense power and transnational responsibility. His daily administrative responsibilities included coordination with the Programme's oil overseers and the banking, oil and goods inspection contractors; managing two internal divisions at the United Nations headquarters in New York (the Program Management Division and the Contracts Processing and Monitoring Division); and supervising the activities in Iraq of the United Nations Office of the Humanitarian Coordinator in Iraq ("UNOHCI"). Throughout the Programme's operation, Mr. Sevan supervised or coordinated the activities of hundreds of international staff in New York and overseas, including a considerably larger number of citizens of Iraq.²¹⁰

Beyond traditional administration duties, Mr. Sevan was the United Nations unofficial "ambassador" for the Oil-for-Food Programme. As described in more detail throughout the course of the report below, his job included constant communications with the Government of Iraq and numerous United Nations member states, including most prominently each of the members of the Security Council.

²⁰⁹ Benon Sevan personnel file, United Nations Department of Human Resources.

²¹⁰ Ibid.; S. Iqbal Riza note to Yasushi Akashi and Kieran Prendergast (Oct. 13, 1997) (regarding Mr. Sevan's appointment as Executive Director of OIP); OIP, "Fact Sheet," <http://www.un.org/Depts/oip/background/fact-sheet.html>; Benon V. Sevan statement (Nov. 15, 1998); Benon Sevan statement to the Security Council, "Phasing down and termination of the Programme pursuant to Security Council resolution 1483 (2003)" (Oct. 28, 2003).

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

This page is intentionally left blank

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

III. IRAQ AND OIL ALLOCATIONS

Resolution 986 allowed Iraq to choose its oil buyers. Under each 180-day phase of the Programme, Iraq developed a list of “allocations” identifying companies to whom it would be willing to sell its oil. Saddam Hussein personally reviewed who would receive oil, in conjunction with a group of several other high government officials: Vice President Taha Yassin Ramadan, Deputy Prime Minister Tariq Aziz, Finance Minister Hikmat Al-Azzawi, and the Minister of Oil Amer Muhammad Rashid. Iraqi records refer to the regime leaders as the “Command Council.”²¹¹

For each phase of the Programme, the Ministry of Oil was responsible for allocating oil as the Command Council had decided. The Ministry of Oil, in turn, controlled Iraq’s State Oil Marketing Organization (“SOMO”), which acted as the legal contracting party for oil sales during the Programme. The Executive Director of SOMO was Saddam Z. Hassan.²¹²

At the beginning of each Programme phase, SOMO prepared tables of crude oil contracts that were based on the allocation lists authorized by the Command Council. From time to time, during a phase, the Command Council approved adjustments to allocations, and SOMO revised its tables towards the end of the phase to reflect these adjustments. The Committee’s investigation has included the review of extensive numbers of documents obtained from SOMO in Baghdad, including the initial and adjusted crude oil allocation tables for all thirteen phases of the Programme.²¹³

For the initial three phases of the Programme, the Command Council gave priority to oil contractors from certain countries that were thought by Iraq to be more favorably inclined toward lifting the sanctions against Iraq. In later phases, the Command Council began to increase the number of special oil allocations for the benefit of particular individuals or entities that were perceived to support or be politically favorable to Iraq. An individual beneficiary would designate a company to purchase or trade the crude oil that had been allocated.²¹⁴

The number of special allocations grew over time. At first, SOMO’s records primarily reflected only the names of the companies designated to purchase the oil, rather than the names of any individual beneficiaries of allocations. In time, however, this practice caused confusion for the

²¹¹ Iraq officials interviews; Ministry of Oil record, Shamkhi H. Faraj report to the Minister of Oil, “Report on Crude Oil Sales under the Former Regime” (Feb. 19, 2004) (translated from Arabic) (referring to group as “Supreme Command Council”). The names and positions of each of the Iraq witnesses is known to the Committee, but cannot be disclosed for reasons of each witness’s personal safety.

²¹² Iraq officials interviews.

²¹³ Iraq officials interviews. In addition, this is supported by numerous SOMO tables and documents reviewed by the Committee.

²¹⁴ Ibid.; Ministry of Oil record, Nizar Hamdoon letter to the Ministry of Trade (July 15, 1999) (translated from Arabic). Mr. Hamdoon served as Deputy Minister of Foreign Affairs.

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

administrators processing the oil contracts, and they requested that the intended beneficiaries of the oil allocations be identified in the paperwork to facilitate the tracking and handling of the allocations and contracts. Consequently, later in the Programme, SOMO increasingly began to include the names of those beneficiaries of allocations in its crude oil contract tables.²¹⁵ Just as SOMO's crude oil allocation tables reflected the names of these intended beneficiaries, related correspondence, memoranda, and records within SOMO's files identified the names of those beneficiaries.²¹⁶

SOMO executed oil contracts with the companies designated to purchase the oil. After the purchasing company entered into a contract with SOMO, it was required to provide a letter of credit and seek approval of its contract from United Nations oil overseers. In order to communicate with the oil overseers, the company first had to have registered with the United Nations through the company's home country mission to the United Nations.²¹⁷ At the same time, in Iraq, after a contract had been executed at SOMO, the contract was submitted for approval to the Iraqi Minister of Oil, who initialed the request for approval of the contract and then returned it to SOMO for a countersignature by the Executive Director of SOMO.²¹⁸ For each phase of the Programme, this process was repeated.

²¹⁵ Iraq official interview.

²¹⁶ Ministry of Oil record, Shamkhi H. Faraj report to the Minister of Oil, "Report on Crude Oil Sales under the Former Regime" (Feb. 19, 2004) (translated from Arabic); Iraq officials interviews.

²¹⁷ 661 Rules, paras. 1-24 (describing the process for approving oil contracts). The United Nations' oil contract approval process is described in Chapter 1.

²¹⁸ Saddam Z. Hassan letters to the Minister of Oil (Sept. 26, 1998; Feb. 6 and Aug. 1, 1999; Jan. 13 and Aug. 15, 2000; Aug. 14, 2001) (translated from Arabic) (seeking approval of oil contracts); Amer Muhammad Rashid interview (Oct. 9, 2004). The Committee's review of Ministry of Oil records, more generally, confirms this practice.

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

IV. OIL FOR AMEP

In 1998, Fakhry Abdelnour owned a company called AMEP. This company was registered in Panama, but it had no offices, refineries, facilities, or employees there. Halfway across the world—in Monaco—AMEP had an office with three employees. Mr. Abdelnour lived and worked in Geneva, Switzerland, and he visited the office in Monaco once or twice per year. He had been an agent for the Egyptian government for overseas oil sales until approximately 1996. Mr. Abdelnour's oil trading business, however, had shrunk after he had been involved in trading Egyptian oil to South Africa during the embargo.²¹⁹

According to Mr. Abdelnour, he turned to the Programme as a source of oil trading business based on a tip from a business acquaintance.²²⁰ On June 17, 1998, Mr. Abdelnour sent a letter to Saddam Z. Hassan, SOMO's Executive Director, to express an interest in the purchase of crude oil and to suggest a meeting with SOMO representatives at an upcoming meeting in Vienna of the Organization of Petroleum Exporting Countries ("OPEC"). In this letter, Mr. Abdelnour said that his company was registered in Panama and had offices in Monte Carlo, Geneva, Cairo, and New York. Mr. Abdelnour said that he was a registered agent in good standing with the government of Egypt and that AMEP "enjoy[ed] an exceptional relationship with the Egyptian state-owned petroleum corporation (EGPC)" and was "the biggest lifter of Egyptian crude oil."²²¹

²¹⁹ Fakhry Abdelnour interviews (Jan. 17-19, 2005); Allegra Hodara-Heifetz interview (Nov. 4, 2004). Ms. Hodara-Heifetz was an employee of AMEP.


²²⁰ Fakhry Abdelnour interviews (Jan. 17-19, 2005). The acquaintance was Pedro de Almeida, who has confirmed his relationship to Mr. Abdelnour. Pedro de Almeida interview (Dec. 11, 2004).

²²¹ AMEP record, Fakhry Abdelnour letter to Saddam Z. Hassan (June 17, 1998).

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

Document 1. Fakhry Abdelnour letter to Saddam Z. Hassan (June 17, 1998).

AFRICAN MIDDLE EAST PETROLEUM Co. LTD. INC. 

Address :
C/O
Donatuz S.A.,
86 rue du Rhône
CH-1204 Geneva
Tel: 4122 310 43 10
Fax: 4122 310 40 30

SOMO (State Oil
Marketing Organisation)
To the attention of
Mr. Saddam Z. HASSAN
Executive Director General
Baghdad - Iraq

17 June 1998

Dear Sirs,

This is to introduce AFRICAN MIDDLE EAST PETROLEUM CO. LTD. INC., registered in Panama, with offices located in Monte Carlo, Geneva, Cairo and New York.

AFRICAN MIDDLE EAST PETROLEUM CO. LTD. INC. would be interested to enter into a contractual relationship with your fine organization in order to purchase and lift BASHRAH and KIRKOUK crude oil on a term basis.


AFRICAN MIDDLE EAST PETROLEUM CO. LTD. INC. would appreciate a meeting with you at your convenience.

/s/


REGISTERED OFFICE : Bank of America Building - 50th + 53rd Streets, PANAMA

- 2 -

Should you or your representatives be in Vienna next week for the OPEC meeting, we shall be delighted to come and see you to discuss the above.

Yours faithfully,

For Fakhry ABDELNOUR

Enc. Company profile of AFRICAN MIDDLE EAST PETROLEUM CO. LTD. INC.

AFRICAN MIDDLE EAST PETROLEUM Co. LTD. INC. 

ADMINISTRATIVE OFFICE:
Immeuble "Eau Claire"
24, bd Princesse Charlotte
MC 98000 MONACO
Tel. 93 25 47 65
Tlx 489 611 ampc mc
Fax 93 25 54 47

Company Profile

By means of the present letter, we would like to introduce AFRICAN MIDDLE EAST PETROLEUM CO. LTD. INC. (AMPC) to your good selves.

AMPC is registered in Panama, with offices located in Monte Carlo, Geneva, Cairo and New York.

AMPC enjoys an exceptional relationship with the Egyptian state-owned petroleum corporation (EGPC), with whom it deals under an evergreen crude oil supply contract covering a substantial volume. In fact, AMPC is the biggest lifter of Egyptian crude oil (over 3 million metric tons yearly).

Besides its relationship with Egypt, AMPC maintains close liens with other producing countries in the Middle East and North Africa. AMPC presently holds a large supply contract for crude oil and petroleum products with Libya (NOC).

AMPC also held, for many years, a crude supply contract (75,000 bbls/d) with QGPC (Qatar) and has moved large quantities of petroleum products and LNG cargoes on a monthly basis under term contract with KPC (Kuwait).

/s/

REGISTERED OFFICE: Bank of America Building - 50th + 53rd Streets, PANAMA


- 2 -

These barrels find their way into our own processing or to the end-user refineries of major or sub-major oil companies.

Financial information about the company can be obtained from the following (supporting bank references attached) :-

- BANQUE PARIBAS (SUISSE) S.A., Geneva
Tel. 787.7111 / Fax. 787.8000
Mr. Bernard Huboux, Vice-President
- BANQUE NATIONALE DE PARIS (SUISSE) S.A., Geneva
Tel. 731.1150 / Fax. 731.6114
Mr. Pierre-Olivier Fraguère, Director

Should any additional information be required, please do not hesitate to contact us.


AFRICAN MIDDLE EAST
PETROLEUM CO. LTD. INC.

Enc.

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

Regardless of AMEP's standing in the oil industry, at that time in the Programme, it was highly unlikely that oil would have been sold to AMEP unless a beneficiary to whom Iraqi officials had allocated oil designated AMEP as the purchaser of the oil.²²² Indeed, Mr. Abdelnour's letter received no response from SOMO in June 1998.²²³

On the basis of the evidence discussed at length in the next section, it is apparent that Mr. Abdelnour arranged to have Mr. Sevan approach Iraq's Minister of Oil to obtain an allocation of oil for AMEP. This would be the start of AMEP's purchase of more than \$144 million of oil from Iraq from 1998 to 2001²²⁴ The course of these transactions and Mr. Sevan's involvement is described in the next section below.

²²² Amer Rashid interview (Aug. 10, 2004).

²²³ AMEP record, Saddam Z. Hassan fax to Fakhry Abdelnour (Aug. 18, 1998); Fakhry Abdelnour interviews (Jan. 17-19, 2005).

²²⁴ Independent Inquiry Committee, "Table One, Oil-for-Food Programme, Oil Sales by Buyer and Buyer Country of Registration per Phase (Sorted by Buyer)," <http://www.iic-offp.org/documents/IIC%20Tables%2010-21-2004.pdf>.

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

This page is intentionally left blank

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

V. ALLOCATIONS OBTAINED BY BENON SEVAN

Shortly after starting as Executive Director of OIP in October 1997, Mr. Sevan became intensely involved in efforts to obtain Security Council authority for an “oil spare parts” program – to permit Iraq to use funds from the humanitarian escrow account to import parts and equipment for the repair and maintenance of its oil production infrastructure. This had always been a very important issue for Iraq. When Iraq had negotiated the Programme’s Memorandum of Understanding in 1996, the United Nations had rebuffed Iraq’s request to use escrow funds for improving its oil facilities, and Iraq had reserved the issue for future discussion by means of a side letter annex to the Memorandum of Understanding. On June 19, 1998, the Security Council authorized an unprecedented expansion of the Programme to allow Iraq to use up to \$300 million of oil proceeds to purchase “oil spare parts” for renovating its oil production and transportation facilities.²²⁵

A. THE FIRST ALLOCATION

Just two days after the Security Council passed the “oil spare parts” resolution, Mr. Sevan left for Iraq for two weeks from June 21 to July 5, 1998. One of the official purposes of his trip was to meet with Iraqi officials and specialists from Saybolt about implementing the “oil spare parts” program. Official travel records show that Mr. Sevan met twice with Oil Minister Rashid (June 22 and June 30) and once with Vice President Taha Yassin Ramadan (July 2).²²⁶ As noted above, both Mr. Rashid and Mr. Ramadan were on the Command Council, which was in charge of approving the oil allocations.

During one of these meetings with Oil Minister Rashid, as reflected in an internal record of the Ministry of Oil, Mr. Sevan solicited an oil allocation on behalf of AMEP. The Oil Minister has stated that he conveyed Mr. Sevan’s request to Vice President Ramadan. Around this time, Mr. Sevan also presented this request to the Iraqi Mission to the United Nations in New York. Mr. Sevan directly asked an Iraqi official for an oil allocation to “help a friend” who was Egyptian, and he then mentioned to the official the name of Abdelnour.²²⁷

Mr. Sevan’s oil allocation request came in the middle of Phase IV of the Programme, which began on May 30, 1998. Accordingly, neither his name nor AMEP’s name was reflected on the SOMO allocation table that was prepared in the beginning of that phase and that was reviewed and confirmed by Vice President Ramadan on June 11, 1998, and later signed and passed on for action by Oil Minister Rashid and SOMO Executive Director Hassan, respectively. During the

²²⁵ Iraq-UN MOU, Annex 2 (including a side letter from the Head of Iraq’s delegation to the United Nations’ Legal Counsel); S/RES/1175, paras. 1-3 (June 19, 1998).

²²⁶ United Nations Quarterly Report on Absences from Duty Station (Apr. to June 1998); Benon Sevan final itinerary, Iraq (June 21 to July 5, 1998).

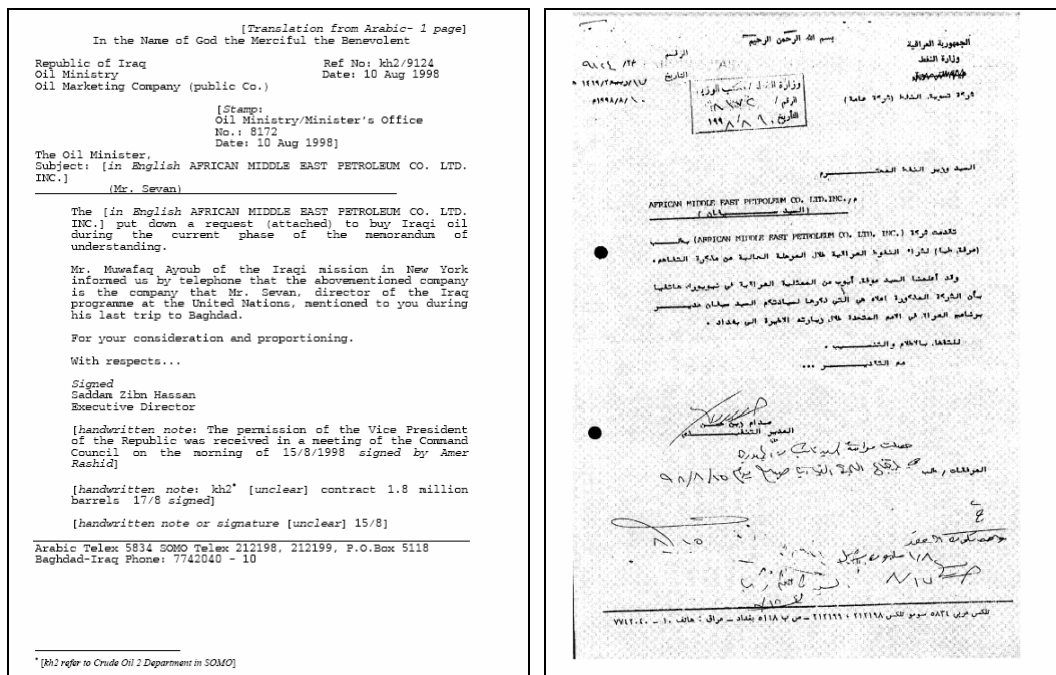
²²⁷ Ministry of Oil record, Saddam Z. Hassan letter to the Minister of Oil (Sept. 26, 1998) (translated from Arabic); Amer Rashid interview (Oct. 29, 2004); Iraq official interviews.

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

month following Mr. Sevan's trip to Iraq, Mr. Sevan's request to the Oil Minister was memorialized in SOMO's records in connection with its consideration of Mr. Abdelnour's correspondence with SOMO. In a letter dated August 10, 1998, SOMO Executive Director Hassan informed Oil Minister Rashid that AMEP had made a request to purchase oil during the current phase and that this was the company mentioned by Mr. Sevan.²²⁸

Document 2. Saddam Z. Hassan letter to the Minister of Oil (Aug. 10, 1998) (translated from Arabic).



In the letter, SOMO's Executive Director reminded Oil Minister Rashid of the following:

Mr. Muwafaq Ayoub of the Iraqi mission in New York informed us by telephone that the abovementioned company is the company that Mr. Sevan, director of the Iraq Programme at the United Nations, mentioned to you during his last trip to Baghdad.

For your consideration and proportioning.

²²⁸ Ministry of Oil record, Taha Yassin Ramadan letter to the Minister of Oil (June 11, 1998) (translated from Arabic) (attaching the Table of Allocations for Phase Four of the Memorandum of Understanding); Ministry of Oil record, Saddam Z. Hassan letter to the Minister of Oil (Aug. 10, 1998) (translated from Arabic).

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

The August 10 letter contained a handwritten notation signed by the Minister of Oil that “[t]he permission of the Vice President of the Republic was received in a meeting of the Command Council on the morning of 15/8/1998” for the allocation. Another handwritten notation indicated that the contract would be for the sale of 1.8 million barrels of oil. When former Oil Minister Rashid was interviewed and shown a copy of this letter, he confirmed its authenticity, and he identified his signature and the co-signature of Khadim Razouki Wahid, the official who was head of SOMO’s Crude Oil Marketing Division.²²⁹

The August 10 letter is just one of many SOMO records (reviewed below) that link Mr. Sevan to oil sold to AMEP and that bear a high degree of circumstantial authenticity. Along with the copies of other SOMO records, these records were obtained directly from the SOMO office within the Ministry of Oil. The documents bear the traditional hallmarks of ordinary business records in their format and internal ordering, and in the type of standard transactional information that is contained in them. The transactions and allocations recorded in outgoing SOMO records for AMEP and other companies are consistent in timing and nature with third party United Nations, bank and corporate records of these same transactions. There is nothing about the AMEP records that have been obtained from SOMO to suggest that they have been tampered with or are different than the thousands of other standard oil transaction records maintained by SOMO during the life of the Programme.

Following the grant of an allocation (in response to Mr. Sevan’s request), an Iraqi official instructed Mr. Sevan to have “his guy” call SOMO directly and request to purchase oil.²³⁰ Mr. Abdelnour again contacted SOMO officials. This time, unlike in June, there was a response to Mr. Abdelnour’s query. In a telex, dated August 18, 1998, SOMO Executive Director Hassan thanked Mr. Abdelnour for his inquiries and invited Mr. Abdelnour to Baghdad “to discuss matters related to crude oil supply.”²³¹

After Mr. Sevan returned from Iraq in July 1998, he reported to the United Nations that both Oil Minister Rashid and Vice President Ramadan stressed that Mr. Sevan and the Secretary-General should “spare no effort in ensuring the approval of the contracts for essential spare parts concerning the oil industry as well as for other sectors, which had been delayed far too long.”²³²

Indeed, Iraqi officials hoped that granting Mr. Sevan’s request for an allocation would benefit Iraq. After the Programme ended, former Oil Minister Rashid explained that oil allocations had been granted to individuals “who ha[d] been good to us, people of influence.” With respect to

²²⁹ Ibid.; Amer Rashid interview (Oct. 29, 2004).

²³⁰ Iraq official interviews.

²³¹ AMEP record, Saddam Z. Hassan fax to Fakhry Abdelnour (Aug. 18, 1998). The correspondence from SOMO to AMEP indicates another letter, of August 5, from AMEP to SOMO. The Committee has not found this correspondence in the files produced by AMEP or in the files obtained from SOMO.

²³² Benon Sevan final itinerary, Iraq (June 21 to July 5, 1998); Benon Sevan meeting notes, Baghdad (June 21 to 23 and June 29 to July 5, 1998).

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

Mr. Sevan, Mr. Rashid explained that the Iraqi regime allocated oil to Mr. Sevan because “he was a man of influence.”²³³ Although Mr. Rashid denied that the oil had been given to Sevan for any specific reason, another Iraqi official who was involved in the process and has been interviewed explained that the allocations were granted upon Mr. Sevan’s request in the hopes of obtaining Mr. Sevan’s assistance in removing holds placed by the 661 Committee on oil spare parts contracts. This official stated also that Mr. Rashid had expressed this hope to others at the time.²³⁴

On September 24, 1998, Mr. Abdelnour was in Baghdad to execute a contract with SOMO for AMEP to purchase 1.8 million barrels of crude oil. Afterwards, in writing, Mr. Abdelnour thanked SOMO officials Ali Hassan, Khaled Fahed, Khadim Razzouki, and Saddam Hassan for meeting with him in Baghdad. There was no mention in Mr. Abdelnour’s letter of having met the Minister of Oil, or anyone else empowered to have granted his company an oil allocation. According to another Iraqi official, during meetings in Baghdad to execute contracts, Mr. Abdelnour represented that he was a friend of Mr. Sevan’s.²³⁵

In the meantime, SOMO Director Hassan had re-confirmed by telephone with Muwafaq Ayoub, one of Iraq’s officials at Iraq’s Permanent Mission to the United Nations in New York, that AMEP was indeed the company that had been recommended by Mr. Sevan. The fact of this communication between Mr. Hassan and Mr. Ayoub was recorded in a memorandum of September 26, 1998—two days after the contract with AMEP was signed—from SOMO to Oil Minister Rashid, seeking formal approval of the final contract terms:

With reference to the approval of the Vice President of the Republic, Mr. Taha Yassin Ramadan indicated to us by your note on our letter number kh2/9124 dated 10 Aug. 1998 (copy of which is attached).

And with reference to the phone conversation on the morning of 24 September 1998 between the undersigned [Saddam Zibn Hassan] with Mr. Muwafaq Ayoub from the Iraqi mission in New York in which he emphasized that AFRICAN MIDDLE EAST PETROLEUM CO. LTD. INC. represented by Mr. Fakhry Abdelnour is the one recommended by Mr. Sevan.

The memorandum then summarized the contract’s terms. At the bottom of the memorandum was an entry for the Oil Minister’s approval, and the document reflects Oil Minister Rashid’s

²³³ Amer Rashid interview (Aug. 10, 2004).

²³⁴ Iraq official interview.

²³⁵ Fakhry Abdelnour interviews (Jan. 17-19, 2005); AMEP fax to the United Nations Oil Overseers (Sept. 28, 1998) (attaching contract M/04/60, which was executed on September 24, 1998); AMEP record, AMEP telex to Ali R. Hassan (Sept. 28, 1998); Iraq official interview.

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

signature of approval on October 11, 1998, followed by SOMO Director Hassan's signature of approval on October 13, 1998.²³⁶

When the SOMO contract was executed on September 24, 1998, AMEP had not yet been registered with a foreign mission nor placed on the list of approved oil purchasers at the United Nations as required under the rules of the Programme for expedited approval of a contract by the United Nations oil overseers. Mr. Abdelnour sought to clear the way for approval of the AMEP contract by the oil overseers in New York. On September 28, 1998, he wrote from Geneva to the head of SOMO's Crude Oil Division to thank him for meeting in Baghdad and to advise that he had started the "formalities" of having AMEP "registered and approved by the 661 committee," that he would be sending the signed contract to the United Nations oil overseers, and that he would be traveling to New York on September 30, 1998, to expedite the approval process.²³⁷

On September 28, Mr. Abdelnour's office in Monaco sent a copy of the oil contract to the oil overseers in New York. Mr. Abdelnour arranged to have AMEP's name registered by Panama's diplomatic mission to the United Nations, and Panama sent a registration letter on September 29 to the chairman of the 661 Committee. On September 30, the two oil overseers approved the AMEP contract. In contrast to the records maintained by SOMO, none of the materials transmitted to the United Nations for approval of the contract disclosed the involvement of Mr. Sevan in the AMEP transaction.²³⁸

AMEP did not "lift" or take physical possession of the 1.8 million barrels of oil for which it contracted. Instead, by the end of October 1998, it had sold nearly half the oil to Addax BV, Geneva Branch, and it sold the other half to Shell International Trading and Shipping Company Limited ("STASCO"). Addax and STASCO sent tankers to lift the oil at the port of Ceyhan

²³⁶ Ministry of Oil record, Saddam Z. Hassan letter to the Minister of Oil (Sept. 26, 1998) (translated from Arabic) (seeking approval of the oil contract). The Committee's review of SOMO records reflects that for every single crude oil contract there is a "request for approval" letter from SOMO's Executive Director to the Minister of Oil, which is sent within a few days from the execution of the contract and that summarizes the information about the contract. These letters are signed by SOMO's Executive Director and have a space for approval of the Oil Minister at the bottom of the letter. For each phase that AMEP lifted oil, such a request-for-approval letter is available. SOMO records include two versions of each letter; one is without the Oil Minister's approval and one has the Oil Minister's approval. At the end of Phase IV, the purchase by AMEP of 1.8 million barrels was added to the revised SOMO table of crude oil contracts for the phase, dated October 7, 1998, but Mr. Sevan's name does not appear on that list in connection with AMEP. See Ministry of Oil record, Table of Allocations for Phase Four of the Memorandum of Understanding (Oct. 7, 1998) (translated from Arabic).

²³⁷ AMEP record, AMEP telex to Ali R. Hassan (Sept. 28, 1998).

²³⁸ AMEP fax to the United Nations Oil Overseers (Sept. 28, 1998) (attaching contract M/04/60, which was executed on September 24, 1998); Ambassador Aquilino Boyd letter to Ambassador Antonio Monteiro (Sept. 29, 1998) (including attachments); 661 Rules, para. 10; United Nations Oil Overseers fax to African Middle East Petroleum Panama (Sept. 30, 1998). At this time, Ambassador Boyd was Panama's Permanent Representative to the United Nations, and Ambassador Antonio Monteiro was serving as Chairman of the 661 Committee.

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

between November 19 and 22, 1998. AMEP's revenue net bank fees totaled \$298,576 from these transactions.²³⁹

B. THE SECOND ALLOCATION

Phase V of the Programme ran from November 26, 1998 to May 24, 1999. Mr. Sevan requested another allocation for AMEP during this phase. The official to whom this request was made and his colleagues decided to recommend that Mr. Sevan receive another allocation, but that it should be reduced to only one million barrels, because they did not believe that Mr. Sevan had been helpful in lifting holds placed primarily on oil spare parts contracts submitted to the United Nations by the Government of Iraq. One official involved said that when Mr. Sevan complained about the reduction, stating that he was unhappy with the amount of the allocation, the official replied that oil allocations were difficult to get. According to this official, Mr. Sevan was repeatedly asked by Iraq to help lift the 661 Committee's "holds" on contracts for goods to enter Iraq—though the official did not explicitly link these requests to oil allocations in his conversations with Mr. Sevan.²⁴⁰

SOMO records confirm that an oil allocation was granted for Mr. Sevan, but it was decreased in Phase V. The preliminary SOMO table of crude oil allocations for the fifth phase included a proposal for AMEP, as it had in the prior phase, to purchase 1.8 million barrels of oil. The table also included a handwritten notation, dated November 28 and signed by the Minister of Oil, that Vice President Ramadan had agreed that morning to the allocations as indicated, but special requests—which had not been marked—would be discussed separately. AMEP was not marked on this list. In a revised SOMO table of crude oil contracts for the fifth phase, dated January 3, 1999, AMEP was listed to purchase only one million barrels of oil. Attached to this table was a

²³⁹ AMEP received approximately \$8,524,865 from Shell for 943,016 barrels of oil, and it made payments of approximately \$8,373,982 to the UN escrow account and approximately \$6,699 to the bank for letter-of-credit fees. AMEP received approximately \$8,172,274 from Addax for 893,340 barrels of oil, and it made payments of approximately \$8,011,473 to the UN escrow account and approximately \$6,409 to the bank for letter-of-credit fees. For these transactions, AMEP's premium on top of Iraq's official selling price was 16 cents per barrel from Shell and 15 cents per barrel from Addax. With respect to the Addax transaction, AMEP charged an additional 3 cents per barrel above the official selling price. Based on the SOMO invoice, an API adjustment of 9 cents per barrel was to be deducted from the price. However, in actuality, AMEP used only a 6 cent API adjustment in its price calculation for the sale to Addax. Accordingly, AMEP's revenues net bank fees were approximately \$144,184 and \$154,392, for the Shell and Addax transactions respectively, totaling \$298,576. See Shell record, AMEP invoice to STASCO (Dec. 4, 1998); Addax record, AMEP telex to Addax (Oct. 15, 1998); UEB record, United European Bank ("UEB") statement for AMEP account (Dec. 31, 1998); UEB credit advice (Dec. 18, 1998); UEB debit advice (Dec. 18, 1998); UEB credit advice (Dec. 18, 1998); UEB credit utilization (Dec. 18, 1998); SOMO invoice, C/241/98 (Nov. 22, 1998); AMEP telex to Addax (Nov. 30, 1998) (attaching a price calculation sheet).

²⁴⁰ Iraq official interviews.

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

handwritten version of the same table that included the name “Mr. Sevan” in parenthesis next to AMEP.²⁴¹

Vice President Ramadan approved the reduction in Mr. Sevan’s oil allocation in Phase V. In a letter marked confidential, dated January 25, 1999, Vice President Ramadan responded to a request from Oil Minister Rashid for a one million barrel allocation:

Subject/Company (African Middle East Petroleum) (Mr. Sevan)

With reference to your letter number RM/20 on 24/1/1999 we agree to provide the above company with only 1 million barrels of crude oil during Phase 5 of the Memorandum of Understanding.

For your information and necessary action . . .

The January 25 letter was signed by Vice President Ramadan and then signed and passed on for action by the Minister of Oil (on January 27, 1999) and the SOMO Director (on January 29, 1999).²⁴²

The SOMO contract with AMEP for the purchase of one million barrels of oil was signed on February 6, 1999. The request to approve the contract, also dated February 6, 1999, specifically referred to the Vice President’s letter agreeing to the allocation and included the handwritten notation “Mr. Sevan” next to the second occurrence of AMEP in the document. The request for approval of the contract was signed and passed on for action by the Minister of Oil and the SOMO Director as of February 9, 1999.²⁴³

Neither Mr. Sevan nor Mr. Abdelnour was pleased with the reduced oil allocation. In late March 1999, Mr. Sevan saw both Mr. Abdelnour and Oil Minister Rashid at an OPEC conference in Vienna. Official travel records show that Mr. Sevan was at the conference from approximately March 22-24, 1999. According to Oil Minister Rashid, Mr. Sevan quietly raised the subject of an

²⁴¹ Ministry of Oil record, Table of Allocations for Phase Five of the Memorandum of Understanding (Nov. 28, 1998) (translated from Arabic); Ministry of Oil record, Table of Allocations for Phase Five of the Memorandum of Understanding (Jan. 3, 1999) (translated from Arabic); Ministry of Oil record, Handwritten Table of Allocations for Phase Five of the Memorandum of Understanding (undated) (translated from Arabic).

²⁴² Ministry of Oil record, Taha Yassin Ramadan letter to the Minister of Oil (Jan. 25, 1999) (translated from Arabic).

²⁴³ OFFP contract between AMEP and SOMO, M/05/61 (Feb. 6, 1999); Ministry of Oil record, Saddam Z. Hassan letter to the Minister of Oil (Feb. 6, 1999) (translated from Arabic) (seeking approval of the oil contract).

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

oil allocation with him while they were at the Vienna conference and during a subsequent trip to Iraq. SOMO Executive Director Hassan was present during the Vienna exchange.²⁴⁴

On April 8, 1999, Mr. Abdelnour sent a telex to SOMO Executive Director Hassan in which he referred to “our meeting last month in Vienna (OPEC)” and requested confirmation that AMEP’s contractual quantity had been raised by another one million barrels. This document, which was recovered from SOMO’s files, contains a handwritten note at the bottom from a lower-level official of SOMO directed to Mr. Hassan and that references Mr. Sevan by name:

Executive Director

African Middle East /Mr Sevan are stating that they are under the impression that their allocation was increased from 1 to 2 million barrels, as a result of the meeting with Mr. Minister in Vienna. Please note that the amount of contract is [for] Kirkuk [oil].

For your information and proportioning -²⁴⁵

Notwithstanding Mr. Sevan’s meeting with the Minister of Oil in Vienna, by the end of Phase V, AMEP had not procured a higher oil allocation, and Abdelnour had elected not to go through with the transaction.²⁴⁶

C. THE THIRD ALLOCATION

Phase VI of the Programme ran from May 25 to December 11, 1999. At the outset of this phase neither AMEP nor Mr. Sevan appeared on any of SOMO’s initial lists of crude oil allocations that were dated May 22. Indeed, in the previous phase, AMEP had delayed and failed to lift its allocation. On at least one occasion, Iraqi officials contacted Mr. Sevan to warn him that his delay in lifting his allocation risked putting him on a blacklist for further allocations. SOMO records confirm that at the beginning of planning for the sixth phase, as Iraqi officials had warned, SOMO had not included an oil allocation for Mr. Sevan under the Programme.²⁴⁷

It was during this phase that the Command Council made all of its special allocations to individuals explicit in the SOMO table of crude oil contracts. In a handwritten note, dated May

²⁴⁴ United Nations Quarterly Report on Absences from Duty Station (Jan. to Mar. 1999); Benon Sevan request for travel authorization (Mar. 15, 1999); Benon Sevan interview (Sept. 29, 2004); Fakhry Abdelnour interview (Oct. 4, 2004, Oct. 7, 2004); Amer Rashid interview (Oct. 29, 2004).

²⁴⁵ SOMO record, Fakhry Abdelnour telex to SOMO (Apr. 8, 1999).

²⁴⁶ Fakhry Abdelnour interviews (Jan. 17-19, 2005).

²⁴⁷ Iraq official interviews; Ministry of Oil record, Handwritten letter from SOMO to the Minister of Oil, with attached Table of Allocations for Phase Six of the Memorandum of Understanding (May 22, 1999) (translated from Arabic).

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

22, 1999, Vice President Ramadan informed the Secretary of the President of the Committee's revised allocation tables:

Please find attached a table clarifying the distribution of contracts for crude oil of Phase 6 and also there is a clarification of allocation that occurred during phases 4 and 5 of Memorandum of Understanding [illegible word] for the companies and countries for the 6th phase under negotiation in the Command Council with the participation of Minister of Oil.

Because of the importance of this issue please inform the President Leader (God protect him) so that the Ministry of Oil can work accordingly.²⁴⁸

The revised allocation table was organized by country and regular and special requests, so that under the heading for Panama, where AMEP was registered, there were no entries for regular requests and only a single entry for special requests under the name "Mr. Sevan" for 1.8 million barrels in the fourth phase.²⁴⁹ There was no mention of AMEP or proposed oil allocation for Phase VI because, as a note on a table explained, Mr. Sevan's allocations had only been executed in the fourth phase.²⁵⁰ In a cover letter, dated May 27, 1999, Lieutenant General Abd Hamid Al-Khattab, Secretary of the President of the Republic, Saddam Hussein, informed Vice President Ramadan that: "Mr. President Leader (God protect him) has agreed to your memorandum."²⁵¹

Although he did not initially receive an allocation for this phase, Mr. Sevan's prospects changed after he paid a visit to Oil Minister Rashid in Baghdad. By May 13, 1999, Mr. Sevan had learned that during Phase V, the Government of Iraq had increased its oil spares parts and equipment funding level to approximately \$385 million—already beyond the \$300 million per phase authorized by the Security Council.²⁵² On May 28, 1999, Mr. Sevan sought travel authorization, explaining that he had been called for consultations by Oil Minister Rashid: "I had a call from the Minister for Oil yesterday urging me to go to Baghdad very soon, to discuss the requirements for the oil industry and how to increase production capacity and export." Official travel records show that Mr. Sevan was in Iraq from June 16 to July 6, 1999.²⁵³

²⁴⁸ Ministry of Oil record, Taha Yassin Ramadan letter to the Secretary of the President (May 22, 1999) (translated from Arabic) (attaching the Table of Allocations for Phase Six of the Memorandum of Understanding).

²⁴⁹ Ibid.

²⁵⁰ Ministry of Oil record, Handwritten Tables of Allocations for Phase Six of the Memorandum of Understanding – Models 1 and 2 (May 17, 1999) (translated from Arabic).

²⁵¹ Ministry of Oil record, Lieutenant General Abd Hamid Al-Khattab letter to Taha Yassin Ramadan (May 27, 1999) (translated from Arabic) (including attachments).

²⁵² Benon Sevan cryptogramme to Hans Von Sponeck, ED/99/HCI/29 (May 13, 1999).

²⁵³ Benon Sevan request for travel authorization (May 28, 1999); United Nations Quarterly Report on Absences from Duty Station (Apr. to June 1999); *ibid.* (July to Sept. 1999); Benon Sevan travel claim (Sept. 9, 1999).

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

Immediately following his trip to Iraq, Mr. Sevan's name again surfaced in the SOMO oil allocation records. An updated list was provided to the Minister of Oil and signed and dated July 12, 1999, by SOMO Executive Director Hassan. The table listed the total amount of oil contracted as of July 12, 1999, and then included a short list of oil barrels that had been allocated and expected to be allocated to five beneficiaries. One of the five beneficiaries was "Mr. Sevan" for two million barrels of oil. There was no mention of AMEP.²⁵⁴

Mr. Abdelnour was back in Baghdad on July 29, 1999, to sign a contract for AMEP's purchase of two million more barrels of oil. In keeping with its usual practice, SOMO submitted a request for approval to the Ministry of Oil after the contract was signed and confirming the essential contract terms. This approval request, dated August 1, 1999, included Mr. Sevan's name in the space adjacent to two references to AMEP, both in the subject line of the letter and in the body of the memorandum. The request was signed by Oil Minister Rashid on August 2, 1999, and then counter-signed by SOMO Director Hassan on August 4, 1999.²⁵⁵

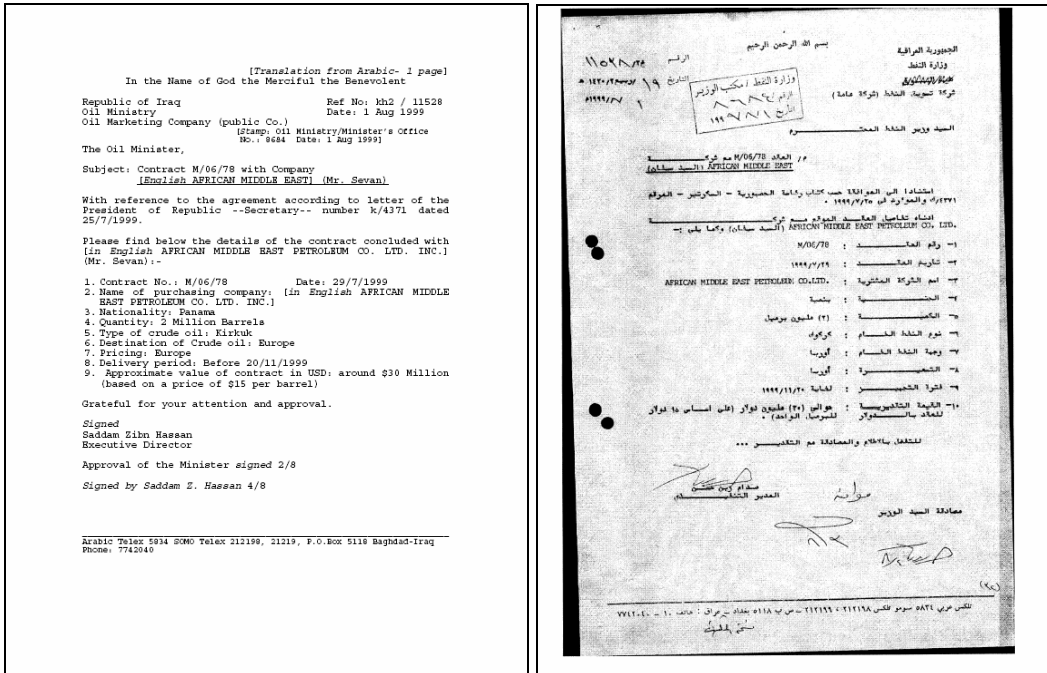
²⁵⁴ Ministry of Oil record, Table of Additional Allocations for Phase Six of the Memorandum of Understanding (July 12, 1999) (translated from Arabic).

²⁵⁵ AMEP fax to United Nations Oil Overseers (July 30, 1999) (attaching OFFP contract M/06/78, which was executed on July 29, 1999). The contract does not indicate the place of signing, but Mr. Abdelnour has stated that he always traveled to Baghdad to sign contracts with SOMO. Fakhry Abdelnour interviews (Oct. 4 and 7, 2004 and Jan. 17-19, 2005); Ministry of Oil record, Saddam Z. Hassan letter to the Minister of Oil Letter (Aug. 1, 1999) (translated from Arabic) (seeking approval of the oil contract). Although the SOMO request for contract approval refers to an agreement by the President of the Republic on the allocation reflected in a letter dated July 25, 1999, the Committee has not found a copy of this letter.

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

Document 3. Saddam Z. Hassan letter to the Minister of Oil Letter (Aug. 1, 1999) (translated from Arabic).



Meanwhile, on August 2, Mr. Abdelnour's office forwarded the signed contract to the United Nations oil overseers, and it was eventually approved on August 6, 1999.²⁵⁶

By the time Mr. Abdelnour went to Baghdad to sign his contract with SOMO, AMEP already had agreed to sell the oil to STASCO (Shell) on July 20, 1999.²⁵⁷ Shell eventually lifted the oil from Ceyhan in two stages: on October 21 and November 21, 1999. Without assuming any risk of transport or possession, AMEP received a 28-cent per barrel premium on the two million barrels of oil, resulting in revenue net bank fees of more than \$490,914.²⁵⁸

²⁵⁶ OFFP contract between SOMO and AMEP, M/06/78 (July 29, 1999); United Nations Oil Overseers fax to AMEP (Aug. 06, 1999).

²⁵⁷ Shell record, STASCO contract with AMEP (July 22, 1999).

²⁵⁸ For the October 21, 1999 lifting, AMEP received \$20,838,000 from Shell for 1,000,000 barrels of oil, and it made payments of \$20,558,000 to the UN escrow account and approximately \$33,196 to the bank for letter-of-credit fees. For the November 21, 1999 lifting, AMEP received approximately \$24,819,466 from Shell for 1,009,578 barrels of oil, and it made payments of approximately \$24,536,784 to the UN escrow account and approximately \$38,572 to the bank for letter-of-credit fees. AMEP's premium on top of Iraq's official selling price for both these transactions was 28 cents per barrel. For these two transactions, AMEP's revenue net bank fees totaled approximately \$490,914. See Shell record, AMEP invoice to STASCO (Nov. 2, 1999); Shell record, AMEP invoice to STASCO (Nov. 30, 1999); UEB record, UEB

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

Back at the United Nations, Mr. Sevan continued to advocate for the oil spare parts program through the remainder of this Programme phase. On July 22, 1999, the Secretary-General delivered a letter to the Security Council detailing the list of parts and equipment necessary for the oil spare parts program. That day, Mr. Sevan briefed the Security Council during informal consultations about his recent trip to Iraq. Referring to the experts' assessment of the Iraqi oil industry, Mr. Sevan explained that the estimated value of the list of spare parts was actually \$600 million and not the \$300 million that had been authorized by the Security Council. Mr. Sevan urged approval of the oil related contracts without further delay.²⁵⁹

Three months later, Mr. Sevan addressed the Security Council to urge approval of the Secretary-General's recommendation for an additional \$300 million for oil spare parts and equipment, and he assured the Council that the recommendation had been made "purely on technical grounds."²⁶⁰ In November 1999, in informal consultations with the Security Council attended by Mr. Sevan, the Council acknowledged that there was general support for the recommendation of the Secretary-General regarding the allocation of an additional \$300 million for spare parts and equipment, but there was a concern about Iraq's low rate of contract submissions in the Phase VI. Mr. Sevan responded that the Secretary-General's recommendation was based on "technical grounds, taking into full account the assessment of independent oil experts." In addition, Mr. Sevan underscored that the fact that "Iraq was slow in contracting for parts and equipment did not and should not . . . minimize the additional funds required."²⁶¹

D. THE FOURTH ALLOCATION

Phase VII of the Programme ran from December 12, 1999 to June 8, 2000. Mr. Sevan appeared on SOMO's oil allocation list at the very beginning of this period. A preliminary table of crude oil contracts, which was dated December 13, 1999, and entitled "special requests," included a proposed allocation of 1.5 million barrels of oil to "Mr. Sevan" under the country heading for Panama. There was no mention of AMEP's name in this table. The SOMO table of special requests also included a handwritten notation signed by the Minister of Oil, stating that a meeting of the Committee members had been held on the morning of December 14, 1999. Handwritten modifications were made as a result of the Committee meeting; the updated SOMO table of

statement for AMEP account (Nov. 30, 1999); UEB record, UEB credit advice (Nov. 19, 1999); UEB record, UEB debit advice (Nov. 19, 1999); UEB record, UEB statement for AMEP account (Dec. 31, 1999); UEB record, UEB credit advice (Dec. 20, 1999); UEB record, UEB debit advice (Dec. 20, 1999).

²⁵⁹ Secretary-General letter to the Security Council, S/1999/746/Add.1 (July 22, 1999); Benon Sevan talking points, "Briefing by Sevan at the Informal Consultations held by the Security Council" (July 22, 1999).

²⁶⁰ Secretary-General letter to the President of the Security Council, S/1999/1053 (Oct. 12, 1999); Benon Sevan talking points, "Letter dated 12 October 1999 from the Secretary-General addressed to the President of the Security Council, S/1999/1053" (Oct. 12, 1999).

²⁶¹ Benon Sevan note to the Deputy Secretary-General (Nov. 18, 1999) (regarding informal Security Council consultations held on November 17, 1999).

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

special requests, dated December 17, 1999, contained a handwritten notation signed by the Minister of Oil, indicating that the list was “modified according to the order of Mr. President – God protect him – in the meeting on the morning of Friday 17/12/1999.” The revised table—approved by Saddam Hussein—also included an allocation of 1.5 million barrels of oil for “Mr. Sevan” and did not reference AMEP.²⁶²

In light of this allocation for Mr. Sevan, Mr. Abdelnour went to Baghdad to sign a contract for 1.5 million barrels of oil in the name of AMEP, which was dated January 11, 2000. SOMO’s usual approval request form, dated January 13, 2000, referred to the list of allocations approved by Saddam Hussein on December 17, 1999, and included the reference to “Mr. Sevan” in parentheses next to the entry for AMEP. The signed contract was faxed to the United Nations oil overseers on January 17, 2000, and then approved by the overseers on January 19, 2000.²⁶³

After executing this contract, AMEP again sold the oil to Shell. In this instance, AMEP contracted to provide Shell with 2 million barrels of oil: the 1.5 million barrels it was allocated by Iraq and an additional 500,000 barrels obtained by AMEP from an allocation to another buyer.²⁶⁴ The price of the oil was set at the price proposed by SOMO and approved by the oil overseers with an additional premium of 25 cents per barrel. Shell lifted the oil in April and June 2000, and AMEP’s revenue net bank fees for arranging the sale of the oil were approximately \$306,218.²⁶⁵

²⁶² Ministry of Oil record, Table of Allocations for Phase Seven of the Memorandum of Understanding – Regular Requests (Dec. 13 and 17, 1999) (translated from Arabic).

²⁶³ Saddam Z. Hassan fax to United Nations Oil Overseers (Jan. 12, 2000) (attaching contract M/07/88, which was executed on January 11, 2000); Ministry of Oil record, Saddam Z. Hassan letter to the Minister of Oil (Jan. 13, 2000) (translated from Arabic); United Nations Oil Overseers fax to AMEP (Jan. 19, 2000).

²⁶⁴ Shell record, Allegra Heifetz telex to Naser Kaidar [*sic.*] (Jan. 26, 2000); AMEP record, Allegra Heifetz telex to Anna Maria Gay (Lukoil, Geneva) (Feb. 17, 2000).

²⁶⁵ For the April 5, 2000 lifting, AMEP received approximately \$19,316,274 from Shell for 988,854 barrels of oil, and it made payments of approximately \$19,069,061 to the UN escrow account and approximately \$35,305 to the bank for letter-of-credit fees. With respect to the June 2, 2000 lifting, only 500,000 of the 996,115 barrels of oil purchased by Shell were allocated to AMEP. The additional 496,115 barrels were part of an allocation to Lukoil that was purchased by AMEP and sold on to Shell. For the total lifting of 996,115 barrels, AMEP received approximately \$26,460,724 from Shell, and it made payments of \$13,157,000 to the UN escrow account, approximately \$13,178,799 to Lukoil, and approximately \$30,615 to the bank for letter-of-credit fees. For both these transactions, AMEP’s premium on top of Iraq’s official selling price was 25 cents per barrel. For the 496,115 barrels purchased from Lukoil and sold on to Shell, AMEP paid a 25 cent per barrel premium to Lukoil, which it passed on to Shell. AMEP’s revenue net bank fees for these transactions totaled approximately \$306,218. See Shell record, AMEP invoice to STASCO (Apr. 17, 2000); UEB record, UEB statement for AMEP account (May 31, 2000); UEB record, UEB credit advice (May 4, 2000); UEB record, UEB debit advice (May 4, 2000); AMEP record, Lukoil telex to AMEP (Feb. 16, 2000); SOMO invoice, C/144/2000 (June 2, 2000); Shell record, AMEP invoice (June 14, 2000); UEB record, UEB statement for AMEP account (June 30, 2000); UEB record, UEB credit utilization (June 26, 2000); UEB record, UEB credit utilization (June 20, 2000).

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

In the meantime, efforts to expand the oil spare parts program continued in early 2000. On February 7, 2000, while he was briefing the Security Council, Mr. Sevan reiterated that the Iraqi oil industry was in a “lamentable state” and appealed to all members to address the issue “urgently.” He repeated the Secretary-General’s recommendation that Iraq be authorized to purchase an additional \$300 million dollars worth of spare parts using revenue from Phase VI.²⁶⁶

A week later, on February 14, 2000, in a meeting with Iraqi Ambassador Saeed Hassan and Mowafak Ayoub of Iraq’s UN mission, as well as other OIP employees, Mr. Sevan was asked directly by the ambassador if the Security Council was close to making a decision regarding the approval of an additional \$300 million in funding for oil spare parts and equipment for the sixth phase of the Programme. The ambassador also reminded Mr. Sevan that Iraq had requested an additional \$300 million for the seventh phase. Mr. Sevan replied that the proposal was still under consideration pending the findings of a group of experts that were dispatched to Iraq to survey the status of the oil industry. Ambassador Hassan asked that Mr. Sevan draw attention to the state of the Iraqi oil industry in the March report and also include a recommendation for an additional allotment for oil spare parts and equipment in the seventh phase as previously requested by the Government of Iraq.²⁶⁷

Within this same time frame, Mr. Sevan was also intensely involved with efforts to persuade the Security Council’s 661 Committee to release the large number of “holds” that had been placed on approvals for goods and spare parts contracts. For example, on January 19, 2000, Mr. Sevan gave a briefing to the 661 Committee on the issue of the steady increase in holds on contract. He discussed the detrimental effect that holds on oil spare parts and equipment contracts were having on the repairs and upgrades of the Northern pipeline and the Mina Al-Bakr outlet. Mr. Sevan summarized his recent attempts to raise the issue of contract holds with the 661 Committee, including his note to the Secretary-General dated October 22, 1999, which was submitted to the Security Council; his briefing to the Security Council in an informal meeting on November 17, 1999; and his paper to the Chairman of the Security Council on December 17, 1999. In response to criticism from Iraq that OIP had not done enough to address the issue of contract holds, Mr. Sevan remarked: “In addition to all the written reports or letters as well as briefings provided to the Council and the Committee, my colleagues and I have never failed to raise the issue of holds on every occasion available; and if there was no occasion, we have created one.”²⁶⁸

In March 2000, Mr. Sevan again traveled to Vienna to meet with Oil Minister Rashid while the minister attended an OPEC conference. It was expected that the Security Council would increase the funding for oil spare parts and equipment under the Programme and that Sevan would be

²⁶⁶ Joseph Stephanides memorandum to Iqbal Riza, “Security Council: Report on Activities” (Feb. 8, 2000) (attaching a summary from the Security Council proceedings of February 7, 2000); Benon Sevan talking points, “Briefing at the Security Council’s Informal Consultations” (Feb. 7, 2000).

²⁶⁷ Georges Nasr note (Feb. 14, 2000) (regarding Benon Sevan’s meeting with the Permanent Representative of Iraq to the United Nations).

²⁶⁸ Benon Sevan talking points, “Briefing the 661 Committee” (Jan. 19, 2000); Provisional record of 661 Committee meeting, S/AC.25/SR.192, pp. 4-6 (Jan. 19, 2000).

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

responsible for working out the details of a monitoring program with the Minister of Oil. While Sevan was in Europe, the Security Council passed Resolution 1293 on March 31, 2000, which doubled the funding of oil spare parts and equipment to \$600 million per phase. The resolution provided that up to \$600 million could be used “to meet any reasonable expenses, other than expenses payable in Iraq” resulting from oil spare parts and equipment contracts.²⁶⁹

E. THE FIFTH ALLOCATION

Phase VIII of the Programme ran from June 9 to December 5, 2000. SOMO’s initial crude oil allocation table of June 14 identified 1.5 million barrels of oil for “Mr. Sevan” as a special request under the country heading for Panama. AMEP was not mentioned in the list. This list was signed by Oil Minister Rashid on June 26, 2000, with a handwritten notation indicating that the list had been approved by both Saddam Hussein and Vice President Ramadan:

The Executive Director of the Marketing Company,

The oral approval of Mr. President, the leader – may God Protect him – was obtained and the oral notification of the Vice President of the Republic was communicated at the meeting of the Council of ministers on the morning of 25/6/2000.

Take the necessary action for execution.²⁷⁰

That summer, on July 10, 2000, Mr. Sevan met with Ambassador Hassan and Muwafaq Ayoub in preparation for his upcoming trip to Iraq. Among other things, Ambassador Hassan raised the delays in the processing and approval of applications and the high number of applications on hold. Mr. Sevan again observed that irrespective of the intensive efforts by the Secretariat to release holds, the ultimate decision on approvals remained the prerogative of the Security Council members. A week later, in a letter addressed to the Secretary-General, Oil Minister Rashid expressed frustration due to delays on contract holds, specifically for oil spare parts. In his reply, Mr. Sevan claimed to “fully share the frustrations of the distinguished Minister of Oil” with the contracts delays and affirmed the Secretary-General’s “serious concerns” about the “excessive” number of holds placed specifically on spare parts applications, which were “affecting adversely the effective implementation” of the Programme. Mr. Sevan described the “intensified campaign” to reduce the number of holds and promised to “continue our efforts to further reduce the number of holds.”²⁷¹

²⁶⁹ Benon Sevan request for travel authorization (Mar. 20, 2000) (regarding request for travel authorization for March 25-31, 2000); S/RES/1293 (Mar. 31, 2000).

²⁷⁰ Ministry of Oil record, Table of Allocations for Phase Eight of the Memorandum of Understanding (June 14, 2000) (translated from Arabic).

²⁷¹ Georges Nasr note (July 10, 2000) (regarding Benon Sevan’s meeting with the Permanent Representative of Iraq to the United Nations); Amer Rashid letter to Kofi Annan (June 27, 2000) (translated

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

Two days later, on July 19, 2000, Mr. Sevan sent an e-mail to Iraq's Ambassador Hassan with an attachment about a recent development in the Security Council on the expedited approval process for oil spare parts and equipment: "The group of experts will take action immediately to approve speedily contracts for oil spare parts and equipment necessary to enable Iraq to increase their export of petroleum and petroleum products, according to the project based list." In his e-mail, Mr. Sevan also informed the Ambassador that he had notified the Minister of Oil about this matter by e-mail. Phone records indicate that there was a call placed on the following day, July 20, 2000, from the telephone in Mr. Sevan's office at the United Nations to Oil Minister Rashid in Iraq.²⁷²

Also, on July 19, 2000, United Nations' phone records for Mr. Sevan's phone extension indicate that Mr. Sevan spoke by telephone with Mr. Abdelnour. On July 19, 2000, a telephone call was placed from Mr. Sevan's office at the United Nations to a cellular telephone number, which was listed under the name of "Fakhry Abdelnour" in Mr. Sevan's electronic contact list. The call lasted approximately six minutes.²⁷³

Two weeks later, from August 1 to August 16, 2000, Mr. Sevan returned to Iraq. On August 12, 2000, he met with Oil Minister Rashid who expressed his displeasure, among other matters, with OIP's lack of effort to reduce holds on oil spare parts and equipment.²⁷⁴

In the month following his return from Baghdad, Mr. Sevan returned to the Security Council on September 21, 2000, to complain about the large numbers of holds placed on contracts, including for oil spare parts:

I am sure some of you will now tell me: "Benon, come on, not again, you sound like a broken record!" Well, so be it. As the Executive Director of the Iraq Programme, I feel duty bound to draw the attention of the Council to the unacceptably high level of holds placed on applications. Just as playing a broken

from Arabic) (regarding contracts on hold); Benon Sevan note to the Secretary-General (July 17, 2000) (commenting on Minister Rashid's letter to the Secretary-General).

²⁷² Benon Sevan telephone records, United Nations (July 2000); Benon Sevan e-mail to Ambassador Saeed Hassan (July 19, 2000) (attaching a letter dated July 18, 2000 addressed to the Acting Chairman of the 661 Committee); Benon Sevan contact list from Lotus Organizer, entry for General Amer Rashid (recovered from Mr. Sevan's office computer at the United Nations). Searches by the Committee of available e-mail correspondence have not yet located the e-mail to the Minister of Oil, which was referenced in Mr. Sevan's e-mail to Ambassador Hassan.

²⁷³ Benon Sevan telephone records, United Nations (July 2000); Benon Sevan contact list file, folder location: c:\Documents and Settings\Benon.Sevan\My Documents\ (Apr. 8, 2000) (recovered from Mr. Sevan's office computer at the United Nations).

²⁷⁴ United Nations Quarterly Report on Absences from Duty Station (July to Sept. 2000); Benon Sevan record of mission to Iraq (Aug. 1-16, 2000); Unsigned note about meeting between Mr. Sevan and the Minister of Oil (Aug. 12, 2000). OIP meeting participants are identified as Benon Sevan, Tun Myat, and Georges Nasr.

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

record hurts the ear, every hold placed on an application for an essential supply affects the implementation of the [P]rogramme, or to put it another way, it hurts the Iraqi people.²⁷⁵

Mr. Sevan's time in Baghdad in August 2000 coincided with a visit by Mr. Abdelnour to sign another contract at SOMO for the 1.5 million barrels that had been allocated in the name of Mr. Sevan in late June. The signed contract was faxed to the United Nations oil overseers on August 15 and approved on August 17, 2000. SOMO records reflected a contract approval request dated August 15, 2000, that referenced the list of allocations approved by Saddam Hussein on June 25, 2000, and again included the name "Mr. Sevan" in parentheses next to AMEP.²⁷⁶

Mr. Abdelnour once again promptly traded the oil he bought from the allocation in the name of Mr. Sevan. On August 25, 2000, AMEP entered into a contract to sell 1.5 million barrels of oil to Shell. The parties agreed that Shell would lift approximately one million barrels around the end of November 2000 and the remaining 500,000 barrels around the beginning of December 2000. Under the terms of the contract, the price of the oil was set at SOMO's official selling price plus a premium of 23 cents per barrel.²⁷⁷

On November 29, 2000, Shell lifted the first installment of one million barrels from Ceyhan. This transaction resulted in revenue net bank fees of approximately \$183,967 to AMEP.²⁷⁸ The second installment, however, was never lifted because of a disruption in oil flows caused by Iraq's new and widely-publicized policy of requiring the payment of up to \$0.50 per barrel kickbacks outside the United Nations escrow account.²⁷⁹ This new policy was plainly in violation of the United Nations sanctions against Iraq.

²⁷⁵ Informal Consultations of the Security Council, "The Report of the Secretary-General pursuant to para. 5 of Security Council Resolution 1302 (2000)" (Sept. 21, 2000).

²⁷⁶ United Nations Oil Overseers fax to AMEP (Aug. 17, 2000); Saddam Z. Hassan fax to United Nations Oil Overseers (Aug. 14, 2000) (attaching contract M/08/96, which was executed on August 13, 2000); Ministry of Oil record, Saddam Z. Hassan letter to the Minister of Oil (Aug. 15, 2000) (translated from Arabic).

²⁷⁷ Shell record, STATSCO telex to AMEP (Sept. 6, 2000).

²⁷⁸ AMEP received approximately €29,418,426 from Shell for 951,655 barrels of oil, and it made payments of approximately €29,170,129 to the UN escrow account and approximately €0,634 to the bank for letter-of-credit fees. On top of Iraq's official selling price for this transaction, AMEP's premium was 23 US cents per barrel. For this transaction, AMEP's revenue net bank fees—converted to US dollars at the exchange rate of .93071 US Dollars/Euro for the payment date of December 28, 2000—was approximately \$183,967. See Shell record, AMEP invoice to STASCO (Dec. 7, 2000); UEB record, UEB statement for AMEP account (Dec. 31, 2000); SOMO invoice, C/314/2000 (Nov. 29, 2000); AMEP payment to United Nations escrow account (Nov. 29, 2000); FXConverter, "Exchange rate for December 28, 2000," <http://www.oanda.com/convert/classic>.

²⁷⁹ See, e.g., "Iraqi Oil Premium Could Lead to Sanctions Busting, UN Official Says," *Agence France Presse*, Nov. 16, 2000; "SOMO to Enforce 50 Cents/B Surcharge Thursday Midnight, Threatening Stoppage of Exports," *MEES News Flash*, Nov. 30, 2000.

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

At some point in November 2000, AMEP had been orally notified by SOMO about the new surcharge policy. When an inquiry to SOMO was made for approval for the vessel to load the oil in November, SOMO replied in a telex that the vessel had been confirmed “subject to your agreement of our proposal.” AMEP relayed the 50 cent surcharge proposal to Shell in a telephone conversation, and Shell swiftly rejected any change to the contractual price of the oil agreed upon by the parties, threatening to hold AMEP in breach of the contract.²⁸⁰

In the face of Shell’s resistance to covering the surcharge, an employee for AMEP then sent the following telex to Shell:

Please note that the verbal “proposal” from SOMO on November 17th, has been rejected by AMPC and is also in contradiction with the United Nations resolution.

On your request and for your information only, we are passing to you hereunder the proposal given to us verbally by SOMO.

They would like to have USDLR 0.50 per BBL paid directly into their bank account outside L/C. [letter of credit]

Concerning the postponement of the cargo to January 10th, 2001, please note that phase VIII ends on December 5th, 2000.

We are most anxious to co-operate with you in these circumstances which seem to be unusual and we look forward to staying in close touch with you.²⁸¹

AMEP then notified SOMO that its proposal would conflict with basic legal obligations by which it was bound and asked SOMO to reconsider on the oil lifting scheduled in December. SOMO rejected the December lifting “due to your non acceptance of our proposal.”²⁸²

While Mr. Abdelnour was encountering the business problems raised by the surcharges, Mr. Sevan was dealing with the fallout of Iraq’s new surcharge policy at the United Nations. With respect to the newly imposed surcharges, on November 30, 2000, Mr. Sevan informed the Deputy Secretary-General that no agreement had been reached between the oil overseers and the Government of Iraq on the fair market value of crude oil loading for the month of December. SOMO had submitted a lower market value to price its crude oil sales. Mr. Sevan explained that this was done “to allow the necessary margin for the buyers to pay Iraq 50 cents per barrel, with payments made into an account outside the control of the United Nations.” Such a surcharge and

²⁸⁰ Fakhry Abdelnour interviews (Jan. 17-19, 2005); AMEP record, SOMO telex to AMEP (Nov. 21, 2000); AMEP record, Shell telex to AMEP (Nov. 22, 2000).

²⁸¹ AMEP record, AMEP telex to Shell (Nov. 22, 2000).

²⁸² AMEP record, AMEP telex to SOMO (Nov. 22, 2000); AMEP record, SOMO telex to AMEP (Nov. 25, 2000).

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

deposit of funds outside the United Nations escrow account was unacceptable to the 661 Committee, and so Iraq had threatened to stop loading oil.²⁸³

On December 4, 2000, in an address to the Security Council, Mr. Sevan complained that the Programme's implementation in Iraq had become "politicized more than ever." Mr. Sevan noted that the Government of Iraq had stopped exporting oil as of midnight on November 30, 2000 because of a dispute over the pricing mechanism for the month of December. Mr. Sevan urged the Council to resolve the oil stoppage: "It is essential to adopt a Cartesian approach and find a pragmatic solution in order to ensure the resumption of oil exports for the sake of the Iraqi people."²⁸⁴

By December 7, 2000, Mr. Sevan reported to the Deputy Secretary-General that, as a result of discussions with SOMO, they had reached an agreement on pricing. In justifying a lower price for oil in December, Mr. Sevan observed that customers had cancelled vessels, end-users had found non-Iraqi sources of oil and customer confidence had been shaken in Iraqi crude oil. As directed by the Security Council, the oil overseers informed all buyers of Iraqi crude oil that the surcharges had not been approved by the Council and should not be paid.²⁸⁵

On March 7, 2001, Mr. Sevan wrote a note to Iqbal Riza, the Chef de Cabinet of the Secretary-General, as a follow up to their telephone conversation about a *New York Times* article reporting on oil surcharges and smuggling in Iraq. In his note, Mr. Sevan acknowledged that Iraq was imposing surcharges, but claimed that he could "neither deny nor confirm" the allegations of kickbacks. Mr. Sevan mentioned that when asked by the 661 Committee to comment on allegations of surcharges or kickbacks, he had stated that OIP had "no hard proof to corroborate" these allegations and that it was up to the permanent missions to address the allegations with the Security Council.²⁸⁶

The next month, from April 1 to April 5, 2001, Mr. Sevan was in Geneva on official business. His cellular phone records show that he again contacted Mr. Abdelnour—at least two calls were placed on April 3, 2001, from Mr. Sevan's cellular telephone to the cellular telephone listed for Mr. Abdelnour on Mr. Sevan's contact list.²⁸⁷

²⁸³ Benon Sevan note to the Deputy Secretary-General, "Still no pricing mechanism for oil sales in December" (Nov. 30, 2000).

²⁸⁴ Benon Sevan introductory statement, "Report of the Secretary-General Pursuant to Paragraph 5 of SCR 1302 (2000) of 8 June 2000, S/2000/1132 (Dec. 4, 2000).

²⁸⁵ Benon Sevan note to Deputy Secretary-General, "Oil price mechanism for December" (Dec. 7, 2000); Benon Sevan note to Deputy Secretary-General, "Oil exports from Iraq" (Jan. 10, 2001).

²⁸⁶ Benon Sevan note to Iqbal Riza, "Today's article in the New York Times" (Mar. 7, 2001); Barbara Crossette, "Iraq is Running Payoff Racket, U.N. Aides Say," *New York Times*, Mar. 7, 2001, p. A1.

²⁸⁷ United Nations Quarterly Report on Absences from Duty Station (Apr. to June 2001); Benon Sevan travel claim (May 09, 2001); Benon Sevan telephone records, T-mobile cellular (June 7, 2001).

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

F. THE SIXTH ALLOCATION

During Phase IX, which ran from December 6, 2000 to June 3, 2001, AMEP did not purchase oil allocated to Mr. Sevan. But four months after talking with Mr. Abdelnour in Geneva, Mr. Sevan received another allocation of crude oil for Phase X. A SOMO table of crude oil contracts, dated August 4, 2001, shows that an allocation of one million barrels of oil was made to “Mr. Sevan” as a special request under the country heading of Panama; AMEP is not referenced on the table. Mr. Abdelnour executed the contract, in Baghdad, on August 13, 2001. SOMO’s request for approval of the contract, dated August 14, 2001, again included a reference to “Mr. Sevan” in parentheses next to AMEP.²⁸⁸

Two weeks later, Shell again agreed to purchase the oil from AMEP. According to the terms of the contract, Shell would pay AMEP a premium of 38 cents per barrel.²⁸⁹ Shell lifted the oil from Ceyhan on September 10, 2001. For this transaction, AMEP’s revenue net bank fees was approximately \$380,723.²⁹⁰

During this time period, however, Iraq was still requiring oil buyers to pay an illegal surcharge. This time, Mr. Abdelnour decided to pay the surcharge. He has admitted that on October 22, 2001, he used approximately half of the proceeds from his sale of the oil to Shell to pay a surcharge of €77,978 to an Iraqi-controlled bank account in Jordan. Accordingly, AMEP’s revenue net of the surcharge payment totaled approximately \$220,635.²⁹¹

²⁸⁸ Ministry of Oil record, Table of Allocations for Phase Ten of the Memorandum of Understanding (Aug. 4, 2001) (translated from Arabic); Saddam Z. Hassan letter to the Minister of Oil (Aug. 14, 2001) (translated from Arabic) (seeking approval of the oil contract); Allegra Heifetz fax to the United Nations Oil Overseers (Aug. 15, 2001) (attaching contract M/10/48, which was executed on August 13, 2001).

²⁸⁹ AMEP record, Margaret Garrod telex (STASCO) to AMEP (Sept. 7, 2001).

²⁹⁰ For this transaction, involving 1,003,958 barrels of oil, Shell (and not AMEP) paid the oil purchase price of approximately €28,182,105 directly to the United Nations escrow account; in addition, Shell (and not AMEP) paid approximately €6,101 to the bank for letter-of-credit fees. These funds did not flow through AMEP’s account. However, Shell paid AMEP the agreed premium of 38 US cents per barrel, totaling approximately €13,631. For this transaction, AMEP’s revenue—converted to US dollars at the exchange rate of .92044 US Dollars/Euro for the payment date of October 9, 2001—totaled approximately \$380,723. See Shell record, AMEP invoice to STASCO (Sept. 18, 2001); Shell record, BNP credit utilization (Oct. 5, 2001); Shell record, STASCO memo (Oct. 8, 2001); Shell record, STASCO memo (Oct. 8, 2001); Shell record, STASCO memo (Oct. 8, 2001); AMEP fax to STASCO (Sept. 18, 2001); FXConverter, “Exchange rate for October 9, 2001,” <http://www.oanda.com/convert/classic>.

²⁹¹ AMEP record, Fax from Allegra Heifetz to Emma Watters (Shell International Trading and Shipping Co. Ltd.) with attached price calculation sheet (Sept. 17, 2001). Fakhry Abdelnour interview (Oct. 4, 2004); SOMO record, Ledger of surcharge payments into SOMO bank accounts (Aug. 23, 2004). The €77,978 surcharge payment—converted to US dollars at the exchange rate of .89948 US Dollars/Euro for the payment date of October 22, 2001—was equivalent to \$160,088. See FXConverter, “Exchange rate for October 22, 2001,” <http://www.oanda.com/convert/classic>.

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

G. THE FINAL ALLOCATIONS

SOMO continued to allocate oil to Mr. Sevan in later phases of the Programme—though the Committee does not have evidence that he requested such allocations. A SOMO table for crude oil contracts dated November 17, 2002, for example, had a revised allocation schedule for Mr. Sevan: 2.5 million barrels in the eleventh phase; 1.5 million barrels in the twelfth phase; and a proposed 1.5 million barrels in the thirteenth phase. A handwritten notation signed by Oil Minister Rashid stated that the figures had been discussed with “the Vice President of the Republic and Hikmat on the Morning of 18/7 and is final.”²⁹² However, Mr. Abdelnour did not trade the allocations after the tenth phase. Several factors, including the surcharges and the advent of “retroactive pricing” by the 661 Committee, made the allocations less desirable.²⁹³ SOMO officials claimed also that because some of Mr. Abdelnour’s surcharge payments were in arrears, AMEP was ineligible to purchase more oil (until paying the full balance).²⁹⁴

But even when AMEP did not lift the allocations granted by SOMO, Oil Ministry officials did not forget Mr. Sevan’s requests. Oil Minister Rashid, like other Iraqi officials became frustrated when Mr. Sevan’s official positions did not agree with that of the Oil Ministry. On one occasion, in 2002, the Ministry of Trade was short of funds. The Ministry of Oil, on the other hand, was ordered to transfer some of its unused Programme funds to other ministries. Oil Minister Rashid became angry and ordered that this decision to transfer funds from the Oil Ministry be investigated. He learned that the order resulted from a meeting arranged by Mr. Sevan in New York between the Minister of Foreign Affairs, Naji Sabri Al-Hadithi, and Secretary-General Kofi Annan. Upon learning of Mr. Sevan’s role in the meeting, Minister Rashid angrily exclaimed: “He forgot all of our favors?”²⁹⁵

In summary, as illustrated below in Table 1, Mr. Sevan solicited and received on behalf of AMEP oil allocations totaling 14.3 million barrels, of which AMEP lifted approximately 7.3 million barrels of oil, resulting in AMEP revenue (net of bank fees and surcharge payment) of approximately \$1.5 million.

²⁹² Ministry of Oil record, Ledger of Outstanding Surcharge Payments due to SOMO (June 16, 2004); Table of Allocations for Phase Eleven of the Memorandum of Understanding (Dec. 1, 2001) (translated from Arabic); Table of Allocations for Phase Twelve of the Memorandum of Understanding (May 19, 2002) (translated from Arabic); Table of Allocations for Phase Thirteen of the Memorandum of Understanding (Nov. 17, 2002) (translated from Arabic); Iraq official interview.

²⁹³ In response to information indicating that the prior procedure followed by the 661 Committee for setting an advance monthly price for oil allowed for excessive premia—between the set price and the actual market price of Iraqi oil—certain members of the 661 Committee, in October 2001, instituted a “retroactive pricing” procedure designed to ensure that there was no premium from which surcharges and kickbacks could be paid to the Iraq regime. See 661 Committee Annual Report, S/2002/647, para. 13 (June 5, 2002).

²⁹⁴ Fakhry Abdelnour interviews (Jan. 17-19, 2005).

²⁹⁵ Iraq official interview.

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

Table 1

Summary of AMEP Allocations and Liftings in Connection with Benon Sevan

Allocation No.	OFFP Phase	Oil Allocation (Barrels)	Secondary Purchaser	Lifting Date	Barrels Lifted	AMEP's Contracted Premium per Barrel	AMEP's Revenue Net of Bank Fees & Surcharge ¹
1	4	1,800,000	Shell	19-Nov-98	943,016	\$ 0.16	
			Addax	22-Nov-98	<u>893,340</u>	\$ 0.15 ²	
							\$ 298,576
2	5	1,000,000					
3	6	2,000,000	Shell	21-Oct-99	1,000,000	\$ 0.28	
			Shell	21-Nov-99	<u>1,009,578</u>	\$ 0.28	
							490,914
4	7	1,500,000	Shell	5-Apr-00	988,854	\$ 0.25	
			Shell	2-Jun-00	<u>500,000</u> ³	\$ 0.25	
						1,488,854	306,218
5	8	1,500,000	Shell	29-Nov-00	951,655	\$ 0.23	183,967 ⁴
-	9	-	-	-	-		-
6	10	1,000,000	Shell	10-Sep-01	1,003,958	\$ 0.38	220,635 ^{4,5}
7	11	2,500,000					
8	12	1,500,000					
9	13	1,500,000					
		14,300,000			7,290,401		\$ 1,500,310

Note 1: AMEP Revenue is net of \$197,922 of bank fees paid by AMEP for letters of credit (including the fees associated with purchase of Lukoil's allocation, See Note 3) and €177,978 (\$160,088) AMEP paid SOMO in surcharges.

Note 2: AMEP charged Addax an additional 3 cents per barrel, or \$0.18 per barrel, above the official selling price.

Note 3: Shell lifted 996,115 barrels of oil on June 2, 2000. Only 500,000 of these barrels were part of an allocation to AMEP and Sevan. The remaining 496,115 barrels were purchased by AMEP from an allocation to Lukoil. AMEP also sold these barrels on to Shell.

Note 4: Amounts were converted from Euros to U.S. Dollars based on an exchange rate at the date of payment.

Note 5: AMEP made a partial surcharge payment of €177,978 (\$160,088) to a SOMO account on October 22, 2001.

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

VI. EXPLANATIONS OF BENON SEVAN AND FAKHRY ABDELNOUR

Mr. Sevan denies that he asked for oil allocations or recommended any company to Iraqi officials for purchasing oil, and Mr. Abdelnour also has stated that Mr. Sevan did not assist AMEP in obtaining oil allocations from Iraq.²⁹⁶ However, as described above, these claims are squarely contradicted by the firsthand accounts of Iraqi officials involved and the extended chain of internal SOMO records documenting the oil allocations.

On January 21, 2005, Mr. Sevan was interviewed by the Committee. At this interview, Mr. Sevan acknowledged that he “might have mentioned” AMEP to Oil Minister Rashid. In particular, after being shown the SOMO document of August 10, 1998, that references Mr. Sevan’s contacts with Oil Minister Rashid and the telephone calls from Mr. Ayoub to SOMO on his behalf, Mr. Sevan stated that “there was a call from the company [AMEP] to me . . . [about] how they can go about getting oil imports under the [P]rogramme.” Mr. Sevan said: “And I told them the procedures that are to, what do they call, to register themselves to the Permanent Mission, etcetera etcetera.”

Q. Well, after making that suggestion did you ever tell the Iraq Oil Minister that this is a company that wanted to lift oil?

A. I might have mentioned, I don’t know.

Mr. Sevan added: “Even if I had mentioned it, it was never meant as a recommendation. Because I never made recommendations to anybody.”²⁹⁷

The difficulty the Committee has with Mr. Sevan’s account is that it was not his duty as Executive Director of OIP to notify SOMO of each of the scores of companies that registered to buy oil under the Programme. SOMO was not required to receive notice that any particular company had registered with the United Nations. Moreover, AMEP did not register with the oil overseers until September 30, 1998—*after* signing its contract with SOMO, well after Mr. Sevan’s trip to Iraq in June 1998, and after the communications referenced in the August 10 document that he was shown. Accordingly, Mr. Sevan’s suggestion that he advised AMEP of the registration process and then spoke to the Oil Minister about AMEP is not plausible.

²⁹⁶ Benon Sevan interviews (Sept. 29, 2004 and Jan. 21, 2005); Fakhry Abdelnour interviews (Oct. 4 and 7 2004, and Jan. 17-19, 2005). At a press briefing on February 10, 2004, the spokesman of the Secretary-General of the United Nations, read a statement from Mr. Sevan denying any wrongdoing: “I should like to state that there is absolutely no substance to the allegations made in a local Iraqi newspaper, now appearing in some international media, that I had received oil or oil monies from the former Iraqi regime.” Fred Eckhard briefing, “Iraq Program Chief Response to Reported Corruption Allegations” (Feb. 10, 2004) (quoting Mr. Sevan).

²⁹⁷ Benon Sevan interview (Jan. 21, 2005).

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

Mr. Sevan further equivocated when questioned about whether he pressed AMEP's name again to Oil Minister Rashid at the March 1999 OPEC conference in Vienna:

Q. In the meeting in Vienna, did you ever have any discussions with the Oil Minister about lifts for this particular company?

A. No.

Q. Or the amount of lifts that this particular company would get?

A. Well, like I said, the guy wants more.

Q. You would have said that?

A. I might have said, yeah.

When asked again whether he ever told the Oil Minister that AMEP wanted more oil, Mr. Sevan replied: "I don't know. I don't remember."²⁹⁸

Mr. Sevan initially claimed and Mr. Abdelnour continues to claim that they met only once at the March 1999 OPEC conference in Vienna and that they had no other contacts.²⁹⁹ But these claims are refuted by the telephone records—as discussed above—which show a six minute telephone call from Mr. Sevan's United Nations telephone to Mr. Abdelnour on July 19, 2000, and two more calls from Mr. Sevan's cellular telephone to Mr. Abdelnour on April 3, 2001.

When Mr. Sevan was interviewed by the Committee on January 21, 2005, his description of past contacts with Mr. Abdelnour evolved: from a chance meeting in Vienna; to a second chance meeting at restaurant in Geneva; to having developed an acquaintanceship with Mr. Abdelnour lasting over several years. After being shown telephone records of several calls between himself and Mr. Abdelnour, Mr. Sevan volunteered that he had become friendly with Mr. Abdelnour and contacted him when he was in Geneva. Mr. Sevan added: "I came to like the guy. He is an interesting character you know, he's been around the world."³⁰⁰

During the January 21 interview, Mr. Sevan claimed for the first time that in Vienna, Mr. Abdelnour had asked him about the requirement that oil purchasers execute the SOMO contracts in person in Baghdad. According to Mr. Sevan, despite just having met Mr. Abdelnour, he agreed to put Mr. Abdelnour's question to Iraqi Oil Minister Amer Rashid. Mr. Sevan said that he asked the Oil Minister about the contract signing requirement because he himself was

²⁹⁸ Ibid.

²⁹⁹ Benon Sevan interview (Sept. 29, 2004); Fakhry Abdelnour interviews (Oct. 4 and 7, 2004 and Jan. 17-19, 2005).

³⁰⁰ Benon Sevan interview (Jan. 21, 2005).

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

interested in the answer. Mr. Sevan stated that he did not get a clear answer from the Oil Minister and relayed this to Mr. Abdelnour and told Mr. Abdelnour that he would pursue it.³⁰¹

Mr. Abdelnour made no mention during his interview of having sought Mr. Sevan's assistance in registering with the Programme. On the contrary, Mr. Abdelnour provides a substantially different account of these events. He confirmed that AMEP was registered with the oil overseers after he had received the oil contract with SOMO, and that—though he came to New York to meet with the Ambassador from Panama—it ultimately was unnecessary because it had been accomplished through correspondence with Panama's Mission.³⁰²

When asked why he was provided oil allocations, Mr. Abdelnour replied that it was a “good question” and that the Committee should “ask the Iraqis.” He then suggested that SOMO was not naïve and knew his customer was Shell and that—through AMEP—the Iraqis could sell to Shell. Mr. Abdelnour's explanations are contradicted by his own statements as well as the SOMO records and the Iraqi officials who have been interviewed.³⁰³

Furthermore, records of Mr. Sevan's telephone contacts with Mr. Abdelnour reflect more than a passing or casual acquaintance. A review of the records from Mr. Sevan's office uncovered two business cards for Mr. Abdelnour: one with AMEP's business address from the time of the Vienna meeting and the other with a subsequent business address.³⁰⁴ This certainly suggests more than one meeting with Mr. Abdelnour over the years.

³⁰¹ Ibid.

³⁰² Fakhry Abdelnour interviews (Oct. 4 & 7, 2004 and Jan. 17-19, 2005).

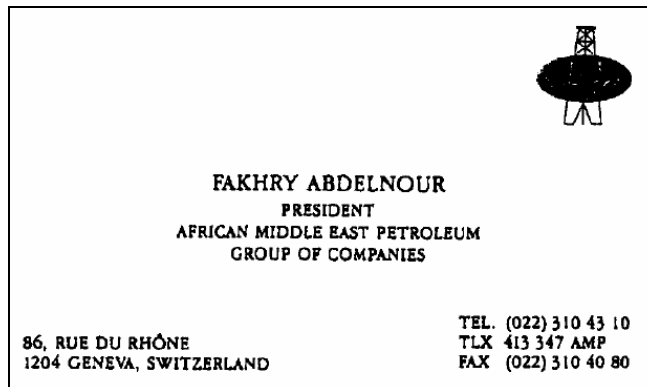
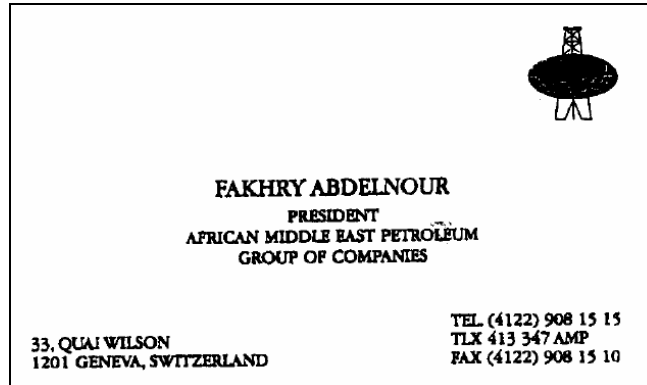
³⁰³ Ibid. However, Mr. Abdelnour acknowledged that he paid money to an Iraqi business partner in an effort to obtain assistance from the Iraqi regime in a number of business matters. He had hoped that this same person might have been able to influence the oil allocation quantities AMEP received, but he is unsure if the partner ever did so.

³⁰⁴ Benon Sevan files, United Nations. The two business cards of Fakhry Abdelnour were located inside a cigar box and are included as PDF images above.

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

Document 4. Fakhry Abdelnour business cards.



In addition, telephone contact lists—personally updated and edited by Mr. Sevan throughout his tenure as Executive Director—include scores of individuals, but list only one oil company: AMEP. The earliest of these lists recovered from Mr. Sevan’s computer, dated in July 1999, lists Fakhry Abdelnour and AMEP, but it includes only a cellular telephone number for Mr. Abdelnour, a number that does not appear on any of the business cards. The next version of the contact list, dated April 2000, a full year after the Vienna meeting, includes yet more contact information for AMEP, including the new office address, as well as the office facsimile and telephone numbers. This information is repeated in a third contact list, dated September 2002, more than three years after the March 1999 meeting in Vienna. Even on this list from 2002, AMEP is still the only oil company on these lists.³⁰⁵

³⁰⁵ Benon Sevan computer file, folder location: c:\WP51DOC\ (July 26, 1999) (recovered from Mr. Sevan’s office computer at the United Nations); *ibid.*, folder location: c:\Documents and Settings\Benon.Sevan\My Documents\ (Apr. 8, 2000) (recovered from Mr. Sevan’s office computer at the United Nations); Benon

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

More troubling is Mr. Sevan's account of his contact with Mr. Abdelnour well after the end of the Programme and after the United Nations started receiving reports from investigator Claude Hanks-Drielsma, in December 2003, about illicit activity in the Programme.³⁰⁶ Mr. Sevan's telephone records reveal that while he was traveling in Switzerland on January 13, 2004, he placed two calls, lasting one and eight minutes, respectively, to Mr. Abdelnour's cellular telephone.³⁰⁷

Mr. Sevan readily recalled the circumstances of these calls in January 2004. He said that he accidentally called Mr. Abdelnour's number:

I had him on my cell phone, ok, and I wanted to dial someone. By mistake I pressed the button, I think I told you this before, I pressed the button and suddenly, instead of a woman's voice, a man's voice came up and then I hang up.

...

And then if you look at it, I looked and almost immediately thereafter, here [referring to the telephone records] five o nine and five eleven, and I look at the log and suddenly see his name and I say I might as well call the guy and you know.³⁰⁸

Mr. Sevan's cellular telephone call log shows that the calls to Mr. Abdelnour were not accidental, but rather deliberate. Mr. Sevan could not have seen Mr. Abdelnour's name appear on the log, because the log—generated at the time the calls were made—does not display Mr. Abdelnour's name. The log also shows that Mr. Sevan dialed Mr. Abdelnour's number not twice but *three* times on this occasion and that the number was dialed differently the first time, indicating that Mr. Sevan had to manually have dialed the number on at least one of these occasions.³⁰⁹

In addition, contrary to the claim of Mr. Sevan and Mr. Abdelnour that they met by chance in Vienna, phone records suggest their communication through a mutual friend who likely served as an intermediary between the two of them. Both Mr. Sevan and Mr. Abdelnour have acknowledged having a friendship with Fred Nadler, who alternates among New York, Geneva, and Egypt. Mr. Sevan stated that after his return from Afghanistan in 1992, he met Mr. Nadler

Sevan contact list file, c:\RECYCLERS\S-1-5-21-1266704185-1068072124-262303683-10058\Dc9.doc (Sept. 15, 2002) (recovered from Mr. Sevan's office computer at the United Nations).

³⁰⁶ Claude Hanks-Drielsma e-mail to Secretary-General Kofi Annan (Dec. 5, 2003); Hans Corell note to the Secretary-General (Dec. 16, 2003) (regarding a letter from Claude Hanks-Drielsma on Iraq); Claude Hanks-Drielsma e-mail to Hans Corell (Feb. 1, 2004) (regarding an independent United Nations inquiry); Yohannes Mengesha note, "Note on meeting on allegations of bribery within the context of the Oil-for-Food Programme" (Feb. 6, 2004).

³⁰⁷ Benon Sevan telephone record, T-mobile cellular (Jan. 25, 2004).

³⁰⁸ Benon Sevan interview (Jan. 21, 2005).

³⁰⁹ Benon Sevan cell phone log, c:\Program Files\Handspring\benon\Backup\PhoneCallDC.PDBC (recovered from Mr. Sevan's United Nations computer).

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

and his brothers at United Nations receptions or meetings at which Secretary-General Boutros Boutros-Ghali, their brother-in-law, spoke. Mr. Abdelnour, a cousin of the former Secretary-General, stated that he is a good friend of Mr. Nadler's and that one of Mr. Abdelnour's uncles was the Nadler family lawyer.³¹⁰

When questioned about the connection between Mr. Nadler and Mr. Abdelnour, Mr. Sevan claimed that he had not learned about their friendship until just before Programme allegations had surfaced in the press. Mr. Sevan also claimed that he did not recall asking Mr. Nadler about his friendship with Mr. Abdelnour. Mr. Sevan further claimed that he could not recall if Mr. Abdelnour passed messages to him through Mr. Nadler.³¹¹

However, a review of records for three telephone numbers used by Mr. Nadler to communicate with Mr. Sevan indicates that, on many occasions, Mr. Nadler was the likely intermediary between Mr. Sevan and Mr. Abdelnour. The records confirm that Mr. Sevan and Mr. Nadler were in close contact on an almost weekly basis from at least 1998 through 2004. Significantly, the records show also that Mr. Nadler was in regular telephone contact with Mr. Abdelnour, in September 1998, when AMEP received its first SOMO contract and registered with the oil overseers.³¹²

The records show a marked increase in telephone calls between the Sevan and Nadler telephone numbers and during a two week period after Mr. Sevan's summer 1998 trip to Iraq during which he requested the initial oil allocation. The records also show an increased number of concurrent calls between these telephones, and also between Mr. Nadler and Mr. Abdelnour during other significant periods, including: (1) when AMEP received its first SOMO contract and registered

³¹⁰ Benon Sevan interview (Jan. 21, 2005); Fakhry Abdelnour interviews (Jan. 17-19, 2005).

³¹¹ Benon Sevan interview (Jan. 21, 2005).

³¹² The pertinent telephone records cover three telephone numbers subscribed to Emanuel Nadler, Fred Nadler's brother, at three apartments in New York City. The first telephone number, which was most frequently used to call Mr. Sevan and Mr. Abdelnour, was in Fred Nadler's residence. The second number was in an office in Emanuel Nadler's apartment, which was used both by Emanuel and Fred Nadler. The third number, which was used only on occasion, was in the Nadlers' mother's apartment. Emanuel Nadler has stated that he never called Mr. Abdelnour on the telephone and that any telephone calls would have been from his brother Fred. Furthermore, according to a review of Mr. Sevan's electronic calendar and telephone log, Fred Nadler used all three telephone numbers to call Mr. Sevan at his office. This review, as well as an interview of Mr. Sevan's former OIP colleague, Stephani Scheer, reveals that Mr. Sevan had almost exclusive contact with Fred in the Nadler family. See Nadler family telephone records, Verizon (1998-2004) (involving the three Nadler family residences in New York); Benon Sevan computer file, folder location: c:\WP51DOC\ (July 26, 1999) (recovered from Mr. Sevan's office computer at the United Nations); *ibid.*, folder location: c:\Documents and Settings\Benon.Sevan\My Documents\ (Apr. 8, 2000) (recovered from Mr. Sevan's office computer at the United Nations); Benon Sevan contact list file, c:\RECYCLERS\S-1-5-21-1266704185-1068072124-262303683-10058\Dc9.doc (Sept. 15, 2002) (recovered from Mr. Sevan's office computer at the United Nations); Benon Sevan Lotus Organizer and Electronic Calendar (recovered from Mr. Sevan's office computer at the United Nations); Emanuel Nadler interview (Feb. 1, 2005); Stephani Scheer interview (Jan. 26, 2005).

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

with the Programme in September 1998; (2) just before and after the first lifts of oil allocations in November 1998; (3) when the oil allocation was decreased in January 1999; (4) prior to and during the OPEC conference in Vienna; (5) in early March 1999, when AMEP had not yet received an allocation for Phase VI; (6) around the time of Mr. Sevan's trip to Iraq, when an allocation was finally granted in July 1999; (7) when the allocation was sold and loaded in the fall of 1999; and (8) when the final allocations were sold by AMEP prior to the imposition of the surcharges around November 2000.³¹³

On November 17, 2000, when SOMO communicated its verbal surcharge offer of a \$.50 per barrel surcharge to AMEP, several phone calls were made between the numbers used by Mr. Nadler and Mr. Abdelnour and between Mr. Nadler and Mr. Sevan. The calls, very close together in time, started at 11:06 a.m. New York time, when AMEP's Geneva office was at the end of its business day and the SOMO offices had already closed. The first call was from Mr. Nadler's telephone to Mr. Abdelnour's cellular telephone and lasted about four minutes. Immediately thereafter a call was placed from Mr. Nadler's telephone to Mr. Sevan's cellular telephone at 11:10 a.m., and again at 11:44 a.m. Very shortly after the second call to Mr. Sevan's telephone, a call was placed from Mr. Nadler's telephone to Mr. Abdelnour's telephone.³¹⁴

The timing of other telephone calls among the three men also suggests that they were in communication with each other. The following are some examples of the patterns of calls placed primarily from Mr. Nadler's telephone as well as from two other telephones listed at Nadler residences:³¹⁵

³¹³ Nadler family telephone records, Verizon (1998-2004) (involving three Nadler family residences in New York).

³¹⁴ Ibid.

³¹⁵ Ibid.

PART TWO**CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS**

Date	Time	Phone
November 14, 1998	10:05 a.m.	Mr. Sevan's office
	10:33 a.m.	Mr. Abdelnour's cellular
	10:34 a.m.	Mr. Abdelnour's cellular
January 14, 1999	8:28 a.m.	Mr. Sevan's apartment
	8:49 a.m.	Mr. Abdelnour's cellular
	9:27 a.m.	Mr. Abdelnour's office
January 27, 1999	7:54 a.m.	Mr. Abdelnour's cellular
	7:56 a.m.	Mr. Abdelnour's cellular
	8:03 a.m.	Mr. Sevan's apartment
March 1, 1999	7:40 a.m.	Mr. Abdelnour's cellular
	7:46 a.m.	Mr. Abdelnour's cellular
	7:51 a.m.	Mr. Sevan's apartment
March 3, 1999	9:28 a.m.	Mr. Abdelnour's office
	9:56 a.m.	Mr. Abdelnour's cellular
	10:15 a.m.	Mr. Sevan's office
June 4, 1999	10:14 a.m.	Mr. Abdelnour's cellular
	11:10 a.m.	Mr. Abdelnour's cellular
	11:11 a.m.	Mr. Abdelnour's office
	11:15 a.m.	Mr. Sevan's office
July 22, 1999	10:34 a.m.	Mr. Abdelnour's cellular
	10:36 a.m.	Mr. Abdelnour's cellular
	11:11 a.m.	Mr. Sevan's office

In addition, Mr. Sevan was questioned about cash income he received while Executive Director outside his United Nations salary. Mr. Sevan declared on his annual United Nations Financial Disclosure Forms, from 1999 through 2003, that he received a total of \$160,000 in cash income

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

from an elderly aunt (now deceased), Berdjouchi Zeytounsian, who lived in Cyprus.³¹⁶ His financial disclosure forms provided the following pertinent information:

Year	Source	Amount
1999	Cash from aunt	\$50,000
2000	Cash from aunt	\$45,000
2001	Cash from aunt	\$30,000
2003	Cash from aunt	\$35,000

Mr. Sevan told Committee investigators that his aunt, Ms. Zeytounsian, brought into the United States “\$20,000 or \$30,000 in cash” and gave him cash gifts in amounts ranging from \$1,000 to \$50,000 to defray the expenses of her annual stay with Mr. Sevan and his family in New York.³¹⁷

Nothing about Mr. Sevan’s aunt’s livelihood suggests that she possessed large amounts of disposable cash income. Ms. Zeytounsian had been a retired Cyprus government photographer, living on a modest pension, for about twenty years. According to a longtime family friend, Ms. Zeytounsian had never shown signs of having access to large amounts of cash and would not have been expected to carry large amounts of cash outside the country. During her retirement, Ms. Zeytounsian lived in a small, plain two-bedroom apartment in Cyprus that had been purchased by Mr. Sevan.³¹⁸

Ms. Zeytounsian’s banking activities also were consistent with a lack of wealth. She maintained a bank account at the local branch of the Bank of Cyprus. A customer representative familiar with Ms. Zeytounsian recalled that she came into the bank monthly to verify that her pension (£319.88) and government social insurance (£215.17) payments had been deposited directly into her bank account. For 2004, her bank account revealed that her primary sources of income were the pension and government social insurance payments, and her few withdrawals ranged from approximately £50 to £500. The only significant transaction in her account during that time period consisted of the withdrawal of £5,000, which she made in anticipation of a scheduled trip to United States in May 2004. The only source of apparent savings was a certificate of deposit

³¹⁶ Benon Sevan financial disclosure form (1999); Benon Sevan financial disclosure form (2000); Benon Sevan financial disclosure form (2001); Benon Sevan financial disclosure form (2002); Benon Sevan financial disclosure form (2003). Mr. Sevan signed each of these forms, on which he noted also that he received no benefit other than disclosed on the form.

³¹⁷ Benon Sevan interviews (June 8, Sept. 29, and Oct. 18, 2004).

³¹⁸ Harry Kupelian interview (Oct. 5, 2004); Benon Sevan interview (Oct. 18, 2004). This also is consistent with the observations of the Committee’s representatives during a visit to Ms. Zeytounsian’s apartment in Cyprus.

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

for approximately £37,399, which she held jointly with her nephew, Mr. Sevan, and which had been opened in September 1999 and closed by Mr. Sevan in April 2004.³¹⁹

The Committee's investigation of the full scope and extent of benefits received by Mr. Sevan is continuing.

Last, before publishing this Report, the Committee notified Mr. Sevan about its proposed adverse findings against him. On January 26, 2005, Mr. Sevan and his counsel received notice from the Committee that it proposed to make certain findings regarding his conduct relating to the Programme. Mr. Sevan was invited to respond to the Committee, either in the form of a written submission or a meeting with the Committee. On January 28, 2005, the Committee staff met with Mr. Sevan's counsel to discuss the allegations and evidence against Mr. Sevan and to review Mr. Sevan's responses to questions during previous interviews.³²⁰ On January 31, 2005, Mr. Sevan's counsel reviewed the documentary evidence at the offices of the Committee. Mr. Sevan submitted a written response to the Committee on February 2, 2005. Mr. Sevan's response was provided on a confidential basis and is therefore not contained in this report; the Committee will publish the response on its website upon Mr. Sevan's written request.

Similarly, on January 26, Mr. Abdelnour and his counsel received notice from the Committee of its proposed adverse findings against him. Mr. Abdelnour likewise was invited to respond to the Committee. His counsel provided a written response on January 31, 2005. Mr. Abdelnour's response was provided on a confidential basis and is therefore not contained in this report; the Committee will publish the response on its website upon Mr. Abdelnour's written request.

³¹⁹ Demetris Kattos and Contantinos Varnavides interview (Dec. 8, 2004). Mr. Kattos, Personal Line Manager, and Mr. Varnavides, a Customer Services Representative, are employees of the Evagoras Avenue branch of the Bank of Cyprus in Nicosia, Cyprus.

³²⁰ Early in the investigation, Mr. Sevan was offered access to his office records and materials. Although Mr. Sevan met with the Committee on May 18, 2004, he was unwilling to discuss the allegations against him at that meeting. Mr. Sevan thereafter met with the Committee on June 9 and 10; August 25 and 27; September 14, 24, 29, and 30; October 4 and 18; and November 4, 2004, but he was unwilling to be formally interviewed regarding the allegations until January 21, 2005.

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

VII. FINDINGS AND CONCLUSIONS

As outlined in the Introduction, the Committee set out to answer the following questions:

1. Did Mr. Sevan on behalf of AMEP request and receive one or more allocations of oil from Iraq for purchase by AMEP while employed as Executive Director of OIP?
2. Did Mr. Sevan's solicitation of oil allocations as Executive Director of OIP amount to a conflict of interest and violate the United Nations Charter and staff conflict-of-interest rules?
3. Was Mr. Sevan forthcoming to the Committee concerning the circumstances surrounding his requests for oil allocations on behalf of AMEP?
4. Is Mr. Sevan's explanation regarding cash income he received in addition to his United Nations salary supported by information available to the Committee?

Findings:

1. The Committee concludes that Mr. Sevan, while employed as Executive Director of OIP, solicited and received on behalf of AMEP several million barrels of allocations of oil from 1998 to 2001. As a result of Mr. Sevan's conduct, AMEP's revenue—net bank fees and surcharge payment—totaled approximately \$1.5 million.
2. The Committee finds also that Mr. Sevan's solicitations on behalf of AMEP and AMEP's resulting purchases of oil presented a grave and continuing conflict of interest, were ethically improper, and seriously undermined the integrity of the United Nations. Mr. Sevan was in an extremely important position with great power and authority to exercise influence over the Programme's administration. He was positioned to affect matters of substantial interest to the Government of Iraq, and the Government of Iraq hoped that he would act favorably in return for the allocations that he was granted. Moreover, throughout the time that these oil allocations were granted, Mr. Sevan was involved officially in areas of the Programme that were highly significant to the Ministry of Oil, including the funding of the repair and maintenance of Iraq's oil infrastructure, and the lifting of holds on contracts for oil-related spare parts and equipment. Mr. Sevan was not the only one in favor of such oil-related causes, and it is possible that—even without the oil grants—he still would have championed these causes. But the fact remains that Mr. Sevan would not have been permitted to remain in a trusted position, as a liaison responsible for conveying information to and counseling the Secretariat and Security Council, had he disclosed his personal involvement in oil allocations. In any event, by soliciting oil allocations from the Government of Iraq on behalf of AMEP—while acting in the capacity of Executive Director of OIP—Mr. Sevan violated the Charter of the United Nations and various Staff Regulations and Rules of the United Nations by:
 - a. Acting in a manner that did not favorably reflect on his position as an international official responsible only to the Organization (Article 100 – Charter of the United Nations (1945));

PART TWO

CHAPTER 4 - BENON SEVAN AND OIL ALLOCATIONS

- b. Failing to discharge his duties only in the interests of the United Nations (Staff Regulations 1.1 and 1.9 (1995-98); Staff Regulations 1.1(b), 1.2(e), and 1.3(a), and Staff Rule 101.3(a) (1999-2003));
 - c. Failing to conduct himself at all times in a manner befitting his status as an international civil servant and engaging in an activity that was incompatible with the proper discharge of his duties on behalf of the United Nations, thereby reflecting adversely on his status, integrity, impartiality, and independence as required by his position (Staff Regulation 1.4 (1995-98), and Staff Regulations 1.2(b) and (f) (1999-2003)); and
 - d. Actively associating with a business concern (namely AMEP), where it was possible for him to benefit from such association by reason of his official position with the United Nations, thus creating a conflict of interest that deprived the United Nations of his ability to properly discharge his duties on behalf of the Organization (Staff Rule 101.6(b) (1995-98)).
3. In addition, Mr. Sevan was not forthcoming to the Committee when he denied approaching Iraqi officials and requesting oil allocations on behalf of AMEP. Mr. Sevan failed to disclose the full nature and extent of his contacts and relationship with Mr. Abdelnour as well as the full nature and extent of communications among Mr. Abdelnour, Mr. Nadler, and himself, regarding oil allocations under the Programme.
4. Last, the Committee finds that Mr. Sevan's statements regarding the source of the additional cash income, which he disclosed on his United Nations Financial Disclosure Forms for years 1999 to 2003, are not adequately supported by the information reviewed by the Committee.

The Committee continues to investigate whether Mr. Sevan or any other individuals or entities received any personal or financial benefit in return for Mr. Sevan's solicitation of oil allocations on behalf of AMEP.

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

CHAPTER 5

I. INTRODUCTION

The Committee's recent Briefing Paper, issued on January 9, 2005, provided perspective on the scope and findings of the audits conducted by the Internal Audit Division ("IAD") in relation to the Programme.³²¹ Expanding on the Briefing Paper, this Chapter addresses how IAD executed its duties and responded to challenges that it encountered regarding the Programme. Specifically, this Chapter answers the following questions:

1. Did IAD have sufficient funding and staff to adequately audit the Programme?
2. Were all the important aspects of the Programme fully audited by IAD?
3. Did IAD properly report its audit findings and monitor implementation of its recommendations?
4. Was IAD able to resolve contentious issues relating to Programme audits?
5. Do IAD policies and procedures conform to the best practices of internal audit?

In addressing these questions, this Chapter elaborates on the main concerns raised in the Briefing Paper, including how IAD's effectiveness was severely diminished by limitations of audit scope and the slow start of its Programme audits. For audits that were conducted, follow-up by both IAD and management to audit recommendations was at times not forceful or timely, and management apparently did not implement a significant proportion of IAD's critical recommendations.

Admittedly, the Programme would have significantly challenged any internal audit department. Effective oversight required exceptional resources, firm organizational support, and compliance with "best practice" policies and procedures. Although the Committee believes that IAD did not fulfill its mandate by failing to audit and report on critical aspects of the Programme, it recognizes that IAD's auditors were committed and diligent in the audits they performed, and they made many valuable recommendations for improvement. In fact, the accomplishments of this small group of audit staff appear to be greater than would be anticipated based on their number alone.

³²¹ Independent Inquiry Committee into the United Nations Oil-for-Food Programme, "Briefing Paper – Internal Audit Reports on the United Nations Oil-for-Food Programme," <http://www.iic-offp.org/documents.htm>. Since the release of this Briefing Paper and the publication of the fifty-eight IAD reports on the Programme and the United Nations Compensation Commission ("UNCC"), the three inspection companies that are the subjects of particular audit reports—Lloyd's, Saybolt, and Cotecna—have contacted the Committee to protest the public release of these reports and to note their disagreement with some or all of the findings. Although the Committee has not commented on the substance of these findings, it will do so, where relevant, in its future report on the Programme's administration.

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

The Committee's assessment of IAD is based on full access to United Nations' records, including related correspondence, internal audit working papers, and interviews regarding the Programme. Based on these observations, the Committee includes in its Interim Report recommendations to the United Nations to help provide IAD with the mandate, structure, and support to enhance its ability to operate effectively and meet future challenges.

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

II. BACKGROUND – OVERSIGHT OF THE UNITED NATIONS SYSTEM

A. OFFICE OF INTERNAL OVERSIGHT SERVICES

1. Overview

In 1994, recognizing the need to bolster oversight functions within the United Nations, the General Assembly established the Office of Internal Oversight Services (“OIOS”) under the direction of an Under-Secretary-General for Internal Oversight Services. Resolution 48/218B provided OIOS with “*operational independence* under the authority of the Secretary-General” and highlighted OIOS’s broad mandate “to initiate, carry out and report on *any action which it considers necessary* to fulfill its responsibilities.”³²² In this regard, the Resolution identified five critical functions within OIOS’s purview: (1) monitoring³²³; (2) internal audit³²⁴; (3) inspection and evaluation³²⁵; (4) investigation³²⁶; and (5) implementation of recommendations and reporting procedures³²⁷. The General Assembly reaffirmed Resolution 48/218B, in Resolution 54/244 (1999), subject to several refinements of OIOS’s operations.³²⁸

Shortly after Resolution 48/218B, the Secretary-General issued a Bulletin providing, among other things, that OIOS shall “discharge its responsibilities without any hindrance or need for prior

³²² A/RES/48/218B, paras. 4-5(a) (July 29, 1994) (emphasis added); see also *ibid.*, para. 10 (requesting that the Secretary-General’s budget proposals reflect OIOS’s independence). In keeping with its operational independence, the Under-Secretary-General possesses significant control over OIOS’s personnel arrangements. ST/AI/2003/4 (Mar. 21, 2003); ST/AI/401 (Jan. 18, 1995).

³²³ The focus of the monitoring function is “assist[ing] the Secretary-General in implementing the provisions of article V of the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation on monitoring of programme implementation.” A/RES/48/218B, para. 5(c)(i) (July 29, 1994). These regulations were updated in 2000. ST/SGB/2000/8 (Apr. 19, 2000).

³²⁴ A/RES/48/218B, para. 5(c)(ii) (July 29, 1994).

³²⁵ Inspection and evaluation involves assessing “the efficiency and effectiveness of the implementation of the programmes and legislative mandates of the organization.” *Ibid.*, para. 5(c)(iii).

³²⁶ OIOS is tasked specifically with conducting investigations into any “reports of violations of United Nations regulations, rules and pertinent administrative issuance” and communicating its investigative findings and recommendations to the Secretary-General. *Ibid.*, para. 5(c)(iv). OIOS’s investigative authority is further delineated in an information circular issued by the Under-Secretary-General for Administration and Management. ST/IC/1996/29 (Apr. 25, 1996).

³²⁷ A/RES/48/218B, para. 5(c)(v) (July 29, 1994).

³²⁸ A/RES/54/244, para. 5 (Dec. 23, 1999).

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

clearance” and shall have access to all relevant evidence (both documents and witnesses). Moreover, this Bulletin empowered the Under-Secretary-General of OIOS to “demand compliance from programme managers concerned if information or assistance requested is refused, delayed or withheld.” In addition, to assist OIOS in fulfilling its mandate, there is a confidential reporting facility for employees and other relevant individuals “to report possible misuse of funds, waste or abuse of United Nations facilities or privileges, or . . . to make proposals for improvement of programme delivery.”³²⁹

Over time, OIOS has adopted various organizational structures to address its principal functions. OIOS currently has four main divisions: two Internal Audit Divisions (“IAD I” and “IAD II”); Monitoring, Evaluation & Consulting Division (“MECD”); and Investigations Division (“ID”).³³⁰

2. OIOS and IAD

The mission of IAD, the division with the greatest relevance to this Chapter, is to assess whether “there is an adequate and effective system of internal controls for providing reasonable assurance with respect to”:

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

In addition to the relevant resolutions and other guidelines, OIOS has adopted the Standards for the Professional Practice of Internal Auditing (promulgated by the Institute of Internal Auditors).³³¹

³²⁹ ST/SGB/273, para. 4 (Sept. 7, 1994); ST/AI/397, para. 1 (Sept. 7, 1994) (addressing the reporting facility). The Secretary-General’s administrative instruction explains the various procedures in place to “protect individual rights and the anonymity of staff members and others . . . as well as protection against reprisals.” *Ibid.*, para. 2.

³³⁰ See, e.g., ST/SGB/2002/7 (May 16, 2002) (specifying one such organizational structure); ST/SGB/1998/2 (Feb. 12, 1998) (specifying another organizational structure). MECD includes four sections: (1) Monitoring & Inspection Section; (2) Central Evaluation Section; (3) Internal Management Consulting Section; and (4) Self-Evaluation & Learning Section. OIOS, “United Nations Internal Oversight,” p. 27, http://www.un.org/Depts/oios/documents/oios_booklet_e.pdf (hereinafter “OIOS Pamphlet”).

³³¹ *Ibid.*, pp. 5-6.

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

a. Funding and Staffing

IAD has two sources for funding internal audits: (1) funds budgeted through the regular United Nations budget; and (2) extra-budgetary funds. The regularly budgeted funds cover IAD's normal, recurring audit activities, and the extra-budgetary funds cover audits of special non-recurring funds and programs (such as the Programme).³³²

Each year, IAD and OIOS prepare a budget request based on the previous year's expenditures—as adjusted to reflect any changed circumstances. IAD's budgetary request is then presented to the United Nations Controller and forwarded to the Advisory Committee on Administrative and Budgetary Questions ("ACABQ"). OIOS and ACABQ discuss possible changes to the request, and an agreed-upon budget is then sent to the Fifth Committee for approval. Over the last eight years, IAD has been funded approximately forty staff posts—through its regular budget—to cover audits of all regular United Nations operations around the world. The following table represents staffing posts funded through IAD's regularly budgeted funds.³³³

Table 1 – IAD Regular Budget Posts

Post Level	1996/1997	1998/1999	2000/2001	2002/2003
Director Level 2	1	1	1	1
Director Level 1	1	1	1	1
Professional Staff Level 5	6	6	6	5
Professional Staff Level 4	6	6	7	6
Professional Staff Level 3	8	8	9	8
Professional Staff Level 2	7	7	7	7
General Service Staff	11	11	13	12
Total	40	40	44	40

Funding for special investigations and new funds and programs is directly negotiated and separately funded by the relevant fund or program to be audited. Approximately forty percent of IAD's current total funding comes from extra-budgetary sources.³³⁴

³³² Esther Stern interview (Dec. 17, 2004).

³³³ Elsa Lorenzo e-mail to the Committee (Jan. 18, 2005); Elsa Lorenzo e-mail to the Committee (Jan. 20, 2005).

³³⁴ Dileep Nair interview (Jan. 6, 2005); Dagfinn Knutsen interview (Jan. 11, 2005).

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

b. Audit Planning

IAD built its audit plans and selected audit areas based on such criteria as size, frequency of previous audits, sensitivity, and visibility. It tried to cover each area every three to five years, depending on IAD's assessment of the area's importance and risk. During the planning phase, the Under-Secretary-General of OIOS sends out a "call letter" to program managers through which IAD inquires about areas of management concern. Responses from management are considered prior to OIOS's finalizing the official audit plan relating to a particular program.³³⁵

Beginning in 2000, IAD began to develop a more rigorous risk-based approach for selecting audit areas and in 2001 conducted a pilot risk assessment of the peacekeeping mission in Kosovo. The risk based assessments were developed in 2001 and 2002 into a structured process of enterprise-wide assessment of risk for each audit area, and this process was then incorporated into all IAD audit planning in 2003.³³⁶

c. IAD Findings and Recommendations

The IAD Manual includes a section on the processes for documenting findings and monitoring the implementation of recommendations presented to management. Upon issuance of an audit observation or final audit report, the auditor-in-charge or resident auditor must complete a Recommendation Coding Sheet ("RCS"). The RCS is usually completed in two stages: the first upon issuance of the audit observation or report and the second upon receipt of the client's response, which must be within an established timeframe. If management does not respond in a timely fashion, the auditor is supposed to inquire again by phone, e-mail, or letter. If still no response is received, the issue is forwarded to the auditor's Section Chief, who initiates correspondence with management under the signature of the Director of IAD.³³⁷

At any step in this process, if the client accepts a finding and indicates that the recommendation has been implemented, the RCS is completed, and the recommendation is closed. If the client provides a timeline for implementation or accepts the recommendation without a timeline for implementation, the recommendation remains open and is monitored until correspondence is received indicating compliance. If the client disagrees with a finding or declines a recommendation, OIOS auditors must follow a prescribed course of action in an attempt to reach agreement with the client.³³⁸

The Under-Secretary-General of OIOS notifies program management on a semi-annual basis (June 30 and December 31) of any overdue or open recommendations. Based on the response of management, OIOS undertakes several steps including re-visiting the original recommendation or

³³⁵ Dagfinn Knutsen interviews (Dec. 8, 2004 and Jan. 11, 2005).

³³⁶ Dagfinn Knutsen interview (Jan. 11, 2005).

³³⁷ OIOS IAD Operational Manual, pt. II, para. 12.2.2 (pre-June 2003) (hereinafter "Old IAD Manual").

³³⁸ ST/SGB/273 (Sept. 7, 1994).

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

issuing new timelines to management. In cases where more than twelve months have elapsed since the issuance of a recommendation, OIOS must re-evaluate the relevance and justification of the recommendation within the context of the client's current operating environment and, if applicable, modify its recommendation.³³⁹

d. Reporting

Two weeks after the issuance of the semi-annual report to management, the Under-Secretary-General of OIOS then issues the semi-annual report to the Secretary-General on the status of implementing recommendations.³⁴⁰ In addition, each June, through the Secretary-General, OIOS submits an annual report ("OIOS Annual Report") to the General Assembly that summarizes OIOS's activities over the past twelve months. The OIOS Annual Reports are the principal means by which serious issues raised through audit fieldwork are communicated to the General Assembly. These reports include a complete list of audit reports issued by OIOS during the last year. They also provide OIOS with an opportunity to note any restrictions on its resources, scope, or independence, which impacted or could impact its ability to fulfill its mandate.

Until recently, complete audit reports were not released to the General Assembly—though member states could seek additional information from OIOS about specific audits. In response to such requests, OIOS would provide the member state with a summary of the audit in question.³⁴¹ But in December 2004, the General Assembly approved a resolution that provides member states with access to all audit reports and related recommendations.³⁴²

3. IAD and the Programme

IAD first became involved in the Programme in late 1997, when a resident auditor was posted at the United Nations Office of the Humanitarian Coordinator for Iraq ("UNOHCI") in Baghdad, Iraq. In February 2000, given the Programme's increase in size and complexity, OIOS established the Iraq Programme Audit Section ("IPAS"), within IAD, to provide audit coverage specifically for the Programme and related programs.

IPAS had direct responsibility for auditing the following Programme-related activities:

- OIP, New York;
- UNOHCI, Baghdad;

³³⁹ Old IAD Manual, ch. II, sec. 12.3, "Monitoring Recommendations."

³⁴⁰ *Ibid.*, sec. 12.4, "The Semi-Annual OIOS Reporting Cycle."

³⁴¹ Dileep Nair interview (Jan. 6, 2005).

³⁴² "Review of the Implementation of General Assembly resolutions 48/218B and 54/244," A/59/649, para. 1(c) (Dec. 22, 2004).

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

- UNCC, Geneva;
- United Nations Monitoring, Verification and Inspection Commission (“UNMOVIC”); and
- United Nations Human Settlements Programme, Settlement Rehabilitation Programme in Northern Iraq (“UN-Habitat”).³⁴³

Because the Programme was outside of IAD’s normal audit activities, it was funded through the extra-budgetary process. IAD requested funds for Programme-related audit posts directly from the relevant program managers, such as the Executive Director of OIP, the Executive Director of UN-Habitat, and the Executive Secretary of the UNCC. In certain cases, IAD requested funds also from the Controller’s Office.³⁴⁴

B. OTHER OVERSIGHT

1. Two Main External Bodies

The work of the two main external oversight bodies, the United Nations Board of Auditors (“BOA”) and the Joint Inspection Unit (“JIU”), complements OIOS’s internal oversight role. In a future report (but not in this Chapter), the Committee will evaluate the scope and adequacy of the Programme-related work performed by these two bodies.

The General Assembly established BOA in 1946 “to carry out external audit of the accounts of the United Nations organization and its funds and programs and to report findings and recommendations to the General Assembly through the Advisory Committee on Administrative and Budgetary Questions.” BOA is comprised of three members—each serving also as the Auditor General, or its equivalent, of a member state—and is supported by the Audit Operations Committee (“AOC”), comprised of three Directors of External Audit—each representing a Board

³⁴³ Dagfinn Knutsen interview (Jan. 14, 2005). Because IAD provided internal audit services directly for UN-Habitat, even though it was one of the nine UN-related agencies implementing the Programme in Northern Iraq, these audits were included in the fifty-eight audit reports released by the Committee on January 9, 2005. See “Report Of The Secretary-General On The Activities Of The Office Of Internal Oversight Services - Enhancing The Internal Oversight Mechanisms In Operational Funds And Programmes Report Of The Secretary-General,” A/51/801 (Feb. 20, 1997). As discussed below, the other eight agencies implementing the Programme in Northern Iraq were audited internally by their own respective departments and not by IAD.

³⁴⁴ Esther Stern letter to Anna Tibaijuka, AUD-7-4:11 (01/1846) (Dec. 24, 2001); Esther Stern letter to Rolf Knutsson, AUD-7-7:7 (01/1447) (Oct. 11, 2001); “Discussion Draft – Office of the Iraq Programme – Proposal for an Additional P5 Post” (undated); Karl Paschke letter to Jean-Pierre Halbwachs, AUD-1-2-2/6-2-36 (0080/98) (Jan. 13, 1998). Esther Stern served as Director of IAD.

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

member—as well as a secretariat that the United Nations provides. BOA conducts external audits that evaluate whether:

- The financial statements present fairly the financial position as at the end of the period and the results of its operations for the period then ended;
- The financial statements were prepared in accordance with the stated accounting principles;
- The accounting principles were applied on a basis consistent with that of the preceding financial period; [and]
- Transactions were in accordance with the Financial Regulations and legislative authority.³⁴⁵

Established in 1966, JIU also provides external oversight throughout the United Nations system. It conducts external evaluations, inspections, and investigations.³⁴⁶ The Statute of the Joint Inspection Unit (“the JIU Statute”) provides that “[t]he Inspectors shall have the *broadest powers of investigation* in all matters having a bearing on the efficiency of the services and the proper use of funds.”³⁴⁷ In addition, the inspectors “shall provide an independent view through inspection and evaluation aimed at *improving management and methods* and at *achieving greater co-ordination* between organizations.”³⁴⁸ Consistent with the JIU Statute as well as the JIU Standards and guidelines, the Unit pursues four key objectives:

- To assist the legislative organs of the participating organizations in meeting their governance responsibilities in respect of their oversight function concerning management by the secretariats of human, financial and other resources;
- To help improve the efficiency and effectiveness of the respective secretariats in achieving the legislative mandates and the mission objectives established for the organizations;

³⁴⁵ BOA, “Official WEB Site for the United Nations Board of Auditors,” <http://www.unsystem.org/auditors> (hereinafter “BOA Homepage”).

³⁴⁶ JIU, “Welcome to JIU,” <http://www.unsystem.org/jiu/> (hereinafter “JIU Homepage”); JIU, “About JIU,” <http://www.unsystem.org/jiu/en/about.htm> (hereinafter “About JIU”); see also JIU, “JIU Standards and guidelines,” A/54/31/Annex I, ch. B, para. 10 (Nov. 12, 1996), http://www.unsystem.org/jiu/data/en/guidelines/guidelines_en.pdf (hereinafter “JIU Standards”) (defining evaluations, inspections, and investigations).

³⁴⁷ JIU, “Statute of the Joint Inspection Unit,” ch. III, art. 5, para. 1, <http://www.unsystem.org/jiu/data/en/statute/statute.pdf> (emphasis added) (hereinafter “The JIU Statute”).

³⁴⁸ The JIU Statute, ch. III, art. 5, para. 2 (emphasis added).

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

- To promote greater coordination between the organizations of the United Nations System; [and]
- To identify best practices, propose benchmarks and facilitate information-sharing throughout the system.³⁴⁹

In recent years, the General Assembly and JIU have focused on ensuring implementation of JIU's recommendations. JIU's 1993 recommendations regarding oversight functions were a key reason for the formation of OIOS in 1994.³⁵⁰

2. The Agencies' Internal Auditors

Most of the UN-related agencies maintain their own internal audit resources, which generally report to the heads of the respective agencies. The following eight United Nations agencies involved in implementing the Programme had their own internal audit functions that did not fall within OIOS's mandate or its policies and procedures:

- Food and Agriculture Programme of the United Nations ("FAO");
- World Food Programme ("WFP");
- United Nations Children's Fund ("UNICEF");
- United Nations Development Programme ("UNDP");
- World Health Organization ("WHO");
- United Nations Educational, Scientific and Cultural Organization ("UNESCO");
- United Nations Office for Project Services ("UNOPS"); and
- International Telecommunication Union ("ITU").

This Chapter reviews the work performed by IAD and not the work performed by the internal audit departments of these eight UN-related agencies. The Committee's investigation of these eight implementing agencies and of UN-Habitat is still ongoing and the results will be included in

³⁴⁹ JIU Homepage.

³⁵⁰ See, e.g., "Report of the Joint Inspection Unit on experience with the follow-up system on Joint Inspection Unit reports and recommendations," A/56/356 (Sept. 18, 2001) (discussing the implementation of JIU's follow-up system); A/RES/54/16, paras. 4-6 (Nov. 19, 1999) (inviting JIU to send reminders to the relevant executives and to update the General Assembly, in JIU's annual reports, on the status of "approved recommendations that have not been implemented").

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

a later report, which will analyze the role of each agency's internal audit department and the extent to which each department competently audited its respective agency's involvement in the Programme.

3. Coordination among Oversight Bodies

All internal audit functions of the United Nations and related agencies, including OIOS, participate in the annual meetings and working groups of the Representatives of Internal Audit Services of the United Nations Organizations and Multilateral Financial Institutions ("RIAS"). At RIAS meetings, a wide range of issues are discussed, including opportunities for improving cooperation and coordination among the internal audit services, sharing best practices, and adopting common standards, approaches, and methodologies.³⁵¹

BOA coordinates with other external entities auditing within the United Nations system through the Panel of External Auditors of the United Nations ("Panel"), which includes representatives from BOA, the specialized agencies, and the International Atomic Energy Agency.³⁵² The Panel is an advisory group that "aims to be dynamic and promote the highest standards of accountability, transparency and sound financial management through [its members'] audits of the United Nations System, for the benefit of Member States."³⁵³

IAD also coordinates and cooperates with both BOA and JIU through tripartite meetings. These meetings include discussions on various issues including internal oversight of jointly financed activities, information technology as an oversight tool, and implementation of recommendations. IAD also holds separate meetings with BOA to coordinate work plans and share information in an effort to avoid duplication of work.³⁵⁴

³⁵¹ OIOS, "Iraq Programme Audit Update," para. 2 (Dec. 2001).

³⁵² BOA Homepage.

³⁵³ United Nations Panel of External Auditors, "Official WEB Site for the Panel of External Auditors of the United Nations, Specialized Agencies, and the International Atomic Energy Agency," http://www.unsystem.org/auditors/auditors_panel_external/external-default-03statement.htm.

³⁵⁴ "Report of the Office of Internal Oversight Services," A/55/436, para. 21 (Oct. 2, 2000).

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

This page is intentionally left blank

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

III. PROGRAMME AUDITS

A. FUNDING AND STAFFING

Staffing of IPAS fluctuated between 2000 and 2003, but it remained between five and six auditors during most of this period. IPAS staff worked exclusively on Programme audits until late 2003, including the review of activities relating to the Programme's liquidation and wind-down. The table below shows the number of extra-budgetary posts funded directly from the ESD Account for audits relating to OIP, UNOHCI, and UN-Habitat, and also from the CWA Account for audits of the UNCC. This total number of posts does not include the Director of IAD, who was funded out of the regular budget, but who spent considerable time on Programme-related matters.³⁵⁵

Table 2 – Extra-Budgetary Staffing Posts for OFFP Internal Auditors

Post Level	1996/1997	1998/1999	2000/2001	2002/2003
Professional Staff Level 5	0	0	1	1
Professional Staff Level 4	1	2	4	5
Professional Staff Level 3	1	1	0	0
Total	2	3	5	6

The agreed-upon audit staffing levels for United Nations peacekeeping missions—one auditor for every \$100 million in annual program expenses—far exceeds the staffing levels (noted above) for Programme-related audits. Similarly, BOA indicated that United Nations funds and programs generally are staffed with approximately twelve internal audit posts for every \$1 billion in expenditures.³⁵⁶ These two metrics—relative to Programme expenditures, which at their height in 2000 totaled almost \$16 billion—would have required over 160 auditors for the Programme.

Despite these significant staffing shortfalls, however, the Committee knows of no instance in which OIOS and IAD communicated broad concerns to OIP management, the United Nations

³⁵⁵ Dagfinn Knutsen interview (Dec. 8, 2004); Elsa Lorenzo e-mail to the Committee (Jan. 18, 2005). The ESD Account held funds for administering the Programme—approximately 2.2 percent of all oil sale proceeds—and is the subject of Chapter 6 of this Interim Report. The CWA Account held funds to be used by the United Nations Compensation Commission, established by Security Council Resolution 687 (1991), to compensate victims of Iraq's invasion of Kuwait. Thirty percent, and later twenty-five percent, of all oil sale proceeds were transferred to the CWA Account.

³⁵⁶ Esther Stern interview (Dec. 17, 2004); Sabiniano Cabatuan, Alain Gillette, and Rajendran Govender interview (Jan. 19, 2005). Mr. Cabatuan, Mr. Gillette, and Mr. Govender represented BOA during this interview.

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

Controller, the Secretary-General, or the General Assembly about insufficient numbers of staff. While IAD did make incremental requests for one or two additional Programme audit staff, from early 1998 onwards, the Committee has identified only one instance, relating to the UNCC, where IAD was denied funding for an audit post. This request—made as early as 2001 and reiterated on several occasions—was repeatedly denied. But funding ultimately was approved as part of UNCC’s 2005 budget.³⁵⁷

In certain instances, IAD was required to pull resources from its regular budget to adequately staff planned audit work for the Programme. This re-allocation reduced IAD resources that otherwise would have been available for other audit requirements.³⁵⁸

B. SCOPE AND AUTHORITY ISSUES

1. Audit Planning and Risk Assessment

On August 30, 2000, Under-Secretary-General of OIOS, Dileep Nair, wrote to the United Nations Deputy Secretary-General, suggesting an overall risk assessment of the Programme. He reasoned that this would “establish a more efficient and effective programme delivery by strengthening management’s capacity to identify factors that prevent them from fulfilling their objectives.” Mr. Nair added that this assessment could “serve as a model for similar exercise in other Departments and other activities.”³⁵⁹

Because OIOS considered the Programme a “high risk activity,” it identified it as a priority audit area. IAD engaged the accounting firm of Arthur Andersen to assist in the risk assessment (for approximately \$70,000), and it was decided that evaluation of the OIP Programme Management Division (“PMD”) made the most sense.³⁶⁰

However, Mr. Sevan, as Executive Director of OIP, declined to approve the risk assessment. In a memorandum to OIOS on May 11, 2001, he stated that for financial reasons—given uncertainty regarding the Programme’s continuation—he did not approve the expense for the proposed risk

³⁵⁷ Rolf Knutsson letter to Dileep Nair, UNCC/EXE/1372/2003 (Dec. 23, 2003); Rolf Knutsson letter to Dileep Nair, UNCC/EXE/772/2004 (Jul. 6, 2004); Esther Stern letter to Rolf Knutsson, AUD-7-7:7(01/1447) (Oct. 11, 2001); Dileep Nair memorandum to Rolf Knutsson 18757/01 (Dec. 18, 2001); Esther Stern memorandum to Rolf Knutsson AUD7-7:7 (02/0031) (Jan. 9, 2002); Esther Stern memorandum to Rolf Knutsson, AUD 7-7:7 (1313/02) (Sept. 12, 2002); Sabiniano Cabatuan, Alain Gillette, and Rajendran Govender interview (Jan. 19, 2005).

³⁵⁸ Dileep Nair memorandum to Rolf Knutsson, OUSG 04/06, para. 11 (Feb. 3, 2003); Dagfinn Knutsen interview (Jan. 14, 2005).

³⁵⁹ Dileep Nair note to the Deputy Secretary-General, 16718/00 (Aug. 30, 2000).

³⁶⁰ Esther Stern memorandum to Benon Sevan, AUD-7-1:31 (Apr. 12, 2001); Esther Stern interview (Dec. 17, 2004).

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

assessment.³⁶¹ The Committee notes that, around this same time and irrespective of the stated reason for denying the request, OIP moved into newly leased office space in New York, resulting in significant Programme expenditures. The increase in rental costs and refurbishments to office space totaled more than \$3 million in 2001.³⁶²

After receiving Mr. Sevan's memorandum, it appears that OIOS abandoned its plans for a comprehensive risk assessment of the PMD, which, in order to be effective, would have required management's cooperation. However, IAD conducted such risk assessments in other areas of the United Nations, including successfully assessing the United Nations fund in Kosovo in 2001.³⁶³

Similarly, in its 2001 audit report, BOA recommended that OIOS and UNCC conduct a joint risk assessment of UNCC. OIOS conducted a risk assessment on its own and submitted it to UNCC in September 2002. The UNCC rejected several of OIOS's assessments, and, in May 2003, both UNCC and OIOS agreed to hire an outside consultant to assist in the risk assessment at a cost of \$20,000 because of OIOS's relative "lack of expertise." Between June and October 2003, the parties agreed on terms of reference, tried to schedule the review, exchanged documentation, and approved the contract. However, the assessment was postponed indefinitely in October 2003, and never was conducted.³⁶⁴

In 2003, IAD formally introduced the risk-based planning approach to all audit planning. Under this new system, IAD assesses risks at an engagement level.³⁶⁵

2. Attempted Coordination of Programme Internal Audits

With the Programme's significant growth in 1999, OIP and OIOS became increasingly concerned about audit coverage, particularly in regard to the agencies implementing the Programme in Northern Iraq, which were of limited visibility. Although IAD audited UN-Habitat, the other eight agencies administering the Programme in Northern Iraq had their own autonomous internal audit divisions, which did not report to OIOS or OIP.

In a memorandum to the Controller of the United Nations dated April 20, 1999, Mr. Sevan wrote:

³⁶¹ Benon Sevan memorandum to Esther Stern, ED/2001/OIOS/2 (May 11, 2001).

³⁶² See Chapter 6, Subsection IV.C.2 of this Report, which provides additional details.

³⁶³ Esther Stern interview (Dec. 17, 2004).

³⁶⁴ "Financial Report and Audited Financial Statements for the Biennium dated 31 December 2001 and Report of the Board of Auditors," A/57/5, para. 71 (July 3, 2002); Esther Stern memorandum to Rolf Knutsson, AUD-7-7:7 (1313/02) (Sept. 12, 2002); OIOS Risk Assessment Chronology, pp. 1, 3 (Feb. 9, 2004) (prepared by Rolf Knutsson).

³⁶⁵ Dagfinn Knutsen interview (Jan. 11, 2005).

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

According to paragraph 3.6 of the MOUs, agencies and programmes are to be subject to internal and external audits and provide OIP copies of their reports. The results of a recent request to agencies and programmes indicate none of them have been subject to management audits in connection with activities pertaining to resolution 986 (1995).

While the United Nations Iraq Account has been the subject of three external audits, with a fourth underway, it is surprising that the activities of agencies and programmes funded under resolution 986 (1995) have yet to be audited in similar manner. It is our understanding, however, that we could request agencies and programmes that ad hoc management audits be conducted of their respective activities under resolution 986 (1995) provided that the related expenditures were absorbed by the United Nations Iraq Account. Given the magnitude and sensitivity of the Programme, I am sure you will agree that this would be a worthwhile investment.³⁶⁶

Shortly thereafter, the Acting Chairman of the 661 Committee expressed similar sentiments in a memorandum to the Secretary-General. Specifically, the Chairman communicated the Committee's "concern with regard to the absence of specific audits of the operations of the United Nations implementing agencies under Resolution 986 (1995)," and he indicated that "[t]he Committee would welcome future reporting on management audits of the agencies' 986-related activities."³⁶⁷

On August 2, 1999, Mr. Sevan reiterated his concerns to the United Nations Controller:

In view of the fact that the United Nations is responsible, on behalf of the Government of Iraq, for the implementation of the programme in the three Northern governorates . . . , I strongly believe that the activities of the implementing agencies and programmes . . . should be subject to specific management audits by external auditors. While the memoranda of understanding between agencies and the United Nations provide for periodic audits to be conducted, I understand that activities of agencies and programmes related to resolution 986 (1995) have not been subject to specific external management audits. This is a matter of grave concern. I am also concerned that recommendations made by their internal auditors, if any, have not been shared with the Secretariat.³⁶⁸

³⁶⁶ Benon Sevan memorandum to Jean-Pierre Halbwachs, ED/1999/DM/3 (Apr. 20, 1999).

³⁶⁷ Fernando Enrique Petrella letter to Kofi Annan, S/AC.25/1999/OC.27/Corr.1 (July 26, 1999).

³⁶⁸ Benon Sevan memorandum to Jean-Pierre Halbwachs, ED/99/DM/12 (Aug. 2, 1999).

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

As a result of these concerns, IAD attempted to coordinate audit activities across all agencies administering the Programme. In early 2000, IAD proposed a comprehensive audit strategy that involved coordinating the internal audits then within the purview of IPAS and the agencies operating in Northern Iraq. Because of the similarities among projects undertaken by the nine agencies, IAD believed that “horizontal” audits across these agencies would be efficient and effective, resulting in a consistent approach in critical audit areas such as project planning, procurement, and financial and personnel management.

IAD and OIP undertook various initiatives in an effort to implement a coordinated audit approach. First, at the annual meeting of the heads of United Nations and multilateral internal audit bodies in June 2000, the Director of IAD advocated strengthening audit coordination within the Programme.³⁶⁹

Almost one year later, at an annual meeting of RIAs of the United Nations organizations and multilateral financial institutions in May 2001, implementation of the proposed audit strategy was further discussed. Meeting participants agreed on a five-pronged approach: (1) share audit plans and information required for conducting horizontal audits; (2) perform joint audits; (3) share audit results; (4) appoint an audit focal point in each audit body; and (5) include auditing of the Programme as a line item in future meetings of audit services. Moreover, IAD authored articles for the RIAs monthly newsletter endorsing this coordinated approach to Programme audits. Around the same time, Mr. Sevan worked directly with representatives of the agencies to strengthen the audit clause included in the agencies’ Memoranda of Understanding.³⁷⁰

Despite the significant time and effort that IAD and OIP devoted to this issue, the strategy of coordinated horizontal audits relating to the Programme never materialized. In addition, though the agencies’ internal auditors provided these reports to the Executive Director of OIP, Mr. Sevan, they did not systematically provide IAD with the audit reports (as requested by IAD), and it does not appear that OIP forwarded them to IAD.³⁷¹

3. Audit Scope and Coverage Deficiencies

In its recent Briefing Paper, issued on January 9, 2005, the Committee noted several deficiencies in Programme internal audit coverage, in particular a lack of focus on oil purchase and

³⁶⁹ “OIOS Annual Report,” A/55/436 (Oct. 2, 2000).

³⁷⁰ Benon Sevan memorandum to Esther Stern, ED/2001/OIOS/2 (May 11, 2001); “SG Report on the activities of the OIOS concerning the OFFP and UNCC,” A/56/903, paras. 5-6 (Apr. 4, 2002).

³⁷¹ Dagfinn Knutsen interview (Jan. 11, 2005).

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

humanitarian supply contracts,³⁷² a lack of focus on headquarter functions, and a slow start up period³⁷³.

IAD staff explained that, in part, these coverage gaps resulted from their view that these contracts were outside of IAD's purview because of the 661 Committee's involvement in the Programme and especially the 661 Committee's role in approving the pricing of oil and in reviewing and approving the humanitarian contracts. This remained IAD's view, even in 2001, after information about contract abuses had surfaced widely in media reports.³⁷⁴

OIOS and IAD staff further explained that limitations in the number of staff constrained the internal auditors' reach. Because of its lean staffing, the internal auditors focused on the areas perceived as being of greatest risk: the Programme activities in Iraq. This was to the exclusion of areas such as headquarter functions and letter of credit processes. Moreover, IAD staff explained that OIP's management—when queried about which Programme areas required the greatest oversight attention—directed IAD to focus on Programme activities in Iraq (as opposed to headquarter functions).³⁷⁵

4. Scope of UNCC Audits

As noted in the January 9, 2005 Briefing Paper, OIOS's work on UNCC matters was sharply contested by UNCC, which maintains that OIOS unilaterally began reviewing and opining on features of its administration and decision-making that are beyond the technical competency of OIOS. OIOS takes an opposite view and finds the UNCC arguments to be tantamount to attempts to unduly limit its scope to the detriment of the UN.

³⁷² As part of one audit, IAD performed a limited review of the letter-of-credit operations relating to oil and humanitarian goods transactions. This audit included interviews of UN Treasury and OIP personnel, as well as the review of: (1) related documentation and approvals for a limited sample of transactions; (2) foreign currency conversions; (3) payment procedures for goods purchases; and (4) postings to the accounting ledgers. Working papers related to "Audit of the Iraq Escrow Account Treasury and Cash Management Functions," AF01/34/1 (Dec. 11, 2001). Although a step was included in IAD's work plan relating to this audit, there is no evidence that IAD ever tested the sale price of oil. In addition, IAD never tested the price paid for humanitarian goods, the suitability of the end-user, or the quality of the delivered goods.

³⁷³ Dileep Nair letter to Paul A. Volcker (Jan. 13, 2005). Although OIOS's first full audit report was not issued until April 1999, Mr. Nair notes that, between June 1997 and July 1998, the Resident Auditor of UNOHCI issued audit observations directly to the Iraq Mission's Chief Administrative Officer. *Ibid.*

³⁷⁴ Esther Stern interview (Dec. 17, 2004); Dagfinn Knutsen interview (Dec. 8, 2004); Ronni Berke, "Iraq seeking kickbacks from oil-for-food program, diplomats say," <http://archives.cnn.com/2001/WORLD/meast/03/07/un.iraq/index.html> (Mar. 7, 2001); Barbara Crossette, "Iraq is Running Payoff Racket, U.N. Aides Say," *New York Times* (Mar. 7, 2001).

³⁷⁵ Dileep Nair interview (Jan. 6, 2005); Esther Stern interview (Dec. 17, 2004).

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

Following a request from BOA for UNCC to agree with OIOS on audit terms and scope, UNCC requested OLA to review and opine on what aspects of UNCC work OIOS might properly review. The resulting opinion from Hans Corell, Under-Secretary for Legal Affairs, stated that “in as much as they are also constituent elements of a process which is, in its overall character a legal one, these aspects of the work of the panels are consequently beyond the proper scope of audit by OIOS” and that “computation by panels of the amounts of compensation . . . which is one of mathematics is within the appropriate scope of OIOS audit.” In sum, OLA concluded that OIOS’s review of UNCC could not include “quasi-judicial processes.”³⁷⁶

However, OIOS did not agree with OLA that its audits of UNCC should be limited to only computational aspects. OIOS therefore continued to audit all aspects of the UNCC claims process, and it reported this disagreement over audit scope to the Secretary-General and General Assembly. It does not appear that this disagreement over audit scope has been resolved. There is no record of action by either the Secretary-General or the General Assembly. The Committee will further examine and assess this dispute in a future report.³⁷⁷

Moreover, the Committee notes that IAD has continued performing UNCC audits based on OIOS’s understanding of IAD’s scope, and, while UNCC has not hindered IAD, it effectively has discounted the usefulness of the audits by rejecting the vast majority of their recommendations.

C. COMMUNICATION OF FINDINGS AND FOLLOW-UP ON RECOMMENDATIONS

1. Communications with Management

Consistent with its procedures, IAD sought responses from OIP, UNOHCI, UN-Habitat, and UNCC on all recommendations issued. In cases where respective management accepted a finding and noted that a recommendation had been implemented, IAD closed the recommendation in its database.

It is difficult to assess the adequacy of follow-up reviews and the question of whether recommendations were actually implemented. Because audit areas were not usually revisited for approximately three years, IAD ordinarily was unable to determine whether a recommendation had been implemented until several years after it was originally communicated.³⁷⁸

Complicating matters further, OIP did not have in place an efficient system to record and track IAD recommendations at least until 2001. In a memorandum addressed to the Humanitarian

³⁷⁶ Hans Corell letter to Rolf Knutsson (Nov. 27, 2002).

³⁷⁷ Dileep Nair interview (Jan. 6, 2005).

³⁷⁸ Dagfinn Knutsen e-mail to the Committee (Jan. 13, 2005).

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

Coordinator of UNOHCI, and various managers at OIP headquarters in New York, Mr. Sevan wrote:

I welcome the work of OIOS, as it can provide valuable assistance to management of the programme. We must ensure that implementation of their recommendations is properly monitored and that OIOS' recommendations are not just paid lip service.

I very much regret to find out that, despite my instructions given long ago, the establishment, in the Executive Office of OIP, of a central data system to monitor the status of implementation of all audit recommendations, had been neglected. Thus the urgency to update the data system in order to ensure that we are taking all the necessary measures, in a timely manner, to implement audit recommendations.³⁷⁹

The Committee notes two instances in which IAD performed follow-up reviews of previous Programme audits in the areas of Treasury and UN-Habitat.³⁸⁰ In each follow-up audit, IAD reported numerous instances in which management had failed to implement recommendations that it had previously accepted and agreed to implement.

In discussions with Committee staff, IAD noted that it was typical practice of BOA to review the implementation of IAD recommendations during the course of its external audit work. Discussions with BOA confirm that, in cases where it performs audits of areas previously audited by IAD, it is standard practice for them to follow-up on IAD recommendations.³⁸¹ However, at this stage of the Committee's investigation, it is unclear to what extent BOA actually verified implementation of IAD's recommendations relating to the Programme.

2. Communications with the General Assembly and Security Council

OIOS did not find its reporting to the General Assembly regarding the Programme entirely satisfactory. It therefore attempted to develop a direct line of reporting to the Security Council.

³⁷⁹ Benon Sevan cryptogramme to Tun Myat, J. Christer Elfverson, Farid Zarif, and Maurice Critchley (Jan. 20, 2001).

³⁸⁰ "Management of UN-Habitat Settlement Rehabilitation Programme (SRP) in Northern Iraq," AF02/24/1 (Jun. 30, 2003); "Follow-up audit of the Iraq Escrow Account Treasury and Cash Management Functions," AF03/105/1 (Nov. 19, 2003).

³⁸¹ Dagfinn Knutsen e-mail to the Committee (Jan. 13, 2005); Sabiniano Cabatuan, Alain Gillette, and Rajendran Govender interview (Jan. 19, 2005).

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

a. General Assembly

Mr. Nair told the Committee that: (1) he had limited opportunity to report to the General Assembly; (2) he did not want to overwhelm the member states with paper; and (3) he included items in the OIOS Annual Reports either in light of the concerns expressed by the member states or because he and OIOS believed them to be important. Because he had received only one question from a member state during the Programme's duration, Mr. Nair did not think the member states were particularly interested in the oversight of the Programme. (Iraq had questioned him on a specific comment contained in the 2001 OIOS Report to the General Assembly). Mr. Nair nevertheless included comments about the Programme in the annual reports, but they were limited.³⁸²

Those occasions when OIOS did report to the General Assembly on the Programme were marked by difficult negotiations with Mr. Sevan, who complained, even after the fact, about disclosures to the General Assembly. It is likely that these negotiations reduced the candor and information value of the reports.³⁸³

In general, there is a discrepancy between the findings in Programme audit reports, which are sometimes quite critical, and the corresponding descriptions of Programme audits in the OIOS Annual Reports. While these reports were not necessarily meant to include a description of specific audit findings, they were meant to provide an overall picture of the Programme. The OIOS Annual Reports from 1997 to 2003 never presented any overall assessment of Programme-related risk—despite recurring weaknesses that IAD had identified across the aspects of the Programme reviewed in the individual audit reports. Moreover, the OIOS Annual Reports make no note of any limitations on OIOS's resources, instances of non-cooperation, or restrictions on scope, with the exception of the dispute over the scope of UNCC audits, which was mentioned, but not fully described, in the 2003 report.

In its Annual Reports, OIOS was also required to include any recommendations that it deemed critical, but that had not been implemented by management. The Committee has reviewed the OIOS Annual Reports and failed to locate any reference to critical and open Programme-related recommendations. However, review of the IAD Recommendations Database reveals numerous recommendations that were deemed "critical" by IAD but not implemented by OIP management.

In addition to the Annual Reports, in April 2002, OIOS submitted a special update report on the Programme to the General Assembly. Although fairly detailed, the report made no mention of

³⁸² Dileep Nair interviews (Jan. 6 and 27, 2005).

³⁸³ See Benon Sevan memorandum to Dileep Nair, ED/2002/OIOS/3 (Apr. 17, 2002); Benon Sevan memorandum to Esther Stern, ED/2002/OIOS/1 (Mar. 7, 2002).

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

the significant findings in the United Nations Department of Economic and Social Affairs, (DESA) audit reports or of the serious issues identified during the UN-Habitat audits.³⁸⁴

Last, in addition to the reports submitted by OIOS to the General Assembly, the Committee reviewed one report, drafted in 2004, that never was submitted. This report concluded that the Programme's overall management was unsatisfactory, and it recommended performance of a "comprehensive lesson learned review." Mr. Nair told the Committee that the draft report was not issued because the appointment of the Independent Inquiry Committee rendered it superfluous.³⁸⁵

b. Security Council

In accordance with its mandate, OIOS's primary reporting responsibility is to the General Assembly through the Secretary-General. In a letter dated August 30, 2000, to the Deputy Secretary-General and copied to Mr. Sevan, Mr. Nair proposed that OIOS report directly to the Security Council on Programme-related matters. Mr. Nair suggested that this would help "ensure adequate coverage and visibility of OIOS' audit activities of OIP." In a response dated November 2, 2000, addressed to Mr. Nair and copied to the Deputy Secretary-General, Mr. Sevan noted that if OIOS "were to communicate directly to the Security Council it would compromise the division of responsibility between internal and external audit, and thus [he did] not support the proposed course of action."³⁸⁶

In a separate memorandum to Mr. Sevan, dated November 30, 2000, the director of IAD reiterated OIOS's intention to report directly to the Security Council in January 2001. However, Mr. Nair told the Committee that following this last memorandum, he received a telephone call from the Deputy Secretary-General denying this proposal. Mr. Nair then abandoned the effort to report directly to the Security Council on Programme-related matters.³⁸⁷

³⁸⁴ "OIOS Audits of the Oil-for-Food Programme and OIP-funded DESA executed Project IRQ97003," AH99/7/2 (Mar. 6, 2000); "OIOS Audit of DESA Project IRQ 97003," AH99/4/3 (Nov. 14, 2000); "Audit of the UNCHS Settlement Rehabilitation Programme in Northern Iraq," AF00/101/1 (Jan. 5, 2001); "UNCHS Settlement rehabilitation project in Northern Iraq," AF01/32/2 (Feb. 26, 2002).

³⁸⁵ Dileep Nair interview (Jan. 6, 2005).

³⁸⁶ Dileep Nair note to the Deputy Secretary-General, 16718/00 (Aug. 30, 2000); Benon Sevan memorandum to Dileep Nair, ED/2000/Audit/31 (Nov. 2, 2000).

³⁸⁷ Esther Stern memorandum to Benon Sevan (Nov. 30, 2000); Dileep Nair interview (Jan. 27, 2005).

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

IV. APPLICATION OF INTERNAL AUDIT “BEST PRACTICES”

The IAD Manual, which identifies key policies, procedural guidelines, and principles, was first prepared in 1990 and has undergone many revisions. The most recent version was released in July 2003 and incorporates the Professional Practices Framework (“PPF”) promulgated by the Institute of Internal Auditors (“IIA”), which was adopted by RIAS in June 2002.³⁸⁸

Operational independence, effective risk assessment and audit planning, and adequate scope and funding are critical to an effective internal audit function. These prerequisites, as embodied in the IIA Practice Advisory Statements (“PAS”), which are guidelines to the implementation of the PPF, are considered below in regard to IAD’s current and past practices.

A. OPERATIONAL INDEPENDENCE

PAS 1110 recommends that the *functional* reporting line for internal audit should be an audit committee, board of directors, or other appropriate governing authority. Functional reporting includes approval of risk assessment, audit plans, staffing, and compensation of the head of internal audit; review of results of all internal audit activities; and inquiries of management about any scope and budgetary limitations. For *administrative* reporting, which involves day-to-day operations, the head of internal audit normally should report to the Chief Executive.³⁸⁹

In contrast, the Head of IAD reports to the Under-Secretary-General of OIOS, who in turn reports both administratively and functionally to the Secretary-General.

B. RISK ASSESSMENT AND AUDIT PLANNING

PAS 2010-2 recommends that plans for internal audit activities should be designed based on an overall assessment of risks and exposures. The IIA supports the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”), which has developed a framework for assessing enterprise risk that expands upon the internal control framework to encompass a fuller, more robust, risk management process. Among other things, an audit plan should be based on such a risk assessment.³⁹⁰

³⁸⁸ OIOS IAD Operational Manual (June 2003), p. 1 (hereinafter “New IAD Manual”).

³⁸⁹ “Practice Advisory 1110-1: Organizational Independence” (revised Feb. 12, 2004); “Practice Advisory 1110-2: Chief audit Executive (CAE) Reporting Lines” (revised Feb. 12, 2004).

³⁹⁰ COSO, “Official WEB Site for the Committee of Sponsoring Organizations of the Treadway Commission,” <http://www.coso.org>; “Practice Advisory 2010-2: Linking the audit Plan to Risk and exposures” (revised Feb. 12, 2004).

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

In this regard, since 2001, IAD has been developing a planning approach based on risk assessments. In 2003, it constructed its audit plans based on a formal system of area-by-area risk assessment. But for the purpose of setting priorities, allocating resources, and identifying gaps in coverage and resources, IAD does not formally view risks systematically, from the “top down,” across the United Nations system.

C. SCOPE AND FUNDING OF INTERNAL AUDIT

PAS 1110-A1 recommends that “the internal audit activity should be free from interference in determining the scope of internal auditing, performing work, and communicating results.”³⁹¹

However, approximately forty percent of IAD’s current funding comes from contributions negotiated with the funds and programs that it wishes to audit. Moreover, if IAD cannot secure the necessary financing from a particular fund or program, it either must allocate resources from its general budget (to the detriment of other audit areas) or limit its audit activity of the particular program.

³⁹¹ New IAD Manual, p. 10.

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

V. FINDINGS AND CONCLUSIONS

As outlined in the Introduction, the Committee set out to answer the following five questions:

1. Did IAD have sufficient funding and staff to adequately audit the Programme?
2. Were all the important aspects of the Programme fully audited by IAD?
3. Did IAD properly report its audit findings and monitor implementation of its recommendations?
4. Was IAD able to resolve contentious issues relating to Programme audits?
5. Do IAD policies and procedures conform to the “best practices” of internal audit?

Findings:

1. Given the Programme’s size and complexity, the Committee finds that the resources committed to audit the Programme were inadequate—especially in comparison to the level of internal audit staffing for peacekeeping missions and the general benchmark identified by BOA. The Committee finds also that IAD’s limited funding and staffing hampered its audit coverage of the Programme. Finally, the Committee notes that had IAD been able to conduct a thorough risk assessment it would have been better positioned to identify and justify the number of staff needed to appropriately audit the Programme.
2. The Committee finds that several important aspects of the Programme were not reviewed by IAD. These include many of the functions performed at OIP’s headquarters in New York as well as key elements of the oil and humanitarian contracts, including price and quality of goods. The Committee finds that the view held by IAD staff that the contracts were beyond their purview was erroneous. IAD had the means and duty to examine these contracts and to test the respective approval processes. All contracts were held at OIP’s New York headquarters, where they were subject to full review by OIP management and IAD. IAD had the opportunity to test the contracts for fairness of price and end-user suitability, and also to assess the adequacy of any quality testing of goods that was conducted in Iraq. A thorough audit of these aspects could have uncovered or confirmed the various kickback schemes employed by the Government of Iraq in relation to the Programme. Furthermore, despite efforts by OIOS and OIP management, the Committee finds that there was poor coordination among IAD and the numerous internal audit resources within the various agencies involved in administering the Programme.
3. In the Committee’s view, OIOS’s reporting to the General Assembly on Programme-related matters was unsatisfactory. Many of the Programme’s key deficiencies—identified through IAD audits—were not described in the OIOS Annual Reports

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

- submitted to the General Assembly. In regard to the implementation of recommendations, the Committee finds that, while IAD diligently followed its procedures for recording and tracking Programme-related findings and recommendations made to management, its monitoring of the implementation of these recommendations was inadequate. Follow-up audits were very infrequent, with the result being that there was little monitoring of whether recommendations accepted by management in fact had been implemented. Moreover, when follow-up audits were performed, IAD found that many accepted recommendations had not been implemented. Finally, OIP and UNOHCI apparently were not systematically monitoring the implementation of recommendations (at least not prior to 2002).
4. The Committee finds that the United Nations did not possess adequate means to resolve disputes regarding OIOS's activities, including disagreements relating to the scope of audits. Among other things, OIOS was unable to adequately resolve disputes relating to its attempt to report directly to the Security Council, its attempt to conduct risk assessment studies, and the scope of its work at the UNCC.
 5. While the current IAD policies and procedures incorporate the Professional Practices Framework ("PPF") promulgated by the Institute of Internal Auditors ("IIA"), the Committee notes that several deviations from "best practices" still are evident. These include: (a) inability to report directly to an audit committee or other independent board; (b) failure to complete enterprise-wide risk assessments; and (c) lack of budgetary independence.

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

VI. RECOMMENDATIONS

The recommendations below are made in an effort to assist the United Nations in providing IAD with the mandate, structure, and support to enhance its ability to operate effectively and meet future challenges.

A. PROVIDE OIOS/IAD WITH A DIRECT LINE OF REPORTING TO A NON-EXECUTIVE BODY

There is a need for independent reporting by OIOS and IAD. The Committee therefore recommends that the United Nations consider creating an independent board to which OIOS and IAD would report.

At present, the Under-Secretary-General of OIOS reports to the Secretary-General. However, there were instances involving Programme audits in which this reporting arrangement was unsatisfactory because of potentially conflicting budgetary and management responsibilities of the Secretary-General.

Potential conflicts can be avoided by creating a new independent, non-executive Board that is accountable to the General Assembly for the oversight of internal audit activities. This Board should assume responsibility for reviewing plans and budgets and for ensuring that IAD fulfills its mandate, adheres to IIA standards, receives sufficient resources, raises audit concerns at the appropriate level, and properly resolves issues throughout the United Nations system.

Additionally, oversight by an impartial, non-executive Board that has representatives from BOA and JIU would: (1) enhance the independence and quality of the internal audit function; (2) improve the planning and budgeting processes, including alleviating concerns regarding the sufficient allocation of resources; and (3) facilitate coordination among IAD and the external oversight bodies.

B. ESTABLISH BUDGETARY INDEPENDENCE FOR OIOS/IAD

The current practice of allowing the executive directors of funds and programs the right to approve budgets and staffing of internal audit activities can lead to critical and high risk areas being excluded from internal audit examination.

The Committee therefore recommends that the IAD budgets and staffing levels—both for normal internal audit activities and activities in support of funds and programs—be submitted to the General Assembly supported by comprehensive risk assessments, and endorsed by the independent board (recommended above), if such a board is created.

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

The Committee further recommends that budgeting for staff positions be based on neutral metrics (for example: so many auditors per millions in expenses multiplied by a risk factor) rather than bargaining with managers and Secretariat executives.

C. REITERATE OIOS/IAD'S MANDATE AND RESOLVE ANY CURRENT DISPUTES ON ITS SCOPE

The Committee recommends that the General Assembly reiterate IAD's broad mandate.

IAD should have the unquestioned ability and duty to examine and report on any program for which it considers oversight inadequate and believes there is potential for the non-attainment of objectives or waste of resources. The General Assembly should clarify that all executive activities of the United Nations are subject to unhindered IAD review. For example, as discussed earlier in regard to the oil and humanitarian contracts, the involvement of a body comprised of member state representatives—such as the Security Council or 661 Committee—does not eliminate IAD's critical oversight role.

Moreover, the Secretary-General should resolve the dispute between OLA and OIOS regarding IAD's ability to audit "quasi-judicial processes," such as in regard to UNCC's activities. Additionally, any future restrictions imposed, contested, or accepted on the scope of IAD's activities should be reported immediately to the appropriate supervisory body.

D. STRENGTHEN OVERSIGHT OF JOINT FUNDS AND PROGRAMS

The Committee recommends that the United Nations strengthen the oversight of funds and programs involving both the United Nations and the UN-related agencies. The United Nations should consider establishing OIOS as the lead auditor of such joint funds and programs.

Most United Nations funds and programs have their own internal audit resources that report directly to the Executive Director of the fund or program. Establishing OIOS as the lead auditor for a fund or program involving the United Nations and one or more of the agencies would provide many benefits, including independence, consistent professional standards, transparency, coordination, and optimum allocation of resources within comprehensive risk plans. Of course, this would require organizational confidence that OIOS possesses the necessary management capabilities, and the Executive Directors of the agencies and programs understandably would require assurances that OIOS would respond appropriately to their concerns and requests. A series of internal audit oversight committees could be established at each fund and program to facilitate the execution and coordination of audit plans.

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

E. CONDUCT PERIODIC REVIEWS OF IAD BY INDEPENDENT EXTERNAL AUDITORS

Consistent with IIA standards, the Committee recommends that an external professional examination of IAD's policies, procedures, resources, and performance be conducted at least once every five years.

IAD has stated its intent to adopt the IIA's PPF. The Committee fully supports this intention. However, the Committee has noted that IAD's current Manual—even though based on IIA standards—does not always reflect IIA standards, and, in any event, IAD's practices sometimes deviate from the Manual's policies and procedures (e.g., in respect of timing of report preparation and management response).

While BOA routinely examines IAD's audit work, it does not appear to have conducted a top-to-bottom, in-depth review of all IAD policies, procedures, and work products. Accordingly, the Committee recommends periodic reviews by an external professional body of IAD's policies and procedures—as well as their actual application—so as to ensure that IAD operates in accordance with the highest professional standards.

F. DEVELOP AUDIT PLANS FOR ALL NEW PROGRAMS COINCIDENT WITH STARTUP

The Committee recommends that whenever a new program involving significant resources is initiated, IAD establish a comprehensive audit plan and commit sufficient resources for reviewing the new operations to ensure that any deficiencies in the program are immediately identified and addressed.

As noted throughout this Interim Report, the Programme was a very complex operation involving huge sums of money. It also operated in very difficult and often dangerous circumstances. It therefore should come as no surprise that there were numerous control and procedural shortcomings. However, the first IAD review was not started until June 1997, and the corresponding audit report was not published until April 1999, more than two years after the Programme began operating. Also, the early IAD reviews covered only a small part of the overall program.

Establishing a new program presents unique risks. New policies and procedures often need to be developed and implemented by staff, many of whom may lack the relevant experience and expertise. Early involvement and monitoring by IAD is therefore essential. If problems are not identified and addressed early in the life of a program, serious deficiencies can go undetected for long periods and exacerbate over time. In such circumstances, recovery often becomes difficult.

PART TWO

CHAPTER 5 - THE ROLE OF THE UNITED NATIONS INTERNAL AUDIT DIVISION RELATING TO THE PROGRAMME

G. REQUIRE AUDITS THROUGHOUT ALL PHASES OF PROGRAMS

The Committee recommends that internal audits be planned for each distinct phase of programs, including initiation, expansion, ongoing operation, wind-down, and closure. Each phase carries a different set of risks that should be evaluated and monitored.

H. RELEASE AUDIT REPORTS WITHIN THREE MONTHS

The Committee recommends that all audit reports are issued promptly and no later than three months after the end of field work. This will ensure that audit concerns are surfaced and addressed quickly.

I. MANDATE COMMITMENT TO IMPLEMENT RECOMMENDATIONS WITHIN A SET TIME PERIOD

The Committee recommends the establishment of a framework of accountability and disclosure to ensure that management, the Secretary-General, and the independent board (recommended above) address recommendations on a timely basis. The Committee recommends that IAD reports indicate for all agreed recommendations the precise dates by which management has committed to ensure implementation. Last, the Committee recommends that for important recommendations, IAD schedule follow-up audits within six months of the agreed implementation date.

PART TWO

CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

CHAPTER 6

I. INTRODUCTION

When the Programme was established, the United Nations created a special account to manage the funds dedicated for the administration. The account, identified internally as the ESD Account, was funded with approximately 2.2 percent, or \$1.4 billion, of the proceeds from the sale of \$62.4 billion of Iraqi oil for this purpose.³⁹² Including interest income and foreign exchange gains of \$105 million, available sources of funds for the account ultimately totaled \$1.5 billion.

In light of the allegations of fraud and corruption surrounding the Programme, the United Nations' access to these monies has prompted persistent questions regarding its entitlement to and use of the funds as well as whether the ESD Account was audited. Some have asserted also that these funds essentially represented a "commission" inciting the United Nations to ignore Programme abuses rather than try to eliminate or mitigate them.³⁹³

This Chapter addresses the following three questions:

1. Did the United Nations treat the 2.2 percent, which was allocated to the ESD Account, as a commission or entitlement that it could spend at will?
2. Did the United Nations spend the ESD funds for purposes or programs other than the Programme, or did it otherwise use the funds to enrich itself?
3. Was the ESD Account ever audited?

To answer these questions and understand more generally the nature of ESD expenditures, the Committee has performed a forensic analysis of the account, examining transfers into the account and expenditures from the account, and evaluating how these flows of funds were accounted for and reported.

³⁹² S/RES/986, para. 8 (Apr. 14, 1995). While the total amount of oil sold was \$64.2 billion, the 2.2 percent allocation did not apply to the \$1.8 billion of oil sold to meet the Turkish pipeline tariffs. See *ibid.*

³⁹³ See, e.g., Charles Laurence, "Probe turns to \$1.1 billion collected by UN," *London Sunday Telegraph*, Apr. 26, 2004, p. 24 ("A senior UN official who is closely involved in uncovering evidence of the scandal said: "The UN was not doing this work just for the good of Iraq. Cash from Saddam's government was keeping the UN going for a few years. No one knows exactly what sums were involved because an audit has never been done. That is why they are wriggling and squirming now in New York."); Claudia Rosett, "Fishy Accounting Over Iraq," *Wall Street Journal Europe*, Feb. 25, 2004, p. A9 ("[T]he U.N. secretariat had collected a 2.2% commission on the oil, which, even after a portion was refunded for relief operations, netted out to more than \$1 billion for U.N. administrative overhead.").

PART TWO

CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

As discussed later in this Chapter, the nine UN-related agencies tasked with implementing the Programme in Northern Iraq received fifty-three percent, or \$482 million, of the total funds spent from the ESD Account.³⁹⁴ The findings expressed in this Chapter do not pertain to the ESD funds spent by the agencies. That review will be part of the Committee's report on the agencies' involvement in the Programme, which will be issued later this year. In addition, a future report will address questions relating to the United Nations' administration of the Programme, including: (1) how United Nations internal costs were allocated; (2) the processes and controls in place to monitor and approve Programme disbursements; (3) Programme procurement practices; and (4) whether funds were used effectively and appropriately within the Programme.

³⁹⁴ Pursuant to Security Council Resolution 986, para. 8, nine UN-related agencies were tasked with implementing the Programme in the three northern Governorates of Dohuk, Erbil, and Suleimaniyah. As of June 30, 2004, disbursements to the nine agencies were approximately: FAO (\$89 million); ITU (\$8 million); UNDP (\$66 million); UNESCO (\$23 million); UN-Habitat, SRP (\$56 million); UNICEF (\$67 million); UNOPS (\$35 million); WFP (\$91 million); and WHO (\$47 million).

PART TWO

CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

II. METHODOLOGY

The Committee's forensic analysis benefited from unfettered access to the Programme-related project, treasury, banking, and accounting information that it sought. The Committee staff conducting the review consisted of independent, experienced forensic accountants, investigators, and information technology specialists, all of whom were employed under the Committee's direction.

The Committee obtained the financial statements for all Programme-associated accounts as well as the Programme's detailed general ledger. In addition, the Committee also collected extensive and detailed information, including documentary support relating to how the United Nations budgeted and spent monies allocated to the ESD Account, and it interviewed numerous United Nations budgeting, treasury, payroll, audit, and accounting personnel.

In the process of confirming the amounts in the general ledger, the Committee and its forensic accountants examined a significant proportion of the allotments and expenditures—as well as related underlying supporting documentation such as budgets, invoices, and contracts—to determine what ESD funds were used for and whether there were indications of monies being allotted or spent for purposes unrelated to the Programme.

PART TWO

CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

This page is intentionally left blank

PART TWO

CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

III. THE ESD ACCOUNT

A. FOUNDATION OF THE ESD ACCOUNT

When the Security Council envisioned the creation of an oil-for-food mechanism, in Resolution 706 (1991), it based such a program on, among other things, the creation of an escrow account into which oil purchasers would deposit their full payment, and it provided expressly that the Secretary-General would administer this account. The Security Council decided also that “part of the sum in the account . . . shall be available . . . to cover the *cost to the United Nations of its activities* under the present resolution and of other necessary humanitarian activities in Iraq.” However, as noted in Resolution 712 (1991), the Security Council agreed to permit the deposit of humanitarian contributions from sources other than oil sales without deducting for administrative expenses or any of the other purposes identified in Resolution 706.³⁹⁵

With the passage of Resolution 986 (1995), the Security Council authorized “the import of petroleum and petroleum products originating in Iraq, including financial and other essential transactions directly relating thereto, sufficient to produce a sum not exceeding a total of one billion United States dollars every 90 days.” Consistent with Resolution 706, the Security Council:

1. Requested the Secretary-General to open “an escrow account for the purposes of this resolution, to appoint independent and certified public accountants to audit it, and to keep the Government of Iraq fully informed”;
2. Decided that the funds in escrow “shall be used to meet the humanitarian needs of the Iraqi population and for . . . other purposes” specified in the Resolution, and it “request[ed] the Secretary-General to use the funds” for these other enumerated purposes;
3. Determined that one such purpose was “[t]o *meet the costs to the United Nations of the independent inspection agents and the certified public accountants and the activities associated with implementation of this resolution*”; and
4. Requested that the 661 Committee, in coordination with the Secretary-General, “develop expedited procedures as necessary to implement the[se] arrangements,” including those involving the escrow account.³⁹⁶

The Interim Report of the Secretary-General on the Implementation of Security Council Resolution 986 is the first articulation of the basis for funding the ESD Account. In this Interim Report, the Secretary-General provided that approximately \$44.3 million of the \$2 billion in initial oil sales, or “approximately 2.2 per cent,” would be “set aside for the various operational and administrative costs to the United Nations associated with the implementation of resolution

³⁹⁵ S/RES/706, para. 1 (Aug. 15, 1991) (emphasis added); S/RES/712, para. 8 (Sept. 19, 1991).

³⁹⁶ S/RES/986, paras. 1, 7-8, 12 (Apr. 14, 1995) (emphasis added).

PART TWO

CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

986 (1995), as specified in paragraph 8(d).” The Secretary-General also provided that in the event administrative costs exceeded the estimate of \$44.3 million, funds originally allocated for humanitarian supplies would be reduced to cover the additional expenses.³⁹⁷ However, throughout the Programme, the ESD Account always held a surplus of funds. Instead of taking additional amounts from the humanitarian accounts, the opposite occurred: Surplus amounts were transferred from the ESD Account to be available for the purchase of humanitarian goods.

B. BUDGETING AND ACCOUNTING

1. Budgeting and Approval Process

The oil proceeds allocated to the ESD Account were not freely available for the United Nations and the agencies to spend. OIP, UNOHCI, and the agencies were required to prepare requests for use of the funds in the form of detailed budget proposals, which required approval by the United Nations Controller. The budgeting cycle proceeded semi-annually for the first few years of the Programme and then annually beginning in 2002.³⁹⁸

Each cycle, the agencies and OIP (including UNOHCI) undertook an extensive effort to prepare budget requests based on their anticipated administrative needs relative to the anticipated scope of the Programme.³⁹⁹ Detailed forms and instructions were used to facilitate the process. The United Nations Peacekeeping Financing Division (“PFD”) served as an intermediary between OIP and the Controller, helping to ensure that the budgets were prepared in accordance with United Nations guidelines and incorporated, where relevant, standard United Nations rates and ceilings for purchases and personnel-related costs. The finalized budget requests, along with supporting documentation and explanations, were submitted to the United Nations Controller for his vetting and final approval. Questions or concerns raised by PFD or the Controller during the

³⁹⁷ “Interim Report of the Secretary-General on the Implementation of Security Council Resolution 986 (1995),” S/1996/978, paras. 34-35 and Annex III (Nov. 25, 1996). Categories of costs included the costs related to the distribution and monitoring of the humanitarian goods, oil and customs inspection, banking-related charges, and independent oil experts, auditors and other administrative costs. In addition, while the actual allocation of funds was 2.215 percent, the rounded percentage of 2.2 percent is more generally used by the Committee herein and by others to describe or define the ESD Account.

³⁹⁸ Moses Bamuwanye interview (Nov. 3, 2004). Mr. Bamuwanye is a Financial Management Officer, Office of the United Nations Controller.

³⁹⁹ Pursuant to various Security Council Resolutions, the Secretary-General prepared detailed interim reports for each Phase of the Programme, which provided information on the Programme’s implementation and its anticipated future needs. These reports are posted on the United Nations’ website. See OIP, “Security Council Reports,” <http://www.un.org/Depts/oip/background/reportsindex.html>.

PART TWO

CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

process were resolved prior to final approval and may have resulted in a reduction in the proposed amounts.⁴⁰⁰

The budget approval process for the Programme deviated from the budget approval process generally followed by United Nations peacekeeping missions. While both processes incorporate close involvement of the PFD and the Controller, budget proposals for the Programme were not sent through the General Assembly or, more specifically, the Assembly's Advisory Committee on Administrative and Budget Questions ("ACABQ") and its Fifth Committee. This step was not involved because the Programme, similar to other extra-budgetary programs, was not funded by assessments of United Nations member states.⁴⁰¹

As discussed later in this Chapter, amounts requested in ESD budgets were consistently less than the sources of funds available.

2. Accounting Method and Process

a. Governing Principles

The ESD Account is a "Type 6" fund, which is a special purpose, or extra-budgetary, fund. The ESD Account, as was all Programme accounts, was maintained in accordance with the Financial Rules and Regulations of the United Nations as adopted by the General Assembly, the rules formulated by the Secretary-General as required under the regulations, and the administrative instructions issued by the Under-Secretary-General for Management as well as the Controller. These accounts complied also with the United Nations System Accounting Standards ("UNSAS") as adopted by the Chief Executives Board for Coordination.⁴⁰²

Similar to the other Programme-designated funds, the ESD Account was maintained as a distinct financial and accounting entity with a separate self-balancing double-entry group of accounts. Consistent with UNSAS, ESD transactions generally were recognized on the accrual basis of accounting, meaning that ESD expenditures were recorded against authorized allotments and were recognized fully in the accounting period during which they were incurred. Unliquidated obligations—the difference between recorded expenses and actual disbursements—were recorded as liabilities in the balance sheet and were reversed to an "undistributed surplus" account at the

⁴⁰⁰ Catherine Pollard interview (Jan. 12, 2005). Ms. Pollard is Director, PFD.

⁴⁰¹ Ibid.

⁴⁰² The United Nations employs seven different fund types, depending on the nature of the funds and their designated purpose. Type 6 funds are reserved for special purpose funds that do not fall within the scope or needs of the other fund types. Notes to the Programme's annual financial statements; Katrina Nowlan interview (Jan. 6, 2005). Ms. Nowlan is Chief, Peacekeeping Accounts Section, Accounts Division.

PART TWO

CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

end of each biennium. Reimbursements of expenditures occurring outside of the biennium period in which the expenditure occurred were recorded as “miscellaneous income.”⁴⁰³

b. Accounting Function and Preparation of Financial Statements

The accounting and preparation of financial statements for the ESD Account, as well as for all other Programme funds, was performed by the Accounts Division of the Office of Programme Planning, Budget and Accounts. This division is within the Department of Management at the United Nations and is wholly separate from OIP. The Accounts Division performs the accounting and prepares the financial reports for the United Nations' General and Related Funds as well as for various other United Nations programs. Financial statements for the Programme were prepared on twelve-month and biennium calendar periods, and they were routinely audited by BOA.⁴⁰⁴

C. ESD ACCOUNT SOURCES AND USES

1. Summary

As shown in Table A, the allocation of oil sale proceeds to the ESD Account totaled \$1.4 billion. As of June 2004, the ESD Account had earned an additional \$105 million in interest and investment income and foreign exchange gains, resulting in total sources of funds of \$1.5 billion. In addition, as of June 2004, \$903 million of the funds were spent administrating the Programme, resulting in unused funds of \$588 million. As of June 2004, \$372 million of the surplus had been transferred to the Programme's escrow account for humanitarian purchases and the Development Fund of Iraq, leaving a balance in the ESD Account of \$216 million.⁴⁰⁵

⁴⁰³ Ibid.; Katrina Nowlan interview (May 25, 2004). For purposes of the Committee's analysis, revenues (or sources) and expenditures (or uses), as reported throughout this Chapter, deviate from the format used in the financial statements. The amounts were adjusted to incorporate amounts originally reported as transfers, undistributed surplus (i.e., savings from the cancellation of prior period obligations) as well as reimbursements of expenditures reported as miscellaneous income.

⁴⁰⁴ Ibid.; BOA audit reports; Sabiniano Cabatuan interview (Oct. 26, 2004). Mr. Cabatuan is Director of External Audit, Philippines, BOA.

⁴⁰⁵ Programme accounts, general ledger, and/or audited financial statements from the Programme's inception to June 30, 2004. As reported in its Briefing Paper issued in October 2004, the Committee confirmed that all funds designated to be deposited in the ESD Account, pursuant to the appropriate resolutions, were in fact deposited, and the Committee was able to reconcile deposits, expenditures, transfers, and remaining balances.

PART TWO

CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

Table A – ESD Account: Summary of Sources, Uses and Surplus (in USD millions)

Sources	
Allocations of Oil Sales	\$1,386
Income from Interest and Foreign Exchange, net	105
Total Sources	\$1,491
Uses	
OIP/UNOHCI	\$250
Inspection Agents/Auditors	120
Bank Charges	51
Agencies	482
Total Uses	\$903
Surplus	\$588
Less Transfers Out	(372)
Remaining Surplus (as of June 2004)	\$216

2. Accumulated Surplus

As illustrated in Chart A, over the course of the Programme, excess funds accumulated in the ESD Account. By the end of 1999, the third full year of the Programme, the surplus amounted to \$229 million. In June 2000, the Security Council requested that the Secretary-General provide the 661 Committee with “recommendations regarding the utilization of excess funds drawn from [the ESD Account]” for Iraq’s import of humanitarian supplies and for the distribution of humanitarian supplies in the northern Governorates of Iraq.⁴⁰⁶ Later in 2000, the Security Council specifically asked the Secretary-General to “transfer the excess funds drawn from the [ESD] account . . . to increase the funds available for humanitarian purchases, including” funds, which were referenced in paragraph 24 of Resolution 1284, “for the purchase of locally produced goods and to meet the local cost for essential civilian needs.”⁴⁰⁷

Pursuant to these resolutions, a total of \$211 million, representing excess funds at the end of Phases VIII, IX, and X of the Programme, was transferred during 2000 and 2001 to the

⁴⁰⁶ S/RES/1302, para. 14 (June 8, 2000) (referencing paragraphs 8(a) and 8(b) of Resolution 986).

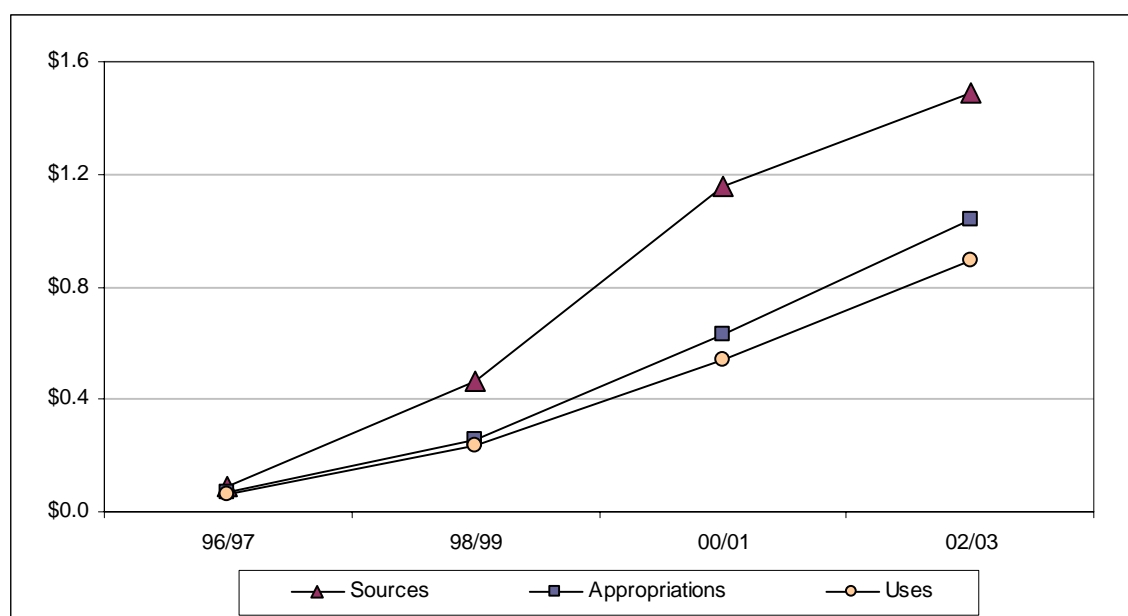
⁴⁰⁷ S/RES/1330, para. 9 (Dec. 5, 2000); S/RES/1284, para. 24 (Dec. 17, 1999).

PART TWO

CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

Programme's main escrow account to be used for humanitarian efforts as mandated by Resolutions 1302 and 1330. In addition, \$61 million was transferred in 2003 to the main escrow account to be used for humanitarian efforts pursuant to Resolution 1360, and \$100 million was transferred in 2004 to the Development Fund for Iraq pursuant to Resolution 1483.⁴⁰⁸ As of June 30, 2004, after the transfers, the remaining fund balance was approximately \$216 million.⁴⁰⁹

Chart A – ESD Account: Cumulative Trend of Fund Flows (in USD billions)



Note: "Sources" of the ESD Account include the percentage of oil sale proceeds plus interest and foreign exchange income. "Appropriations" represent monies made available to spend based on the approved budgets. "Uses" represent monies disbursed for Programme expenses.

⁴⁰⁸ S/RES/1302, para. 14 (June 8, 2000); S/RES/1330, para. 9 (Dec. 5, 2000); S/RES/1360, para. 8 (Jul. 3, 2001); S/RES/1483, para. 17 (May 22, 2003); Programme financial statements and related notes and observations for the biennium periods ending December 2001 and December 2003, and for the six months ending June 2004.

⁴⁰⁹ Although the Programme has been suspended, the ESD Account cannot be fully liquidated as it is still incurring some expense obligations relating to the wind-down of the Programme and its facilities' lease. In addition, as was publicly announced last year, the Committee's investigation into the Programme is being funded from the ESD Account.

PART TWO

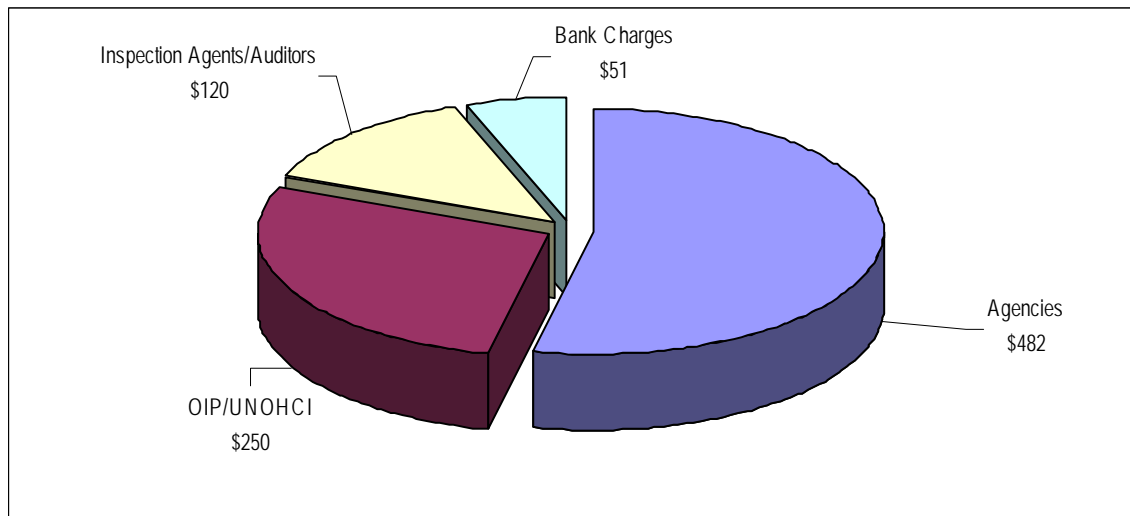
CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

IV. ANALYSIS OF EXPENDITURES

A. MAJOR FUND USES

As discussed earlier, the collective disbursement of funds to the agencies represented the biggest use of funds from the ESD Account. Collectively, the agencies were advanced slightly more than one-half (fifty-three percent), or \$482 million, of the total funds spent as of June 30, 2004. In contrast, over the same period OIP and UNOHCI spent \$250 million (twenty-eight percent) for their operations. An additional \$120 million (thirteen percent) was spent on the independent inspection agents and external auditors and \$51 million (six percent) for bank charges. The proportion of funds spent within these major categories is illustrated in Chart B. The trends for expenditures within the categories are shown in Chart C.

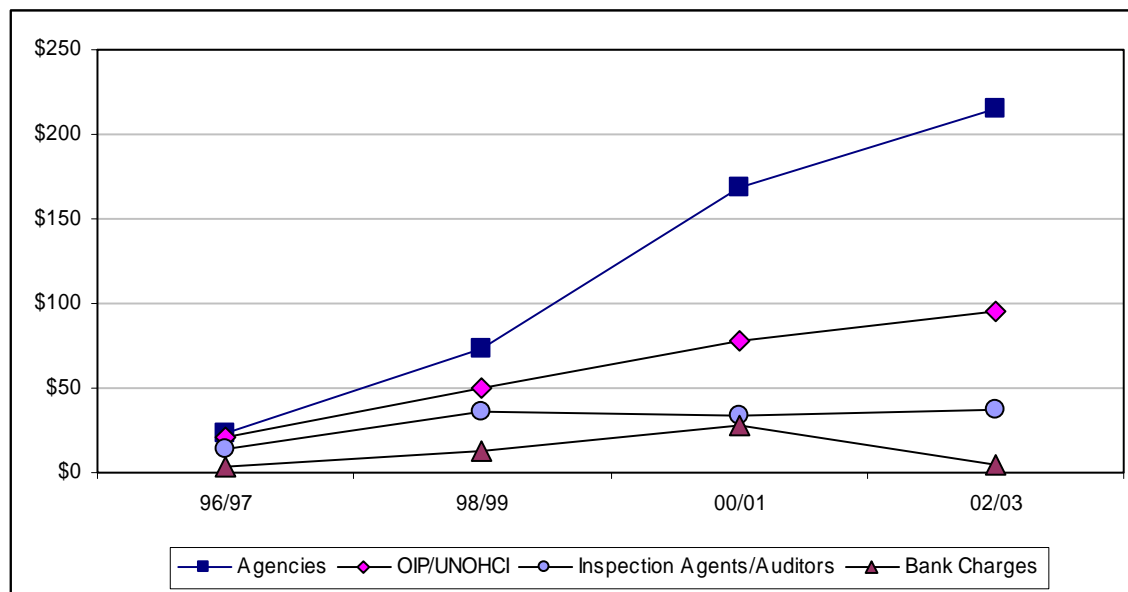
Chart B – ESD Account: Uses of Funds in Aggregate (in USD millions)



PART TWO

CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

Chart C – ESD Account: Uses of Funds by Biennium (in USD millions)



B. ADVANCES TO UN-RELATED AGENCIES

As illustrated in Chart C, as the Programme progressed and grew in scope, the rate of funds spent by the agencies in administering the Programme far outpaced the rate of growth in funds spent by OIP and UNOHCI. By 2002, spending of ESD funds by the agencies amounted to approximately two-thirds of total ESD funds spent for the year. In contrast, the funds spent by OIP and UNOHCI grew at a much slower rate.

As discussed earlier, the agencies were required to submit detailed requests for funds to OIP and the United Nations Controller each budgetary cycle. Based on the approved budgets, the agencies were advanced funds from the ESD Account to cover their costs for administering the Programme, such as salaries, rents, transportation, communications, IT equipment, and other miscellaneous expenses.⁴¹⁰ In light of the significant amount of funds involved, the apparent lack of transparency and oversight by OIP into the manner in which the funds were spent by the agencies, and other concerns, the Committee is currently undertaking an extensive review of the agencies' budgeting processes, the manner in which their funds were used and reported, and

⁴¹⁰ WFP and UNICEF elected not to receive advances and instead were reimbursed based on actual incurred costs. It is important to note that the agencies, beginning in 2001, were also reimbursed by the Programme from its fund for "Programme Support Costs," for certain indirect costs incurred in implementing the Programme. The Committee is also reviewing the appropriateness of these charges.

PART TWO

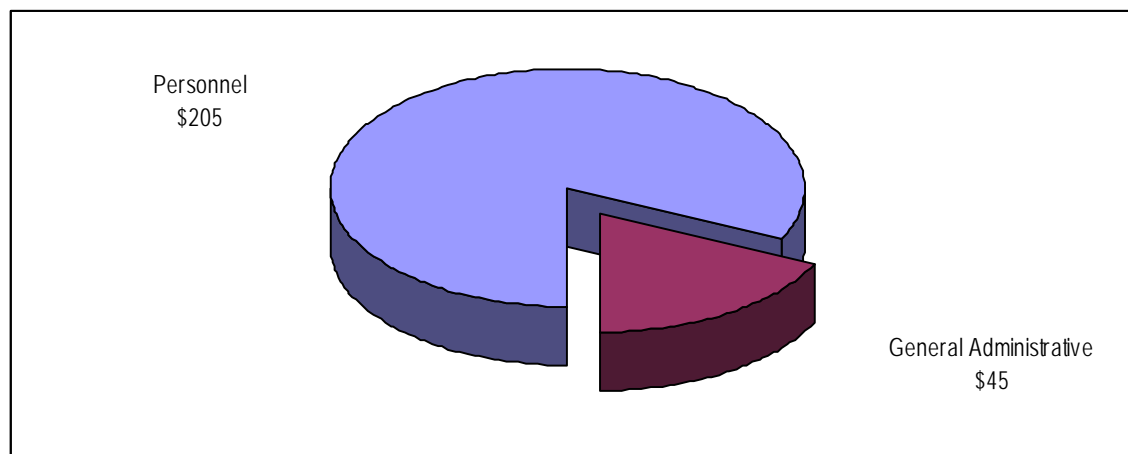
CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

whether the appropriate actions regarding interest earned on the funds were taken. It will report on these issues later this year.

C. OIP AND UNOHCI EXPENDITURES

The largest component of administrative costs for OIP and UNOHCI was for labor. As shown in Chart D, the large majority of funds, or \$205 million, of the total \$250 million spent by OIP and UNOHCI, as of June 2004, was spent on personnel and personnel-related costs, such as salaries, benefits, allowances, and travel.⁴¹¹ All other administrative costs of OIP and UNOHCI—such as for facilities, furniture and equipment, transportation, and general office items and services—totaled \$45 million, which represents less than five percent of the *total* funds spent from the ESD Account (including agencies).

Chart D – OIP/UNOHCI Use of ESD Funds (in USD millions)



1. Personnel

As with most humanitarian efforts, administering the Programme was labor-intensive and required the work of hundreds of staff and consultants from throughout the United Nations. Most of the staff was located in Iraq as part of the field operations. For example, 544 (eighty-six percent) of the 635 staffing posts budgeted for 2002 were for positions in Iraq. The rest of the staff was located in New York at OIP headquarters and within other organizational bodies throughout the United Nations, which performed support or specialized functions on behalf of the Programme, such as accounting, payroll, internal audit, and treasury. Approximately seventy-one

⁴¹¹ For purposes of this Report, personnel costs include the costs relating to consultants under contract with the United Nations.

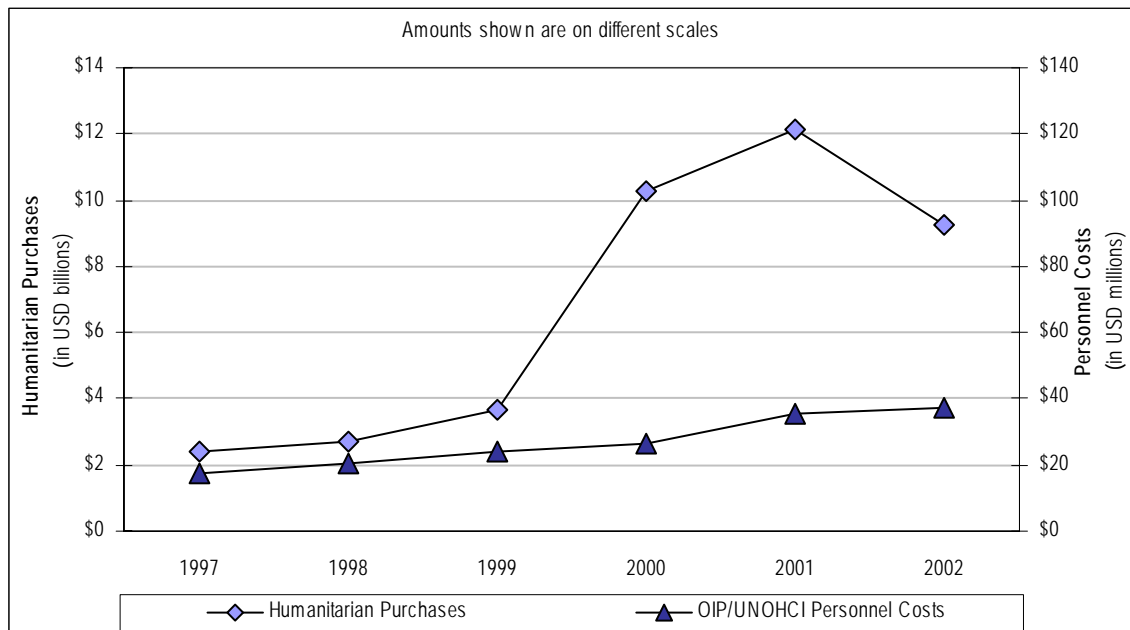
PART TWO

CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

percent (\$145 million) of the total personnel costs of \$205 million related to the posts in Iraq; about twenty percent (\$41 million) related to costs of OIP headquarter operations in New York; and about nine percent (\$19 million) related to other United Nations support personnel for the Programme.⁴¹²

As shown in Chart E, personnel costs for OIP's and UNOHCI's administrative operations increased annually as the scope of the Programme increased, but at a slower rate, especially as the volume of humanitarian purchases almost tripled from 1999 to 2000. Consequently, OIP/UNOHCI personnel costs for administering the Programme—as a percentage of total humanitarian expenditures—decreased substantially after 1999, averaging about seven-tenths of one percent from 1997 to 1999, and then dropping to less than three-tenths of one percent in 2000 and 2001.⁴¹³

Chart E – OIP/UNOHCI Personnel Costs versus Humanitarian Purchases (Excluding Agencies)



⁴¹² Programme ESD Account approved budget request for the 2002 twelve-month operating period.

⁴¹³ The information and statistics for total personnel costs as reported in this Subsection is for OIP and UNOHCI only, and it does not include the personnel costs of the individuals administering the Programme on behalf of the nine UN-related agencies.

PART TWO

CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

In keeping with standard United Nations practice, staffing posts (or positions) paid for by the Programme bore all remuneration and related costs of the individual occupying the post, including the person's salary and various allowed benefits, allowances, pension contributions, travel, and relocation costs. It did not, however, include any indirect overhead-related costs or levies. Salaries, benefits, and allowances paid to individuals were based on a variety of factors including level, working location, and special circumstances, and these were based on the standard guidelines and parameters applicable across the United Nations for its employees.⁴¹⁴

Table B illustrates the percentages of costs paid for salaries versus benefits and travel. Due to the sheer number of posts located outside the United States, millions of dollars were spent related to travel (\$8 million) and daily subsistence (i.e., per diem living allowances for staff working away from home) (\$38 million). In addition, other standard benefits borne by the Programme included pension contributions of \$20 million and education tuition subsidies for staff members' families of \$3 million. Due to the conditions in Iraq, an additional \$6 million was paid in hazardous duty and hardship and mobility allowances. In all, as reflected in Table B, total benefits and allowances for OIP and UNOHCI personnel amounted to \$55 million (twenty-seven percent of total personnel costs and thirty-nine percent of salaries).⁴¹⁵

Table B – Components of OIP/UNOHCI Personnel Costs (in USD millions)

	<u>Total</u>	<u>Percent</u>
Salaries	\$142	69%
Benefits and Allowances	55	27%
Travel	8	4%
Total	<u>\$205</u>	<u>100%</u>

The Committee notes that a large portion of funds (up to \$19 million) was spent on staff posts filled by individuals within the United Nations providing support functions to the Programme, such as accounting, treasury, payroll, audit, and legal.

The Committee is aware of at least one instance in which a post—though funded from the ESD Account—did not involve any work directly on Programme tasks. The staff in question occupied a relatively high level post in a key support group. The rationale for funding this post from the ESD Account was that the job responsibilities provided to the United Nations Controller specifically identified Programme-related tasks; however, this work was not performed. The Committee is continuing its review of this apparent transgression, including focused discussions

⁴¹⁴ Christophe Monier interview (Dec. 15, 2004). Mr. Monier is Chief, Payroll Section, Accounts Division.

⁴¹⁵ Total benefits and allowances reported herein include and are reduced by the corresponding deductions from staff pay to fund the United Nations' tax reimbursement program.

PART TWO

CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

with those involved, and it will report on the results of its investigation in the future. Until then, the Committee has elected not to reveal the names of those involved.

2. General Administration

While the use of ESD Account monies for general administration represented the smallest dollar component of the annual administrative costs, it also represented the most diverse and complex in terms of the number and types of items, vendors, functions, and purposes.

Major expenditures for general administration included the use and maintenance of offices and facilities in both New York and Iraq; the purchase and maintenance of furniture and equipment, including IT, office, and communications equipment; transportation and the purchase of vehicles; communication and telephone services; and general office expenses. These costs, from 1997 to June 30, 2004, are summarized in Table C.

PART TWO

CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

Table C – Components of OIP/UNOHCI General Administration Costs (in USD millions)

	1997	1998	1999	2000	2001	2002	2003	2004 ¹	Total
Fixtures & Equipment	\$2.4	\$0.5	\$1.0	\$0.6	\$4.4	\$1.3	\$2.0	\$0.0	\$12.2
Facilities	0.3	0.2	0.4	0.7	4.0	2.9	1.8	1.3	11.6
Office Services	0.7	0.6	0.6	1.1	1.9	1.7	2.6	0.1	9.3
General & Administrative	0.3	0.6	0.3	1.2	1.3	1.7	1.3	0.2	6.9
Transportation	1.8	0.4	0.5	0.2	1.5	0.1	0.6	0.0	5.1
Total	\$5.5	\$2.3	\$2.8	\$3.8	\$13.1	\$7.7	\$8.3	\$1.6	\$45.1

¹Through June 30, 2004

OIP and UNOHCI purchased many of these items and services directly from third-party vendors. These outlays were generally well-supported by supplier invoices, contracts and other documentation. However, a sizable amount of the more general expenses represented internal charges to the Programme by the United Nations for items or services purchased centrally by the United Nations, including costs for insurance, satellite communications, telephone, and delivery. While it is the standard practice of the United Nations to allocate directly such charges to the various activities, departments, and programs that utilize the items or services, for many of these, the Committee has not been able to determine the exact basis for and approval of the charge or allocation of these costs. Therefore, these costs and allocation methods are being further examined by the Committee in its evaluation of the administration of the Programme.

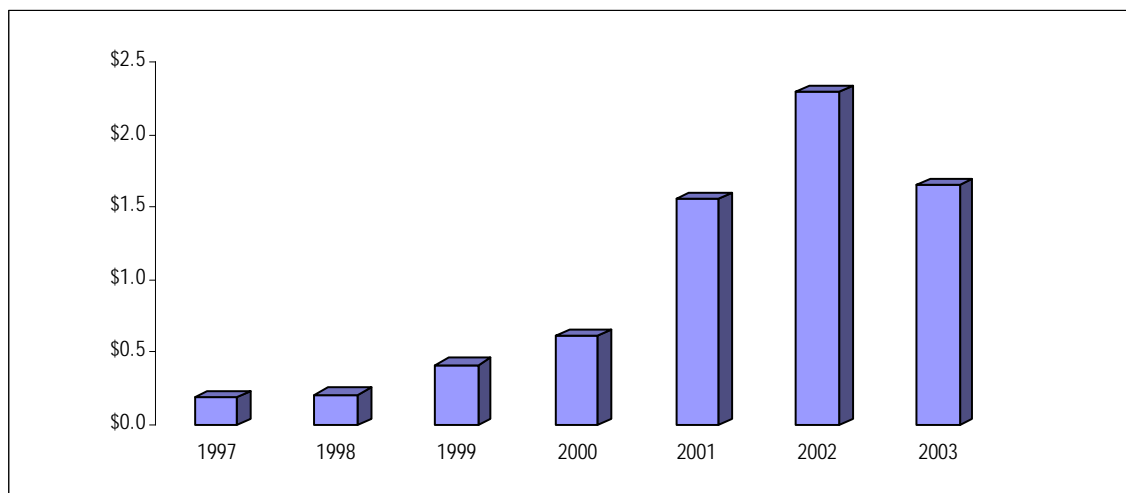
As shown in Table C above, after the Programme's initial year, expenditures for general administration remained relatively flat until 2001. During 2001, about \$5 million was spent on the purchase of large quantities of vehicles, computer equipment, office furniture, and radio network equipment. In addition, a total of \$4 million was spent related to OIP's and UNOHCI's office facilities, most of which related to OIP's move to its new office space in 2001.⁴¹⁶ As shown in Chart F, the expansion of space requirements almost quadrupled OIP's annual lease costs from \$610,000 in 2000 to \$2.3 million in 2002.

⁴¹⁶ During 2001, the United Nations entered into a five-year lease to move OIP and UNMOVIC's headquarters to 30,845 square feet of space at 866 UN Plaza in New York, at a monthly lease obligation exceeding \$120,000 (with rates starting at about \$48 per square foot). Including the costs to retrofit and renovate the space for OIP's use, the total costs of the new space in 2001 amounted to over \$3 million. The lease obligations run through January 2006. Although OIP has dissolved, a portion of the on-going monthly lease obligation for the empty space continues to be funded from the ESD Account.

PART TWO

CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

Chart F – OIP/UNOHCI Annual Leasing Costs (in USD millions)



D. OTHER COSTS

1. Inspection Agents and Auditors

Pursuant to Resolution 986, the Programme employed independent inspection agents, customs agents, auditors, and others to maintain the integrity of the Programme. Through June 2004, a total of \$119 million from the ESD Account was spent on the three firms employed as border inspection agents: Cotecna, Lloyd's, and Saybolt. In contrast, \$1 million was paid to BOA over the duration of the Programme for its audits of the ESD Account's accounting and financial reporting functions.

2. Bank Charges

The Agreement for Banking Services in place between the United Nations and BNP—at the Programme's start—stipulated that the Programme would pay the fees and charges associated with issuance of letters of credit by BNP in regard to humanitarian contracts and other activities. Due to the Programme's growing activity in its middle phases, the amount of annual fees and charges became increasingly large. These fees were paid from the ESD Account regardless of the escrow account to which the relevant activity was related.⁴¹⁷

⁴¹⁷ Agreement for Banking Services between BNP and the United Nations (Sept. 12, 1996).

PART TWO

CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

In late 2000, the Agreement was renegotiated so that the beneficiaries of letters of credit issued outside of Iraq (that is, suppliers of humanitarian goods) were required to pay the fees.⁴¹⁸ BNP would reimburse the Programme (into the ESD Account) for fees it collected.⁴¹⁹ As reflected in Chart C above, this change significantly reduced bank fees paid out of the ESD Account during the remainder of the Programme. As of June 30, 2004, total fees and charges paid to BNP, net of reimbursements as of that date, was \$51 million.

⁴¹⁸ Amendment No. 4 to the Agreement for Banking Services (Nov. 2000).

⁴¹⁹ Bank fees were reimbursed only for supplier contracts that were successfully completed. The Programme still had to absorb the costs of bank fees for letters of credit where contracts expired or were cancelled.

PART TWO

**CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S
ADMINISTRATIVE EXPENDITURES**

This page is intentionally left blank

PART TWO

CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

V. AUDIT OVERVIEW

The Iraq-UN MOU established that BOA should audit the Iraq Escrow Accounts. As described above, separate accounting books were maintained, and financial statements prepared, for all Programme funds, including the ESD Account. The financial statements relating to these funds were routinely audited by BOA and given unqualified opinions; corresponding audit reports and audited financial statements were distributed to the Secretary-General, United Nations Controller, OIP, OIOS, JIU, 661 Committee, and the Government of Iraq.⁴²⁰

The Committee has obtained copies of the financial statements, audit reports, and management letters relating to all Programme funds, including the ESD Account, and noted matters raised by BOA that are of interest to the Committee. The Committee is currently in discussions with BOA on access to and review of its supporting audit work papers. As part of a future report, the Committee will assess the extent and resolution of the matters raised by BOA.

The ESD Account was also subject to internal audits by IAD; the nature of the internal audit function is discussed at length in the previous Chapter. However, only one internal audit relating to the ESD Account was conducted during the course of the Programme. In late 2001, IAD audited the budgetary practices and procedures of the agencies administering the Programme. The audit identified deficiencies in the relevant policies and procedures, internal controls, and the monitoring of agency expenditures. Among other things, the internal audit report concluded that “inadequate provision was made in the UN agencies’ budgets for internal auditing.”⁴²¹

⁴²⁰ Iraq-UN MOU, para. 14; BOA and Secretary-General transmittal letters.

⁴²¹ “Audit of budget practices for the SCR 986 (1995) 2.2 per cent account,” AF2001/35/1 (Aug. 26, 2002).

PART TWO

**CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S
ADMINISTRATIVE EXPENDITURES**

This page is intentionally left blank

PART TWO

CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

VI. FINDINGS AND CONCLUSIONS

As outlined in the Introduction, the Committee set out to answer the following three questions:

1. Did the United Nations treat the 2.2 percent, which was allocated to the ESD Account, as a commission or entitlement that it could spend at will?
2. Did the United Nations spend the ESD funds for purposes or programs other than the Programme, or did it otherwise use the funds to enrich itself?
3. Was the ESD Account ever audited?

Findings:

1. The Committee finds that the ESD Account was not treated by the United Nations as a commission, either by design or practice, but rather as a necessary pool of funds dedicated to covering the significant administrative expenses associated with the Programme. Although the inflow of funds available for use was tied directly to oil sales—which therefore grew as oil sales increased—actual expenditures were based on the Programme's expected needs. To spend money from the account, detailed semi-annual or annual needs-based budgets that incorporated standard United Nations rates and ceilings were required to be submitted for evaluation and approval by the United Nations Controller. The budgets and actual expenditures were always significantly less than the amount of funds available, so much so, that \$372 million, or twenty-seven percent of the total oil proceeds allocated to ESD and available for the United Nations to spend, was not used, but rather was transferred out of the account to be used directly for the benefit of the Iraqi people.
2. The Committee finds that funds designated to be deposited in the ESD Account, pursuant to the appropriate resolutions, were in fact deposited. The Committee found no evidence that funds allocated to the ESD Account were commingled with other Programme or United Nations funds or removed from the ESD Account without authorization, including transfers or payments to non-Programme entities at the United Nations. With the one exception mentioned below, the Committee found no evidence that ESD funds were used for any purpose other than the Programme. However, the Committee notes the following matters that it continues to investigate as part of its evaluation of the Programme's administration:
 - a. In reviewing disbursements from the ESD Account, the Committee found instances in which the purpose of the expenditure was not well supported or its use adequately explained. This was especially prevalent in the charges internally allocated to the Programme by the United Nations. The Committee also identified instances in which expenses were inadvertently miscoded within the accounting records or were inconsistently coded across multiple budget classifications.

PART TWO

CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

- b. In addition, the Committee identified one instance in which an individual's remuneration was inappropriately allocated to and funded from the ESD Account. The Committee has reviewed numerous other non-OIP staffing positions funded from the ESD Account, and it has concluded that this instance is likely an isolated occurrence.
 - c. Finally, the Committee noted weaknesses in some of the supporting documentation, controls and safeguards in place to maintain the integrity of the accounting and financial reporting functions. These matters and concerns—many of which were also previously identified by the external auditors—could have resulted in isolated instances of inappropriate spending of ESD funds. The Committee is further investigating this and will provide its evaluation in its report on the Programme's administration, which will be released later this year.
 3. The Committee finds that IAD conducted only one internal audit relating to ESD, but that the accounting and financial reporting processes and results of the ESD Account were audited routinely by BOA. The Committee finds also that external audit reports were distributed to the Security Council and others. The Committee will review and assess BOA's Programme-related findings in a future report.

Although the funds spent from the ESD Account appear to the Committee to have been appropriately accounted for and used for administering the Programme, additional analysis and review of the expenditures is needed in order to determine whether those funds were effectively used. This includes the amounts advanced to the nine UN-related agencies for which little transparency and oversight was in force.

Finally, in light of the allegations of fraud and corruption relating to the Programme's administration, the Committee finds that additional funds should have been expended on inspections and audits, notwithstanding the request of the Security Council to "minimize the cost of the United Nations activities associated with the implementation of resolution 986 (1995) as well as the cost of the independent inspection agents and the certified public accountants."⁴²²

⁴²² S/RES/1284, para. 22 (Dec. 17, 1999).

PART TWO

CHAPTER 6 - FORENSIC ANALYSIS OF THE PROGRAMME'S ADMINISTRATIVE EXPENDITURES

VII. RECOMMENDATIONS

The Committee recognizes that the Programme was unique to the United Nations in many respects, namely its sheer size, scope, and political and geographic complexities. The Committee commends the United Nations for establishing a separate accounting for the various components of the Programme. The Committee also notes the intention of the Security Council, United Nations, and OIP to minimize the administrative costs of the Programme. Finally, the Committee is aware of the United Nations' efforts to operate the administrative and budgetary components of the Programme within the applicable standard practices and policies of the United Nations.

In light of this and its findings related to the ESD Account, the Committee has the following recommendations:

A. TRANSPARENCY

Increase transparency of the administration of funds and programs, especially in relation to the need to review, based on detailed financial reports, budgetary, disbursement, and cost allocation processes and decisions. Provide more detailed and descriptive financial statements and reports. Consider making such reports publicly available.

B. CONTROLS AND OVERSIGHT

Emphasize the importance of establishing and maintaining high standards of documentation, controls, oversight, and reporting for large humanitarian aid programs or funds, especially ones involving extra-budgetary funding sources, to preclude any doubt regarding the United Nations' costs and questions as to whether it profits from such projects.

APPENDIX

Paris 27 January 2005

Following the phone conversation with Dr. Paul Volcker today I want to confirm what I told him:
The choice of the Bank B.N.P. 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.

Boutros Boutros-Ghali

APPENDIX

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

1440 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005-2111

TEL: (202) 371-7000
FAX: (202) 393-5760
www.skadden.com

DIRECT DIAL
(202) 371-7180
DIRECT FAX
(202) 371-7813
EMAIL ADDRESS
RBENNETT@SKADDEN.COM

FIRM/AFFILIATE OFFICES

BOSTON
CHICAGO
HOUSTON
LOS ANGELES
NEW YORK
PALO ALTO
SAN FRANCISCO
WASHINGTON, D.C.
WILMINGTON
BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
PARIS
SINGAPORE
SYDNEY
TOKYO
TORONTO
VIENNA

February 1, 2005

VIA FACSIMILE AND FEDERAL EXPRESS

Professor Mark Pieth
Faculty of Law
University of Basel (Switzerland)
Maiengasse 51
CH-4056 Basel
SWITZERLAND

Michael T. Cornacchia, Esq.
Chief Investigative Counsel
Independent Inquiry Committee into the
United Nations Oil-for-Food Programme
825 Third Avenue, Fifteenth Floor
New York, NY 10022

Re: BNP Paribas

Dear Messrs. Pieth and Cornacchia:

It was good to have had the occasion to meet with you and to provide the Independent Inquiry Committee ("IIC") that has been commissioned by the United Nations ("U.N.") with an opportunity to interview four individuals who were senior officials of Banque Nationale de Paris ("BNP") at the time BNP was awarded a mandate by the U.N. to provide certain banking services in connection with the U.N.'s Oil-for-Food Program (the "Program"). As those individuals stated, BNP was well-qualified to provide those services, based upon its broad global experience with respect to the financing of international oil and other commodities transactions, and

APPENDIX

Professor Mark Pieth
Michael T. Cornacchia, Esq.
February 1, 2005
Page 2

especially in light of its substantial "back office" capabilities in New York – including approximately 50 employees highly skilled in processing letters of credit – as a legacy of its acquisition of the French American Bank.

It therefore was surprising to us that the IIC appeared to have formed the impression that BNP lacked the credentials to perform such services. That impression evidently was based in some considerable part upon the Bank's 1996 individual credit rating of "B/C" by a rating agency known as IBCA.

Several observations are relevant in this regard. First, by IBCA's own account, an individual "B/C" rating indicated that BNP's creditworthiness was "adequate" to "strong." In addition, BNP's 1996 long-term credit rating by IBCA was AA-. Moreover, BNP's long-term unsecured debt ratings by S&P and Moody's were A+ and Aa3, respectively. BNP's short-term credit ratings by S&P and Moody's likewise were high.

Coupled with its willingness to take the credit risk associated with the confirmation of oil letters of credit issued by other banks around the world, its reasonable pricing, and its depth of relevant experience, BNP's solid financial footing, as reflected in its strong credit ratings, made it an excellent choice to receive the mandate to hold the U.N. Iraq Account. We believe this has been borne out by the capable performance of banking services for the U.N. throughout the course of the Program by BNP and its successor, BNP Paribas; and by the fact that the U.N. ultimately chose not to diversify the handling of the U.N. Iraq Account even after it grew to a size and corresponding level of activity that far outstripped all expectations.

We submit it therefore would be unfair to question BNP's qualifications to hold the U.N. Iraq Account, much less to speculate that it must have been awarded the mandate for political reasons, based upon a false premise that it was not qualified for the award. Such speculation, even if not couched as an "adverse

APPENDIX

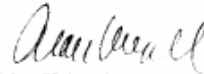
Professor Mark Pieth
Michael T. Cornacchia, Esq.
February 1, 2005
Page 3

finding," would cause incalculable harm to BNP Paribas, especially in the highly charged atmosphere in which such speculation would be received. Accordingly, if the IIC is contemplating any such observations in its upcoming report, we very much would like to have an opportunity to speak with you before the report is issued.

Sincerely,



Robert S. Bennett



Alan Kriegel

cc: Mark G. Califano, Esq.

APPENDIX

ALLAN B. ROBERTSON
181-15 HENLEY ROAD
JAMAICA, NEW YORK 11432

2 February 2005

Independent Inquiry Committee
825 Third Avenue, 15th Floor
New York, New York 10022

Dear Mr. Volcker,

This will respond to your letter to me dated 27 January 2005. I will confine my comments to the passage you intend to include in your report concerning my role in the Saybolt award.

It is true that as Officer-in-Charge of the Procurement and Transportation Division (PTD), I approved the submission to the HCC of PTD's proposal to award the contract in question to Saybolt. Your use of the word "allowed" however conveys a misleading impression that despite being aware that a wrong decision was being made, I allowed it to be made. This is too simplistic a view of the actual dynamics of the case. I therefore invite your Committee to review my Annex 1 (attached) in conjunction with a further examination of the underlying documents to see if you have not in fact failed completely to comprehend the dynamics of the case.

A review of the referenced Annex will show clearly that from the early stages, the Steering Committee selected Saybolt. Had PTD disregarded the rules, this would have been the end of the matter and the contract would have been awarded to Saybolt without further ado. PTD, however, resisted and as a result of that resistance, we were directed to seek a series of clarifications from Saybolt and SGS. These requests were from the Steering Committee through DPA, which was the focal point. If you follow the sequence of events carefully, you will note that we, at one point, were obliged to draw the Steering Committee's attention to the fact that a decision to give the award to Saybolt would be outside normal UN procurement rules and that if that was the Steering Committee's decision, it would have to be justified. The response from DPA which is on file said in part 'while the cost of individual inspectors was important, there were other aspects of major concern to the 661 Committee, which should also be taken into consideration.' (See also Annex I).

Further, for your Committee to say therefore that I "allowed" the Saybolt to submit the lowest bid on the basis of an amended proposal also disregards the fact that this was not an ITB but an RFP, and the RFP for this requirement clearly stated that. UN procurement rules, procedures and practices allow for clarifications of this nature. Thus whether your Committee agrees with the rules or not, they allow this and in paragraph 8(iii) of the referenced Annex 1, I try to make this clear.

APPENDIX

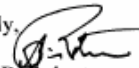
I also must state that your Committee does not appear to have a good grasp of the organization of work as between PTD, the HCC and the ASG who ultimately approves the award. Please refer to Annex III, attached to this submission as an illustration. The reality is that it was my role to approve submissions to the HCC. The HCC in turn had the role of reviewing my submissions to them and recommend the award to the ASG, who at that time was Mr. Benon Sevan. He was the one who had the power to reject or approve the award. Secondly, your Committee again misses the point when it comes to the organization of work within PTD, and as a result, undue reliance was placed on questionable notes for the file by one of my staff members, the very officer who had primary responsibility for the case. I have no recollection of ever being copied these notes for the file, and I found one of them rather self-serving in terms of the staff member concerned (See Annex II).

Further, it is imperative that the Committee review the Saybolt case within the context of UN procurement rules, procedures and practices as they are applied in the UN and not as the world would like those rules to be because that can only distort the issues. In this regard, let me draw your attention to your Committee's references to Section 8.0014 of the Procurement Manual. The practice in the UN was to treat RFPs differently from ITBs and I gave your Committee a copy of the actual practice followed. And as already referenced above paragraph 8(iii) of Annex 1 to this submission explains how these rules apply to RFPs.

In addition, please note that under the RFP procedures then in use at the UN, and it is my understanding they are still in use today, it was permissible to ask proposers for clarifications, and naturally clarifications can lead to changes in prices. The basic rationale behind a clarification is that 'something is not clear in the proposal and therefore needs to be clarified.' The process can lead to a proposer realizing that they did not take certain factors into account and when they take those factors into account, it may result in them restating their original prices.

Finally, therefore, I for one do not believe the Committee after reading Annexes I, II and III of this submission, is suggesting that given the political dynamics and sensitivities of the case, and the fact that the RFP pointed out clearly that it was the Steering Committee that would select the inspectors, PTD would have proceeded any differently. The Committee cannot fail to see that PTD tried as much as it could to keep a level playing field as between Saybolt and SGS. The in-depth minutes of the HCC meeting that dealt with the case make it very clearly what the respective roles of DPA (and the Steering Committee) and PTD were in making this award. To put blame, if any, on me individually, would be to look for a scapegoat and ignores the facts of the case and the rules, procedures and practices then in vigor.

Sincerely,



Allan B. Robertson.

APPENDIX

Annex 1

SEQUENCE OF EVENTS RESULTING IN SAYBOLT'S SELECTION

1. Under UN procurement rules and procedures, when bids are received and summarized by PTD, the summaries are sent to the substantive office for evaluation. These summaries showed the following:

(a)	SGS	=	\$1,778,220
(b)	Petrak	=	\$2,136,960
(c)	Saybolt	=	\$2,608,316

2. The summaries were sent to the Department of Political Affairs (DPA) for evaluation. DPA were the focal point for this requirement and they worked with the 661 Committee. Their recommendation, despite the fact that SGS was the lowest bidder was for Saybolt. They justified this on the basis that Saybolt's proposal was more compliant with the operative Security Council resolutions. PTD was then asked to assess if Saybolt's prices for inspectors, testing, equipment etc., could be considered fair.

3. Even though it was obvious that the 661 Committee was satisfied with the Saybolt proposal and had no interest in the SGS bid which they considered not fully compliant, PTD decided to ask for the same clarification from SGS in order to maintain a level playing field for the two competitors. These clarifications resulted in the lowering of the Saybolt bid from \$2,608,316 to \$2,366,400, while SGS's proposal went up slightly to \$1,883,040. The results were sent back to DPA. Saybolt's proposal was however still higher than SGS.

4. DPA came back to us and pointed out a number of problems with the SGS proposal including the fact that the latter had not included verification, which was a requirement under this solicitation. They also pointed out that because of the complex pricing structure proposed by SGS, they thought in practice the SGS would turn out to be higher than the Saybolt proposal. They therefore recommended Saybolt, pointing out that 'while the cost of individual inspectors was important, there were other aspects of major concern to the 661 Committee, which should also be taken into consideration. In that context, the proposal by Saybolt was clearly superior'. (Refer Stephanides memo dated 8 July 1996).

5. PTD in its memorandum of 11 July 1996 responded to the above recommendation by pointing out to DPA that if they recommended award to Saybolt, that would be outside the normal UN procurement procedures and that the decision will need to be justified. DPA responded to this on 12 July 1996 saying to hold off on submitting the case to the HCC until DPA got guidelines from the 661 Committee.

APPENDIX

6. DPA after consultations with the Steering Committee, then asked PTD to ask SGS to provide additional inspectors without links to the region. Again we, in PTD, took it upon ourselves to approach both companies for this information, to be fair and create a level playing field. (Refer also to Yakolev Note For The File dated 25 July, 1996, which I do not vouch for since I do not believe I received a copy). In response to this request, SGS maintained their price while Saybolt reduced their price to \$1,904,916. You will recall, we had fought off attempts to award the contract to Saybolt on the basis that they were not the lowest bidder and therefore the decision would have to be justified, this latest round of clarifications meant that we could no longer maintain our argument. That is when we submitted the case to the HCC on the basis of lowest acceptable bidder.

7. I draw the attention of the IIC to the minutes of the HCC (Meeting held on 30th July 1996) on this case, which include words to the following effect and invite your Committee to revisit those minutes:

'DPA (Steering Committee) stated that Saybolt's offer was considered superior, taking into account all necessary aspects necessary for the effective implementation of the sanctions, since it offered expert and reliable oil monitoring and testing arrangements in conformity with the requirements of Security Council Resolution 986 and the Memorandum of Understanding (UN/IRAQ) and the draft expedited procedures.'

8. Finally, the IIC should note the following:

- (i) Annex A to the RFP specifically said selection of the inspectors would be done by the Steering Committee;
- (ii) Paragraph 4 of the RFP points out that this was not a bid but an RFP, and
- (iii) Paragraph 5 contains language that accompanies all UN RFPs and says clearly 'the UN has the right to reject any and all proposals and negotiate with any of the Proposers or other firms in any manner deemed to be in the best interests of the UN; the UN can negotiate and award separate contracts, modify or exclude any consideration, information or requirement and add new considerations, information, requirements at any stage of the procurement process, including negotiations with the proposers; and reject a proposal submitted by any proposer etc.'

9. All these factors should be looked at in trying to understand what actually happened and whether everything that happened was within allowable limits of UN procurement rules, procedures and practices.

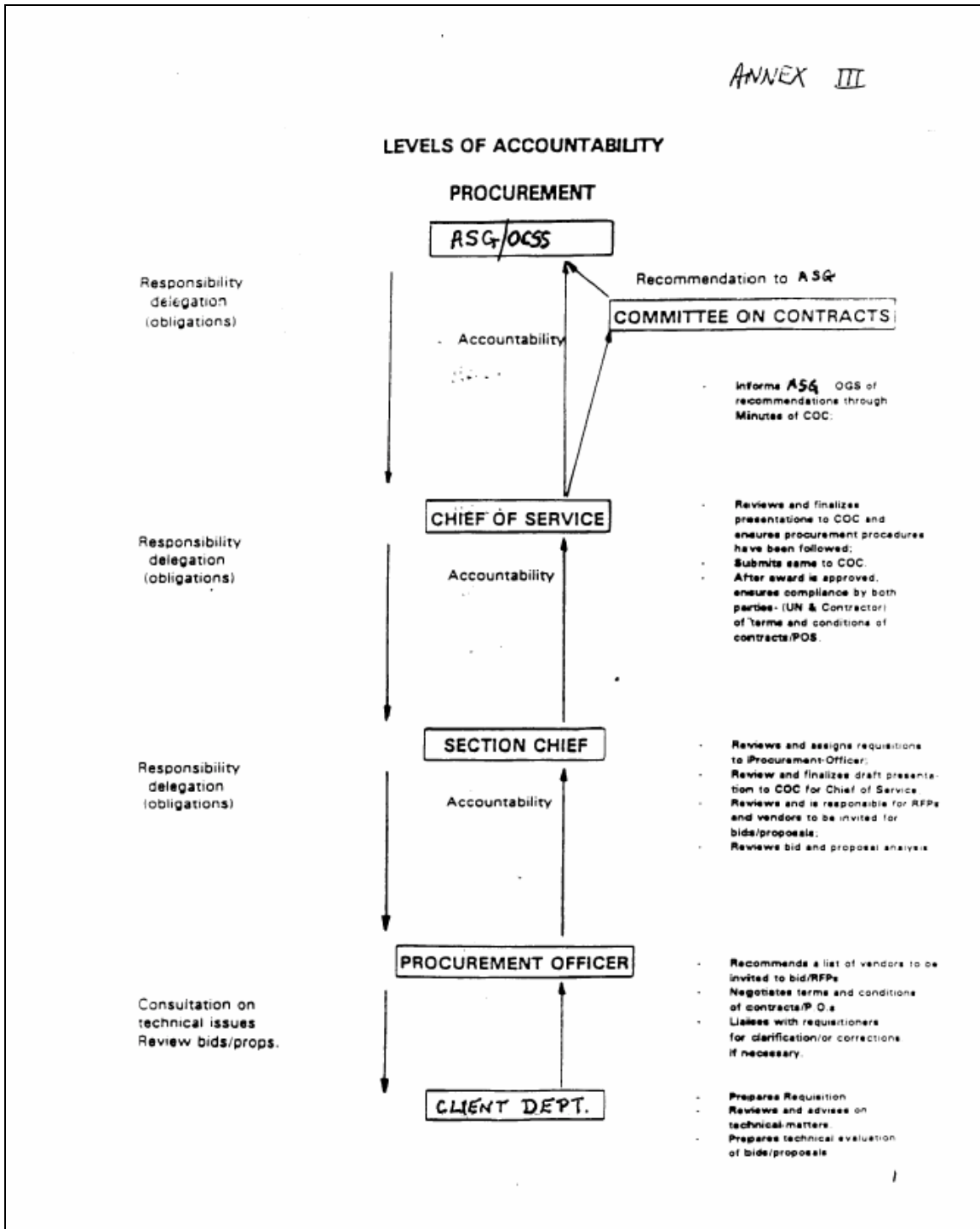
APPENDIX

Annex II

Re: Mr. Yakovlev's Notes For The File

1. During previous discussions with the IIC, it appears that undue reliance was placed on Notes For The File written by Mr. Yakovlev. I must state that I have no recollection of ever seeing these notes before I appeared before the IIC. I take particular exception to the Note of 22 July 1996, which, had I been copied, I would have responded and responded strongly. If the alleged meeting ever took place, and I disagreed with Mr. Yakovlev, as he alleges, I would have been duty bound to put my reasons in writing for disagreeing with him, with a copy to Mr. Bahel, his immediate supervisor. Both the tone and content of that Note appear to be self-serving on Mr. Yakovlev's part. I note also that while the first note refers to Mr. Bahel and myself as participants, the second note does not include Mr. Bahel, unless he was absent or Mr. Yakovlev by-passed him. Under normal circumstances any communications of this sort would have included Mr. Bahel, who was Mr. Yakovlev's immediate supervisor.
2. Mr. Yakovlev would have been the person who dealt with everything to do with this case. He would consult with Mr. Bahel when in doubt and both would come to me if they could not resolve the issues. From Annex 1, it seems clear that from the beginning, the Steering Committee preferred that the contract go to Saybolt. The only people standing between the Steering Committee and Saybolt were us (PTD). Seen from this context, Mr. Yakovlev's second note for the file does not seem to make sense,
3. In my interviews with the IIC, there was an interest in finding out whether I had been influenced in submitting Saybolt as the lowest bidder to the HCC. I think Annex 1 makes it clear that if someone was trying to influence the outcome of this bid, they did not contact me and told me what to do. If that was the intention on anyone's part, then it was done through subtle maneuvers from the Steering Committee through DPA (Mr. Stephanides), without anything explicit being said. My answer that no one tried to influence me is based on the above.

APPENDIX



APPENDIX

This page is intentionally left blank

GLOSSARY

INDIVIDUALS

Name	Description
Fakhry Abdelnour	Owner of African Middle East Petroleum Co Ltd Inc (AMEP)
Jean-Claude Aimé	Chef de Cabinet for former Secretary-General Boutros-Ghali, 1996
Yasushi Akashi	Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, 1996; Member of Iraq Steering Committee, 1996
Madeleine Albright	United States Permanent Representative to the United Nations, 1993 - 1997; United States Secretary of State, 1997 - 2001
Isam Rashid Al-Huwaysh	Former Governor of Iraq's Central Bank
Kofi Annan	Secretary-General of the United Nations, 1997 - present
Kojo Annan	Son of Secretary-General Kofi Annan; formerly employed by Cotecna Inspection SA
Tariq Aziz	Former Deputy Prime Minister of Iraq
Sanjay Bahel	Chief of the Commodity Procurement Section, United Nations Procurement and Transportation Division, 1996
Suzanne Bishopric	Deputy Treasurer of the United Nations, 1996; currently United Nations Treasurer
Peter Boks	Executive, Saybolt Eastern Hemisphere BV
Boutros Boutros-Ghali	Secretary-General of the United Nations, 1992 - 1996
Lisa Buttenheim	Assistant to Chinmaya Gharekhan, 1996
Joseph E. Connor	Under-Secretary-General for Administration and Management, 1996; Member of Iraq Steering Committee, 1996
Hans Corell	Under-Secretary-General for Legal Affairs, 1994 - 2004; Member of Iraq Steering Committee, 1996
Howard Earnshaw	Employee of Lloyd's Register Inspection Ltd, 1996
Chinmaya R. Gharekhan	Under-Secretary-General and Senior Adviser to the Secretary-General (Boutros-Ghali), 1996; Chairman of Iraq Steering Committee, 1996
Marrack I. Goulding	Under-Secretary-General for Political Affairs, 1986 - 1997; Member of Iraq Steering Committee, 1996

GLOSSARY

INDIVIDUALS

Name	Description
Jean-Pierre Halbwachs	Controller of the United Nations, 1997 - present
Nizar Hamdoon	Former Deputy Minister of Foreign Affairs, Iraq; Ambassador, Iraq's Permanent Representative to the United Nations, 1996
Steven R. Katz	Senior Legal Officer, United Nations Office of Legal Affairs, 1996
Fred Nadler	Friend of Benon Sevan and Fakhry Abdelnour
Dileep Nair	Under-Secretary-General of the United Nations Office of Internal Oversight Services
Taha Yassin Ramadan	Former Vice President of Iraq
Amer Muhammad Rashid	Former Minister of Oil, Iraq
Iqbal Riza	Former Chef de Cabinet of the Secretary-General (Kofi Annan)
Allan B. Robertson	Officer-in-Charge of United Nations Procurement and Transportation Division, 1996
Stephani Scheer	Chief, United Nations Office of the Iraq Programme, 1997 - 2001
Benon Vahe Sevan	Under-Secretary-General and Executive Director of the United Nations Office of the Iraq Programme, 1997 - 2004; previously Secretary-General's Personal Representative in Afghanistan and Pakistan; Assistant Secretary-General and Deputy Head of Department of Political Affairs; Assistant Secretary-General with the Office of Conference and Support Services, Department of Administration and Management, 1996; United Nations Security Coordinator
Joseph Stephanides	Chief of the Sanctions Branch and Deputy Director of the Security Council Affairs Division, United Nations Department of Political Affairs, 1996; previously Deputy Permanent Representative for the Cyprus Mission to the United Nations; currently Director of the Security Council Affairs Division, United Nations Department of Political Affairs
Esther Stern	Director, Internal Audit Division, United Nations Office of Internal Oversight Services, 1998 - 2002
Yukio Takasu	Assistant Secretary-General and Controller, 1996; Member of Iraq Steering Committee, 1996

GLOSSARY

INDIVIDUALS

Name	Description
Wolfgang Weisbrod-Weber	Assistant to Chinmaya Gharekhan, 1996
David Wengert	Director of the United Nations Accounts Division, 1996
Alexander Yakovlev	Procurement Officer, United Nations Procurement and Transportation Division, 1996

ORGANIZATIONS

Term	Description
AMEP	African Middle East Petroleum Co Ltd Inc
BNP	Banque Nationale de Paris
Command Council	Iraqi regime leaders who made decisions on allocations of oil
Cotecna	Cotecna Inspection SA
EGPC	Egyptian General Petroleum Corporation, an Egyptian state-owned petroleum company
IIA	Institute of Internal Auditors
Lloyd's	Lloyd's Register Inspection Ltd.
MIF	Multinational Interception Force
OPEC	Organization of Petroleum Exporting Countries
Saybolt	Saybolt Eastern Hemisphere BV
SGS	Société Générale de Surveillance SA
SOMO	Iraq's State Oil Marketing Organization
STASCO, Shell	Shell International Trading and Shipping Company Limited (Shell)
the Committee	Independent Inquiry Committee into the United Nations Oil-for-Food Programme
Veritas	Bureau Veritas

GLOSSARY

UNITED NATIONS ABBREVIATIONS

Term	Description
661 Committee	A sanctions oversight committee created under Security Council Resolution 661 (1990), composed of representatives from each of the fifteen members of the Security Council
ACABQ	United Nations General Assembly Advisory Committee on Administrative and Budgetary Questions
AOC	Audit Operations Committee (United Nations)
BOA	United Nations Board of Auditors
DAM	United Nations Department of Administration and Management, later renamed Department of Management
DESA	United Nations Department of Economic and Social Affairs
DHA	United Nations Department of Humanitarian Affairs
DPA	United Nations Department of Political Affairs
FAO	Food and Agricultural Organization of the United Nations
Fifth Committee	United Nations General Assembly committee entrusted with the task of dealing with administrative and budgetary matters
General Assembly	Main deliberative organ of the United Nations, composed of representatives of all member states, each of which has one vote; meets annually
HCC	United Nations Headquarters Committee on Contracts
IAD	Internal Audit Division, United Nations Office of Internal Oversight Services
ID	Investigations Division, United Nations Office of Internal Oversight Services
IPAS	Iraq Programme Audit Section, Internal Audit Division, United Nations Office of Internal Oversight Services
ITU	International Telecommunication Union
JIU	Joint Inspection Unit (United Nations)

GLOSSARY

UNITED NATIONS ABBREVIATIONS

Term	Description
MECD	Monitoring, Evaluation & Consulting Division, United Nations Office of Internal Oversight Services
OFFP or the Programme	United Nations Oil-for-Food Programme
OIOS	United Nations Office of Internal Oversight Services
OIP	United Nations Office of the Iraq Programme, established October 15, 1997 to administer the Oil-for-Food Programme
OLA	United Nations Office of Legal Affairs
OPPBA	United Nations Office of Programme Planning, Budget and Accounts
PFD	United Nations Peacekeeping Financing Division
PMD	Programme Management Division, United Nations Office of the Iraq Programme
PTD	Procurement and Transportation Division, United Nations Department of Administration and Management; renamed Procurement Division in July 1997
RIAS	Representatives of Internal Audit of the United Nations Organizations and Multilateral Financial Institutions
Security Council	United Nations Security Council, composed of representatives of fifteen member states, of which five have permanent seats; primary responsibility for maintenance of international peace and security
SRP	Settlements Rehabilitation Programme, part of UN-Habitat
Steering Committee	Advisory body established by Secretary-General Boutros-Ghali to coordinate implementation of Resolution 986, chaired by Chinmaya Gharekhan; also known as "Iraq Steering Committee" and "986 Committee"
the Organization	the United Nations
the Programme	United Nations Oil-for-Food Programme
UN	United Nations

GLOSSARY

UNITED NATIONS ABBREVIATIONS

Term	Description
UN-related agencies	These nine agencies had significant roles in the Programme on the ground in Iraq, especially in the three governorates in the largely Kurdish northern region: Food and Agriculture Organization of the United Nations (“FAO”), International Telecommunication Union (“ITU”), United Nations Development Programme (“UNDP”), United Nations Educational, Scientific and Cultural Organization (“UNESCO”), United Nations Human Settlements Programme (“UN-Habitat”), United Nations Children’s Fund (“UNICEF”), United Nations Office for Project Services (“UNOPS”), World Food Programme (“WFP”), and World Health Organization (“WHO”). For ease of reference, this Report refers to this group of agencies as “UN-related agencies” in recognition that they have varying legal relationships to the United Nations.
Treasury	United Nations Treasury
UNCC	United Nations Compensation Commission, established by Security Council Resolution 687 (1991), to compensate victims of Iraq’s invasion of Kuwait
UNCHS	United Nations Centre for Human Settlements, also known as UN-Habitat
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UN-Habitat	United Nations Human Settlements Programme (UNHSP), also known as UNCHS, Centre for Human Settlements
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children’s Fund
United Nations Inter-Agency Humanitarian Programme	Coalition of UN-related agencies tasked with distributing humanitarian goods in the three northern governorates of Iraq (“UN-related agencies”)
UNMOVIC	United Nations Monitoring, Verification and Inspection Commission
UNOHCI	United Nations Office of the Humanitarian Coordinator for Iraq
UNOPS	United Nations Office for Project Services

GLOSSARY

UNITED NATIONS ABBREVIATIONS

Term	Description
WFP	World Food Programme
WHO	World Health Organization

SECURITY COUNCIL AND GENERAL ASSEMBLY RESOLUTIONS

Resolution	Description
Resolution 661 (1990)	Following invasion of Kuwait by Iraq in 1990, United Nations Security Council passed this resolution to prohibit most forms of trade and financial transactions with Iraq
Resolution 687 (1991)	After the restoration of Kuwait's sovereignty, the United Nations Security Council passed Resolution 687 to continue the sanctions regime subject to Iraq's compliance with disarmament and weapons inspections requirements and subject again to humanitarian exemptions; established the United Nations Compensation Commission
Resolution 706 (1991)	In an earlier attempt to create an oil-for-food program, this resolution envisioned the creation of an escrow account administered by the Secretary-General for direct payment of full amount of each purchase of Iraqi petroleum, and allowed for part of the sum in the account to be made available to cover the cost of administering the program
Resolution 712 (1991)	In an earlier attempt to create an oil-for-food program, this resolution envisioned an escrow account administered by the Secretary-General, and allowed for funds contributed from other sources other than Iraqi oil to be deposited into this account to meet Iraq's humanitarian needs
Resolution 48/218B (1994)	General Assembly resolution establishing the United Nations Office of Internal Oversight Services
Resolution 986 (1995)	Security Council Resolution establishing the Oil-for-Food Programme
Resolution 1153 (1998)	Increased six month limitation on oil sales to \$5.256 billion
Resolution 1175 (1998)	Authorized use of \$300 million from the escrow account to import "parts and equipment to enable Iraq to increase the export of petroleum and petroleum products"

GLOSSARY

SECURITY COUNCIL AND GENERAL ASSEMBLY RESOLUTIONS

Resolution	Description
Resolution 54/244 (1999)	General Assembly resolution reaffirming Resolution 48/218B, refining operations of the United Nations Office of Internal Oversight Services
Resolution 1284 (1999)	Removed quantity limitation on oil lifting; approved “green list” procedure to exempt certain Programme-financed contracts from 661 Committee review
Resolution 1293 (2000)	Increased oil spare parts exemption from \$300 million to \$600 million
Resolution 1302 (2000)	Requested the Secretary-General to submit to the 661 Committee recommendations regarding the use of excess funds drawn from the escrow account
Resolution 1330 (2000)	Changed allocations of the Iraq Escrow Account to allow 59 percent of oil sales to be used for goods in southern and central Iraq and to reduce the percentage devoted to the victims of the Iraq-Kuwait war
Resolution 1360 (2001)	Requested that the Secretary-General transfer excess funds from the operational and administrative escrow account (ESD, or 2.2 percent) to increase the funds available in the humanitarian escrow accounts
Resolution 1409 (2002)	Instituted goods review list procedure to require that only certain potential “dual use” goods be subject to 661 Committee review
Resolution 1483 (2003)	Directed phase-out of ongoing operations of the Oil-for-Food Programme
Resolution 1538 (2004)	Created the Independent Inquiry Committee into the United Nations Oil-for-Food Programme (“the Committee”)

GLOSSARY

OTHER TERMS

Term	Description
CWA Account	Held funds to be used by the United Nations Compensation Commission to compensate victims of Iraq's invasion of Kuwait; initially thirty percent, and later twenty-five percent, of all oil sale proceeds were transferred to the CWA Account
Dual Use Materials	Materials that might facilitate production of Weapons of Mass Destruction
Duelfer Report	Report of the Iraq Survey Group, November 2004
ESB Account	Escrow Account for humanitarian purchases in connection with Resolution 986 (1995), for fifteen governorates in central and southern Iraq
ESC Account	Escrow Account for humanitarian purchases in connection with Resolution 986 (1995), for three northern governorates of Iraq administered by the United Nations Inter-Agency Humanitarian Programme (13 percent account)
ESD Account	Escrow Account for operational and administrative costs associated with the implementation of Resolution 986 (1995) (2.2 percent account)
Financial Rules	Financial Regulations and Rules of the United Nations
IBCA Ratings	Standard measure of credit worthiness of financial institutions issued by IBCA Limited of London
Interim Report	Report issued by the Independent Inquiry Committee on February 3, 2005
Iraq Escrow Accounts	Escrow Accounts for humanitarian purchases (ESB, ESC) in connection with Resolution 986 (1995), and Escrow Account (ESD) for operational and administrative costs associated with the implementation of Resolution 986
Iraq-UN MOU	Memorandum of understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of Security Council Resolution 986 (1995), S/1996/356 (May 20, 1996)
Member States	United Nations Member States
MOU	Memorandum of Understanding

GLOSSARY

OTHER TERMS

Term	Description
No Objection Procedure	Procedure by which a humanitarian goods contract is deemed approved if no member of the 661 Committee lodged an objection within a prescribed time period
Northern Governorates	Erbil, Suleimaniyah, Dohuk; regions of northern Iraq where the Programme was administered by UN-related agencies; also known as Iraqi Kurdistan
Oil Lift	Transfer of oil from an oil port terminal to a seagoing oil tanker
Oil Spare Parts	Parts and equipment for the maintenance and repair of Iraq's oil production infrastructure
OIOS Annual Report	Report sent to the General Assembly which summarizes OIOS's activities over a twelve month period
PAS	Practice Advisory Statements, issued by the Institute of Internal Auditors as guidelines for professional practices ("best practices")
PPF	Professional Practices Framework ("best practices"), established by the Institute of Internal Auditors
RCS	Recommendation Coding Sheet, completed by an auditor upon issuance of an audit observation or final audit report
Retroactive Pricing	Procedure instituted in October 2001 by certain members of the 661 Committee, designed to ensure that there was no premium from which surcharges and kickbacks could be paid to the Iraqi regime
RFP	Request for Proposal
United Nations System	General term comprising all principal organs and departments of the United Nations and UN-related agencies, programs, funds and subsidiary bodies
UNSAS	United Nations System Accounting Standards