

Annex 1UNITED
NATIONS**S****Security Council**Distr.
GENERALS/RES/986 (1995)
14 April 1995

RESOLUTION 986 (1995)

Adopted by the Security Council at its 3519th meeting,
on 14 April 1995The Security Council,

Recalling its previous relevant resolutions,

Concerned by the serious nutritional and health situation of the Iraqi population, and by the risk of a further deterioration in this situation,

Convinced of the need as a temporary measure to provide for the humanitarian needs of the Iraqi people until the fulfilment by Iraq of the relevant Security Council resolutions, including notably resolution 687 (1991) of 3 April 1991, allows the Council to take further action with regard to the prohibitions referred to in resolution 661 (1990) of 6 August 1990, in accordance with the provisions of those resolutions,

Convinced also of the need for equitable distribution of humanitarian relief to all segments of the Iraqi population throughout the country,

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of Iraq,

Acting under Chapter VII of the Charter of the United Nations,

1. Authorizes States, notwithstanding the provisions of paragraphs 3 (a), 3 (b) and 4 of resolution 661 (1990) and subsequent relevant resolutions, to permit 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 for the purposes set out in this resolution and subject to the following conditions:

(a) Approval by the Committee established by resolution 661 (1990), in order to ensure the transparency of each transaction and its conformity with the other provisions of this resolution, after submission of an application by the

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State concerned, endorsed by the Government of Iraq, for each proposed purchase of Iraqi petroleum and petroleum products, including details of the purchase price at fair market value, the export route, the opening of a letter of credit payable to the escrow account to be established by the Secretary-General for the purposes of this resolution, and of any other directly related financial or other essential transaction;

(b) Payment of the full amount of each purchase of Iraqi petroleum and petroleum products directly by the purchaser in the State concerned into the escrow account to be established by the Secretary-General for the purposes of this resolution;

2. Authorizes Turkey, notwithstanding the provisions of paragraphs 3 (a), 3 (b) and 4 of resolution 661 (1990) and the provisions of paragraph 1 above, to permit the import of petroleum and petroleum products originating in Iraq sufficient, after the deduction of the percentage referred to in paragraph 8 (c) below for the Compensation Fund, to meet the pipeline tariff charges, verified as reasonable by the independent inspection agents referred to in paragraph 6 below, for the transport of Iraqi petroleum and petroleum products through the Kirkuk-Yumurtalik pipeline in Turkey authorized by paragraph 1 above;

3. Decides that paragraphs 1 and 2 of this resolution shall come into force at 00.01 Eastern Standard Time on the day after the President of the Council has informed the members of the Council that he has received the report from the Secretary-General requested in paragraph 13 below, and shall remain in force for an initial period of 180 days unless the Council takes other relevant action with regard to the provisions of resolution 661 (1990);

4. Further decides to conduct a thorough review of all aspects of the implementation of this resolution 90 days after the entry into force of paragraph 1 above and again prior to the end of the initial 180 day period, on receipt of the reports referred to in paragraphs 11 and 12 below, and expresses its intention, prior to the end of the 180 day period, to consider favourably renewal of the provisions of this resolution, provided that the reports referred to in paragraphs 11 and 12 below indicate that those provisions are being satisfactorily implemented;

5. Further decides that the remaining paragraphs of this resolution shall come into force forthwith;

6. Directs the Committee established by resolution 661 (1990) to monitor the sale of petroleum and petroleum products to be exported by Iraq via the Kirkuk-Yumurtalik pipeline from Iraq to Turkey and from the Mina al-Bakr oil terminal, with the assistance of independent inspection agents appointed by the Secretary-General, who will keep the Committee informed of the amount of petroleum and petroleum products exported from Iraq after the date of entry into force of paragraph 1 of this resolution, and will verify that the purchase price of the petroleum and petroleum products is reasonable in the light of prevailing market conditions, and that, for the purposes of the arrangements set out in this resolution, the larger share of the petroleum and petroleum products is shipped via the Kirkuk-Yumurtalik pipeline and the remainder is exported from the Mina al-Bakr oil terminal;

7. Requests the Secretary-General to establish 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;

8. Decides that the funds in the escrow account shall be used to meet the humanitarian needs of the Iraqi population and for the following other purposes, and requests the Secretary-General to use the funds deposited in the escrow account:

(a) To finance the export to Iraq, in accordance with the procedures of the Committee established by resolution 661 (1990), of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs, as referred to in paragraph 20 of resolution 687 (1991) provided that:

- (i) Each export of goods is at the request of the Government of Iraq;
- (ii) Iraq effectively guarantees their equitable distribution, on the basis of a plan submitted to and approved by the Secretary-General, including a description of the goods to be purchased;
- (iii) The Secretary-General receives authenticated confirmation that the exported goods concerned have arrived in Iraq;

(b) To complement, in view of the exceptional circumstances prevailing in the three Governorates mentioned below, the distribution by the Government of Iraq of goods imported under this resolution, in order to ensure an equitable distribution of humanitarian relief to all segments of the Iraqi population throughout the country, by providing between 130 million and 150 million United States dollars every 90 days to the United Nations Inter-Agency Humanitarian Programme operating within the sovereign territory of Iraq in the three northern Governorates of Dihuk, Arbil and Suleimaniyah, except that if less than one billion United States dollars worth of petroleum or petroleum products is sold during any 90 day period, the Secretary-General may provide a proportionately smaller amount for this purpose;

(c) To transfer to the Compensation Fund the same percentage of the funds deposited in the escrow account as that decided by the Council in paragraph 2 of resolution 705 (1991) of 15 August 1991;

(d) To 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;

(e) To meet the current operating costs of the Special Commission, pending subsequent payment in full of the costs of carrying out the tasks authorized by section C of resolution 687 (1991);

(f) To meet any reasonable expenses, other than expenses payable in Iraq, which are determined by the Committee established by resolution 661 (1990) to be directly related to the export by Iraq of petroleum and petroleum products permitted under paragraph 1 above or to the export to Iraq, and activities

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directly necessary therefor, of the parts and equipment permitted under paragraph 9 below;

(g) To make available up to 10 million United States dollars every 90 days from the funds deposited in the escrow account for the payments envisaged under paragraph 6 of resolution 778 (1992) of 2 October 1992;

9. Authorizes States to permit, notwithstanding the provisions of paragraph 3 (c) of resolution 661 (1990):

(a) The export to Iraq of the parts and equipment which are essential for the safe operation of the Kirkuk-Yumurtalik pipeline system in Iraq, subject to the prior approval by the Committee established by resolution 661 (1990) of each export contract;

(b) Activities directly necessary for the exports authorized under subparagraph (a) above, including financial transactions related thereto;

10. Decides that, since the costs of the exports and activities authorized under paragraph 9 above are precluded by paragraph 4 of resolution 661 (1990) and by paragraph 11 of resolution 778 (1991) from being met from funds frozen in accordance with those provisions, the cost of such exports and activities may, until funds begin to be paid into the escrow account established for the purposes of this resolution, and following approval in each case by the Committee established by resolution 661 (1990), exceptionally be financed by letters of credit, drawn against future oil sales the proceeds of which are to be deposited in the escrow account;

11. Requests the Secretary-General to report to the Council 90 days after the date of entry into force of paragraph 1 above, and again prior to the end of the initial 180 day period, on the basis of observation by United Nations personnel in Iraq, and on the basis of consultations with the Government of Iraq, on whether Iraq has ensured the equitable distribution of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs, financed in accordance with paragraph 8 (a) above, including in his reports any observations he may have on the adequacy of the revenues to meet Iraq's humanitarian needs, and on Iraq's capacity to export sufficient quantities of petroleum and petroleum products to produce the sum referred to in paragraph 1 above;

12. Requests the Committee established by resolution 661 (1990), in close coordination with the Secretary-General, to develop expedited procedures as necessary to implement the arrangements in paragraphs 1, 2, 6, 8, 9 and 10 of this resolution and to report to the Council 90 days after the date of entry into force of paragraph 1 above and again prior to the end of the initial 180 day period on the implementation of those arrangements;

13. Requests the Secretary-General to take the actions necessary to ensure the effective implementation of this resolution, authorizes him to enter into any necessary arrangements or agreements, and requests him to report to the Council when he has done so;

14. Decides that petroleum and petroleum products subject to this resolution shall while under Iraqi title be immune from legal proceedings and not be subject to any form of attachment, garnishment or execution, and that all States shall take any steps that may be necessary under their respective domestic legal systems to assure this protection, and to ensure that the proceeds of the sale are not diverted from the purposes laid down in this resolution;

15. Affirms that the escrow account established for the purposes of this resolution enjoys the privileges and immunities of the United Nations;

16. Affirms that all persons appointed by the Secretary-General for the purpose of implementing this resolution enjoy privileges and immunities as experts on mission for the United Nations in accordance with the Convention on the Privileges and Immunities of the United Nations, and requires the Government of Iraq to allow them full freedom of movement and all necessary facilities for the discharge of their duties in the implementation of this resolution;

17. Affirms that nothing in this resolution affects Iraq's duty scrupulously to adhere to all of its obligations concerning servicing and repayment of its foreign debt, in accordance with the appropriate international mechanisms;

18. Also affirms that nothing in this resolution should be construed as infringing the sovereignty or territorial integrity of Iraq;

19. Decides to remain seized of the matter.

Annex 2UNITED
NATIONS**S****Security Council**Distr.
GENERALS/1996/356*
20 May 1996

ORIGINAL: ENGLISH

**LETTER DATED 20 MAY 1996 FROM THE SECRETARY-GENERAL
ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL**

I have the honour to submit to you, and through you to the members of the Security Council, the text of a memorandum of understanding concluded today between the Secretariat of the United Nations and the Government of Iraq on the implementation of Security Council resolution 986 (1995) of 14 April 1995. I am also submitting to you a letter handed over by the Head of the Iraqi delegation upon signing the memorandum.

The memorandum represents an important step in the arrangements that are required under the resolution to bring it fully into effect. Once all the necessary actions have been taken, I will be in a position to report to the Security Council as provided for in paragraph 13 of the resolution. The present letter, therefore, is submitted with a view to keeping the Council abreast of the progress achieved so far in the implementation of the resolution.

(Signed) Boutros BOUTROS-GHALI

• Reissued for technical reasons.

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Memorandum of understanding between the Secretariat of
the United Nations and the Government of Iraq on the
implementation of Security Council resolution 986 (1995)

Section I

General provisions

1. The purpose of this Memorandum of Understanding is to ensure the effective implementation of Security Council resolution 986 (1995) (hereinafter the Resolution).
2. The Distribution Plan referred to in paragraph 8 (a) (ii) of the Resolution, which has to be approved by the Secretary-General of the United Nations, constitutes an important element in the implementation of the Resolution.
3. Nothing in the present Memorandum should be construed as infringing upon the sovereignty or territorial integrity of Iraq.
4. The provisions of the present Memorandum pertain strictly and exclusively to the implementation of the Resolution and, as such, in no way create a precedent. It is also understood that the arrangement provided for in the Memorandum is an exceptional and temporary measure.

Section II

Distribution Plan

5. The Government of Iraq undertakes to effectively guarantee equitable distribution to the Iraqi population throughout the country of medicine, health supplies, foodstuffs and materials and supplies for essential civilian needs (hereinafter humanitarian supplies) purchased with the proceeds of the sale of Iraqi petroleum and petroleum products.
6. To this end the Government of Iraq shall prepare a Distribution Plan describing in detail the procedures to be followed by the competent Iraqi authorities with a view to ensuring such distribution. The present distribution system of such supplies, the prevailing needs and humanitarian conditions in the various Governorates of Iraq shall be taken into consideration with due regard to the sovereignty of Iraq and the national unity of its population. The plan shall include a categorized list of the supplies and goods that Iraq intends to purchase and import for this purpose on a six-month basis.
7. The part of the Distribution Plan related to the three northern Governorates of Arbil, Dihouk and Suleimaniyeh shall be prepared in accordance with Annex I, which constitutes an integral part of this Memorandum.
8. The Distribution Plan shall be submitted to the Secretary-General of the United Nations for approval. If the Secretary-General is satisfied that the

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plan adequately ensures equitable distribution of humanitarian supplies to the Iraqi population throughout the country, he will so inform the Government of Iraq.

9. It is understood by the Parties to this Memorandum that the Secretary-General will not be in a position to report as required in paragraph 13 of the Resolution unless the plan prepared by the Government of Iraq meets with his approval.

10. Once the Secretary-General approves the plan, he will forward a copy of the categorized list of the supplies and goods, which constitutes a part of the plan, to the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait (hereinafter the 661 Committee) for information.

11. After the plan becomes operational, each Party to the present Memorandum may suggest to the other for its consideration a modification to the plan if it believes that such adjustment would improve the equitable distribution of humanitarian supplies and their adequacy.

Section III

Establishment of the escrow account and audit of that account

12. The Secretary-General, after consultations with the Government of Iraq, will select a major international bank and establish there the escrow account described in paragraph 7 of the Resolution, to be known as "the United Nations Iraq Account" (hereinafter the "Iraq Account"). The 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. All transactions and deductions mandated by the Security Council under paragraph 8 of the Resolution shall be made from the "Iraq Account", which will be administered in accordance with the relevant Financial Regulations and Rules of the United Nations.

13. The Iraqi authorities might designate a senior banking official to liaise with the Secretariat of the United Nations on all banking matters relating to the "Iraq Account".

14. In accordance with the United Nations Financial Regulations, the "Iraq Account" will be audited by the Board of Auditors who are external independent public auditors. As provided for in the Regulations, the Board of Auditors will issue periodic reports on the audit of the financial statements relating to the account. Such reports will be submitted by the Board to the Secretary-General who will forward them to the 661 Committee and to the Government of Iraq.

15. Nothing in this Memorandum shall be interpreted to create a liability on the part of the United Nations for any purchase made by the Government of Iraq or any agents acting on its behalf pursuant to the provisions of the Resolution.

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Section IV

Sale of petroleum and petroleum products originating in Iraq

16. Petroleum and petroleum products originating in Iraq will be exported via the Kirkuk-Yumurtalik pipeline through Turkey and from the Mina al-Bakr oil terminal. The 661 Committee will monitor the exports through those outlets to ensure that they are consistent with the Resolution. Transportation costs in Turkey will be covered by an additional amount of oil, as foreseen in the Resolution and in accordance with procedures to be established by the 661 Committee. The arrangement between Iraq and Turkey concerning the tariffs and payment modalities for the use of Turkish oil installations has been provided to the 661 Committee.

17. Each export of petroleum and petroleum products originating in Iraq shall be approved by the 661 Committee.

18. Detailed provisions concerning the sale of Iraqi petroleum and petroleum products are contained in Annex II, which constitutes an integral part of this Memorandum.

Section V

Procurement and confirmation procedures

19. The purchase of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs of the Iraqi population throughout the country, as referred to in paragraph 20 of resolution 687 (1991), will, subject to paragraph 20 below, be carried out by the Government of Iraq, will follow normal commercial practice and be on the basis of the relevant resolutions of the Security Council and procedures of the 661 Committee.

20. The purchase of humanitarian supplies for the three northern Governorates of Arbil, Dihouk and Suleimaniyeh, as provided for in the Distribution Plan, will be carried out in accordance with Annex I.

21. The Government of Iraq will, except as provided for in paragraph 20, contract directly with suppliers to arrange the purchase of supplies, and will conclude the appropriate contractual arrangements.

22. Each export of goods to Iraq shall be at the request of the Government of Iraq pursuant to paragraph 2 (a) of the Resolution. Accordingly, exporting States will submit all relevant documentation, including contracts, for all goods to be exported under the Resolution to the 661 Committee for appropriate action according to its procedures. It is understood that payment of the supplier from the "Iraq Account" can take place only for items purchased by Iraq that are included in the categorized list referred to in Section II of the present Memorandum. Should exceptional circumstances arise, applications for the export of additional items may be submitted to the 661 Committee for its consideration.

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23. As noted above, the 661 Committee will take action on applications for the export of goods to Iraq in accordance with its existing procedures subject to future modifications under paragraph 12 of the Resolution. The 661 Committee will inform the Government of Iraq, requesting States, and the Secretary-General of the actions taken on the requests submitted.
24. After the 661 Committee has taken action on the applications for export in accordance with its procedures, the Central Bank of Iraq will request the bank holding the "Iraq Account" to open irrevocable letters of credit in favour of the beneficiaries. Such requests shall be referred by the bank holding the "Iraq Account" to the United Nations Secretariat for approval of the opening of the letter of credit by the latter bank, allowing payment from the "Iraq Account" upon presentation of credit-conform documents. The letter of credit will require as condition of payment, *inter alia*, the submission to the bank holding the "Iraq Account" of the documents to be determined by the procedures established by the 661 Committee, including the confirmations by the agents referred to in paragraph 25 below. The United Nations, after consultations with the Government of Iraq, shall determine the clause to be inserted in all purchase orders, contracts and letters of credit regarding payment terms from the "Iraq Account". All charges incurred in Iraq are to be borne by the applicant, whereas all charges outside Iraq are for the account of the beneficiary.
25. The arrival of goods in Iraq purchased under the plan will be confirmed by independent inspection agents to be appointed by the Secretary-General. No payments can be made until the independent inspection agents provide the Secretary-General with authenticated confirmation that the exported goods concerned have arrived in Iraq.
26. The independent inspection agents may be stationed at relevant Iraqi entry points, customs areas or other locations where the functions set out in paragraph 27 of this Section can be performed. The number and location of the stationing points for the agents will be designated by the United Nations after consultations with the Government of Iraq.
27. The independent inspection agents will confirm delivery to Iraq of shipments. They will compare the appropriate documentation, such as bills of lading, other shipping documents or cargo manifests, and the documents issued by the 661 Committee, against goods actually arriving in Iraq. They will also have the authority to perform duties necessary for such confirmation, including: quantity inspection by weight or count, quality inspection including visual inspection, sampling, and, when necessary, laboratory testing.
28. The inspection agents will report all irregularities to the Secretary-General and to the 661 Committee. If the problem is related to normal commercial practice (e.g., some shortlanded goods), the 661 Committee and the Government of Iraq are informed, but normal commercial resolution practices (e.g., claims) go forth. If the matter is of serious concern, the independent inspection agents will hold the shipment in question pending guidance from the 661 Committee.

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29. As regards the export to Iraq of parts and equipment which are essential for the safe operation of the Kirkuk-Yumurtalik pipeline system in Iraq, the requests will be submitted to the 661 Committee by the national Government of the supplier. Such requests will be considered for approval by the Committee in accordance with its procedures.

30. If the 661 Committee has approved a request in accordance with paragraph 29, the provisions of paragraph 24 shall apply. However, since the supplier can expect payment against future oil sales, as stated in paragraph 10 of the Resolution, the proceeds of which are to be deposited in the "Iraq Account", the bank holding the "Iraq Account" will issue an irrevocable letter of credit stipulating that payment can only be effected when at the time of drawing the "Iraq Account" has sufficient disposable funds and the United Nations Secretariat approves the payment.

31. The requirement of authenticated confirmation of arrival provided for in this Section shall apply also to the parts and equipment mentioned in paragraph 29.

Section VI

Distribution of humanitarian supplies purchased under the Distribution Plan

32. The distribution of humanitarian supplies shall be undertaken by the Government of Iraq in accordance with the Distribution Plan referred to in Section II of the present Memorandum. The Government of Iraq will keep the United Nations observation personnel informed about the implementation of the plan and the activities that the Government is undertaking.

33. The distribution of humanitarian supplies in the three northern Governorates of Arbil, Dihouk and Suleimaniyeh shall be undertaken by the United Nations Inter-Agency Humanitarian Programme on behalf of the Government of Iraq under the Distribution Plan with due regard to the sovereignty and territorial integrity of Iraq in accordance with Annex I.

Section VII

Observation of the equitable distribution of humanitarian supplies and determination of their adequacy

GENERAL PROVISIONS

34. The United Nations observation process will be conducted by United Nations personnel in Iraq under the overall authority of the Department of Humanitarian Affairs at United Nations Headquarters in New York in accordance with the provisions described below. Such observation shall apply to the distribution of humanitarian supplies financed in accordance with the procedures set out in the Resolution.

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35. The objectives of the United Nations observation process shall be:
- (a) to confirm whether the equitable distribution of humanitarian supplies to the Iraqi population throughout the country has been ensured;
 - (b) to ensure the effectiveness of the operation and determine the adequacy of the available resources to meet Iraq's humanitarian needs.

OBSERVATION PROCEDURES

36. In observing the equitable distribution and its adequacy, United Nations personnel will use, inter alia, the following procedures.

Food items

37. The observation of the equitability of food distribution will be based on information obtained from local markets throughout Iraq, the Iraqi Ministry of Trade, the information available to the United Nations and its specialized agencies on food imports, and on sample surveys conducted by United Nations personnel. The observation will also include the quantity and prices of food items imported under the Resolution.

38. To provide regular updated observation of the most pressing needs, a survey undertaken by United Nations agencies in cooperation with the appropriate Iraqi ministries will serve as a baseline for the continuing observation of nutritional status of the population of Iraq. This information will take account of public health data generated by the Ministry of Health (MOH) and the relevant United Nations agencies.

Medical supplies and equipment

39. Observation regarding distribution of medical supplies and equipment will focus on the existing distribution and storage system and will involve visits to hospitals, clinics as well as medical and pharmaceutical facilities where such supplies and equipment are stored. Such observation will also be guided by health statistics data from MOH and surveys by relevant United Nations agencies.

Water/sanitation supplies and equipment

40. Observation of distribution of water/sanitation supplies and equipment will focus on the determination that they are used for their intended purposes. Confirmation will be carried out by collecting data on the incidence of water-borne diseases and by water quality control checks by visits to water and sanitation facilities by representatives of relevant United Nations agencies. In this regard the United Nations will rely on all relevant indicators.

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Other materials and supplies

41. With reference to materials and supplies which do not fall within the three areas indicated above, in particular, those needed for the rehabilitation of infrastructures essential to meet humanitarian needs, observation will focus on confirmation that such materials and supplies are delivered to the predefined destinations in accordance with the Distribution Plan and that they are used for their intended purposes, and on the determination of whether these materials and supplies are adequate or necessary to meet essential needs of the Iraqi population.

COORDINATION AND COOPERATION

42. The United Nations observation activities will be coordinated by the Department of Humanitarian Affairs at United Nations Headquarters in New York. Observation will be undertaken by United Nations personnel. The exact number of such personnel will be determined by the United Nations taking into account the practical requirements. The Government of Iraq will be consulted in this regard.

43. The Iraqi authorities will provide to United Nations personnel the assistance required to facilitate the performance of their functions. United Nations personnel will coordinate with the Iraqi competent authorities.

44. In view of the importance of the functions which United Nations personnel will perform in accordance with the provisions of this Section of the Memorandum, such personnel shall have, in connection with the performance of their functions, unrestricted freedom of movement, access to documentary material which they find relevant having discussed the matter with the Iraqi authorities concerned, and the possibility to make such contacts as they find essential.

Section VIIIPrivileges and Immunities

45. In order to facilitate the successful implementation of the Resolution the following provisions concerning privileges and immunities shall apply:

- (a) officials of the United Nations and of any of the Specialized Agencies performing functions in connection with the implementation of the Resolution shall enjoy the privileges and immunities applicable to them under Articles V and VII of the Convention on the Privileges and Immunities of the United Nations, or Articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies to which Iraq is a party;
- (b) independent inspection agents, technical experts and other specialists appointed by the Secretary-General of the United Nations or by heads of the Specialized Agencies concerned and performing functions in connection with

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the implementation of the Resolution, whose names will be communicated to the Government of Iraq, shall enjoy the privileges and immunities accorded to experts on mission for the United Nations or for the Specialized Agency under Article VI of the Convention on the Privileges and Immunities of the United Nations or the relevant Annexes of the Convention on the Privileges and Immunities of the Specialized Agencies respectively;

- (c) persons performing contractual services for the United Nations in connection with the implementation of the Resolution, whose names will be communicated to the Government of Iraq, shall enjoy the privileges and immunities referred to in sub-paragraph (b) above concerning experts on mission appointed by the United Nations.

46. In addition, officials, experts and other personnel referred to in paragraph 45 above shall have the right of unimpeded entry into and exit from Iraq and shall be issued visas by the Iraqi authorities promptly and free of charge.

47. It is further understood that the United Nations and its Specialized Agencies shall enjoy freedom of entry into and exit from Iraq without delay or hindrance of supplies, equipment and means of surface transport required for the implementation of the Resolution and that the Government of Iraq agrees to allow them to, temporarily, import such equipment free of customs or other duties.

48. Any issue relating to privileges and immunities, including safety and protection of the United Nations and its personnel, not covered by the provisions of this Section shall be governed by paragraph 16 of the Resolution.

Section IX

Consultations

49. The Secretariat of the United Nations and the Government of Iraq shall, if necessary, hold consultations on how to achieve the most effective implementation of the present Memorandum.

Section X

Final clauses

50. The present Memorandum shall enter into force following signature, on the day when paragraphs 1 and 2 of the Resolution become operational and shall remain in force until the expiration of the 180 day period referred to in paragraph 3 of the Resolution.

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51. Pending its entry into force, the Memorandum shall be given by the United Nations and the Government of Iraq provisional effect.

SIGNED this 20th day of May 1996 at New York in two originals in English.

For the United Nations

(Signed) Hans CORELL
Under-Secretary-General
The Legal Counsel

For the Government of Iraq

(Signed) Abdul Amir AL-ANBARI
Ambassador Plenipotentiary
Head of the Delegation of Iraq

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Annex I

1. In order to ensure the effective implementation of paragraph 8 (b) of the Resolution, the following arrangements shall apply in respect of the Iraqi Governorates of Arbil, Dihouk and Suleimaniyeh. These arrangements shall be implemented with due regard to the sovereignty and territorial integrity of Iraq, and to the principle of equitable distribution of humanitarian supplies throughout the country.
2. The United Nations Inter-Agency Humanitarian Programme shall collect and analyze pertinent information on humanitarian needs in the three northern Governorates. On the basis of that information, the Programme will determine the humanitarian requirements of the three northern Governorates for discussion with the Government of Iraq and subsequent incorporation in the Distribution Plan. In preparing estimates of food needs, the Programme will take into consideration all relevant circumstances, both within the three northern Governorates and in the rest of the country, in order to ensure equitable distribution. Specific rehabilitation needs in the three northern Governorates shall receive the necessary attention.
3. Within a week following the approval of the Distribution Plan by the Secretary-General, the Programme and the Government of Iraq will hold discussions to enable the Programme to determine how the procurement of humanitarian supplies for the three northern Governorates can be undertaken most efficiently. These discussions should be guided by the following considerations. The bulk purchase by the Government of Iraq of standard food commodities and medicine may be the most cost-effective means of procurement. Other materials and supplies for essential civilian needs, specifically required for the three northern Governorates, may be more suitably procured through the United Nations system in view of technical aspects related to their proper use.
4. To the extent that purchases and deliveries are made by the Government of Iraq in response to the written communication of the Programme, an amount corresponding to the cost of the delivered goods will be deducted from the amount allocated to the Programme from the "Iraq Account".
5. Humanitarian supplies destined for distribution in the three northern Governorates shall be delivered by the Programme to warehouses located within these Governorates. Such supplies can also be delivered by the Government of Iraq or the Programme, as appropriate, to warehouses in Kirkuk and Mosul. The warehouses shall be managed by the Programme. The Government of Iraq shall ensure the prompt customs and administrative clearances to enable the safe and quick transit of such supplies to the three northern Governorates.
6. The Programme shall be responsible in the three northern Governorates for the storage, handling, internal transportation, distribution and confirmation of equitable distribution of humanitarian supplies. The Programme will keep the Government of Iraq informed on the implementation of distribution.
7. Whenever possible and cost-effective, the Programme shall use appropriate local distribution mechanisms which are comparable to those existing in the rest

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of Iraq in order to effectively reach the population. Recipients under this arrangement will pay a fee for internal transportation, handling, and distribution as in the rest of the country. The Programme shall ensure that the special needs of internally displaced persons, refugees, hospital in-patients and other vulnerable groups in need of supplementary food are appropriately met, and will keep the Government of Iraq informed.

8. The Programme will observe that humanitarian supplies are used for their intended purposes, through visits to sites and by collecting relevant data. The Programme will report to the Department of Humanitarian Affairs at United Nations Headquarters in New York and the Government of Iraq any violation observed by the Programme.

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Annex II

1. The State concerned or, if the 661 Committee so decides, the national petroleum purchaser authorized by the 661 Committee, shall submit to the Committee for handling and approval the application, including the relevant contractual documents covering the sales of such petroleum and petroleum products, for the proposed purchase of Iraqi petroleum and petroleum products, endorsed by the Government of Iraq or the Iraqi State Oil Marketing Organization (hereinafter SOMO) on behalf of the Government. Such endorsement could be done by sending a copy of the contract to the 661 Committee. The application shall include details of the purchase price at fair market value, the export route, opening of a letter of credit payable to the "Iraq Account", and other necessary information required by the Committee. The sales of petroleum and petroleum products shall be covered by contractual documents. A copy of these documents shall be included in the information provided to the 661 Committee together with the application for forwarding to the independent inspection agents described in paragraph 4 of this Annex. The contractual documents should contain the following information: quantity and quality of petroleum and petroleum products, duration of contract, credit and payment terms and pricing mechanism. The pricing mechanism for petroleum should include the following points: marker crude oil and type of quotations to be used, adjustments for transportation and quality, and pricing dates.

2. Irrevocable confirmed letters of credit will be opened by the oil purchaser's bank with the irrevocable undertaking that the proceeds of the letter of credit will be paid directly to the "Iraq Account". For this purpose, the following clauses will have to be inserted in each letter of credit:

- "- Provided all terms and conditions of this letter of credit are complied with, proceeds of this letter of credit will be irrevocably paid into the "Iraq Account" with Bank."
- "- All charges within Iraq are for the beneficiary's account, whereas all charges outside Iraq are to be borne by the purchaser."

3. All such letters of credit will have to be directed by the purchaser's bank to the bank holding the "Iraq Account" with the request that the latter adds its confirmation and forwards it to the Central Bank of Iraq for the purpose of advising SOMO.

4. The sale of petroleum and petroleum products originating in Iraq will be monitored by United Nations independent oil experts appointed by the Secretary-General of the United Nations to assist the 661 Committee. The monitoring of oil exports will be carried out by independent inspection agents at the loading facilities at Ceyhan and Mina al-Bakr and, if the 661 Committee so decides, at the pipeline metering station at the Iraq-Turkey border, and would include quality and quantity verification. They would authorize the loading, after they receive the information from the United Nations oil experts that the relevant contract has been approved, and report to the United Nations.

S/1996/356

English

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5. The United Nations will receive monthly reports from SOMO on the actual volume and type of petroleum products exported under the relevant sales contracts.

6. The United Nations Secretariat and SOMO shall maintain continuing contact and in particular United Nations oil experts shall meet routinely with SOMO representatives to review market conditions and oil sales.

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English
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Letter dated 20 May 1996 from the Head of delegation
of Iraq addressed to the Legal Counsel

In reference to the memorandum of understanding signed today and as I advised you during the discussion that a letter would be sent to you concerning the position of Iraq as to the cost of production and transportation of oil inside Iraq, I state below Iraq's position, which I request that you include in the official record of our discussion:

The Iraqi delegation explained during the discussion that the cost of production and transportation of petroleum excluding expenses in local currency, is currently estimated at US\$ 2.00 per barrel. Such cost had to be deducted from the sale price or recovered through the production and export of extra quantity of petroleum and petroleum products. In either case the amount referred to above would be deposited in the "Iraq account" to be utilized for the import of spare parts and other items necessary for the maintenance and sustaining of production and transportation operations as is the established practice in the oil industry, otherwise production and transportation operations would be hindered and eventually come to a halt.

Nevertheless, and in order to facilitate the conclusion of this memorandum of understanding, the Iraqi delegation agreed not to insist on the acceptance of its position by the United Nations Secretariat delegation at this stage and agreed to have it included in a separate letter addressed to the Head of the delegation of the United Nations Secretariat for consideration in any future discussion.

Although the matter is not discussed, the Iraqi delegation wishes to state that a third outlet for Iraqi petroleum export could be via the Syrian Arab Republic.

(Signed) Ambassador A. Amir ANBARI
Head of the delegation of Iraq



M E M O R A N D U M

Date: May 9, 2003
To: Dominique Remy
From: Pierre Veyres
Copy: Lincoln Payton

Re: Chronology of Oil For Food Program Banking Events

Please find attached here below a synopsis of events that were significant for BNP/BNP Paribas:

- June 3, 1996 Request for Proposal of this date sent to BNP.
- June 7, 1996 BNP response to RFP sent to UN Treasury under competitive bidding procedure.
- June 18, 1996 Notification that BNP won the bid sent to Pierre Schneider by UN Controller.
- Sept. 12, 1996 Agreement For Banking Services (ABS) signed by UN and BNP after six weeks of negotiation. Valid until March 26, 1997. Along with BNP Paribas, Chase has managed the various accounts which represented 47% of the funds at that time (now it is 41%)
- Dec. 10, 1996 Phase I begins, first oil cargo loaded.
- Dec. 27, 1996 UN allows BNP to sell risk participations in confirmations of oil L/Cs opened by Turkish banks.
- Jan. 17, 1997 Amendment no. 1 to ABS signed changing authorized signatories.
- Feb. 14, 1997 First humanitarian L/C issued by BNP.
- Several amendments to ABS and renewal of several phases in between.*
- Dec. 12, 1999 Phase VII begins.
Extension to ABS signed by UN with validity until Sept. 27, 2000.
- During 2000 Diversification of funds at banks selected by UN begins (Deutsche Bank, HypoVereinsbank, BBVA, CAI).
- June 9, 2000 Phase VIII begins.
- Sept. 27, 2000 Extension to ABS signed by UN with validity until March 26, 2001.

- Nov. 13, 2000 Amendment no. 4 to ABS signed adding Euro Sub-Account and format of oil L/Cs, now to be denominated in Euros.
- Dec. 6, 2000 Phase IX begins.
- Dec 18 2000 Letter from the Permanent Representative of Iraq to the UN Security Council raising some operational issues and insisting on a diversification of the banking activities
- Jan 9, 2001 Letter from the Iraqi Ministry of Foreign Affairs to the UN General Secretary alerting him about serious operational issues
- Jan 18, 2001 Letter from the UN Under Secretary General to the Iraqi Minister of Foreign Affairs explaining the operational situation and suggesting to Iraq to deploy in NY a representative of CBI in order to resolve practical issues
- Mar. 26, 2001 Extension to ABS signed by UN with validity until Sept. 24, 2001.
- Mar. 30, 2001 Request for Proposal of this date sent to BNPP for diversification of letter of credit business and new pricing. Sent by Joseph Connor, Under-Secretary-General, Department of Management.
- Apr. 27, 2001 RFP bid for diversification of letters of credit sent to UN with validity of June 30, 2001.

In between extensions of phase, amendment to our ABS, renewals of our bid under the RFP

- Oct. 26, 2001 Letter received from UN Procurement Division rejecting all proposals and indicating that the UN would enter into negotiated agreements directly with each of the invited banks, the pricing to be matched being in practice the one submitted by BNP Paribas in the 1st round (meaning BNPP's pricing was likely the lowest one).
- Nov. 16, 2001 RFPS-311 and RFPS-312 regarding diversification of oil and humanitarian letters of credit sent to BNPP. Sent by UN Procurement Division.
- Nov. 29, 2001 RFPS bids sent to UN with validity of Jan. 31, 2002 (after clarification and re-adjustments by the UN of several points that were not properly addressed by the UN in its RFP).
- Dec. 1, 2001 Phase XI begins.
- Jan. 9, 2002 RFPS-330 for "best and final offer" regarding diversification of humanitarian L/Cs sent to BNPP by UN Procurement Division. It was stated that one of the intended recipients did not receive the solicitation RFPS-312.
- Jan. 22, 2002 Response to RFPS-330 sent to UN with a validity of April 23, 2002.
- Jan 2002 BNP Paribas informed (unofficially) that several banks short-listed for the 1st round have either decided not to bid finally or have been not retained by the UN after round 1 or 2.
- Feb. 6, 2002 Letter from UN regarding RFPS-311, 312 and 330 indicating that the UN intends to enter into direct negotiations for award of contracts for both Oil letters of credit and Humanitarian letters of Credit, respectively.
- Feb 2002 Several meetings between UN and CBI in Baghdad regarding the banking side of the Program, this leading to some changes decided by the UN as for the handling of discrepant documents presented for payment, notably expired LCs

- Feb. 25, 2002 Extension to ABS signed by UN with validity until Dec. 31, 2002.
- May 2002 BNP Paribas informed by the UN that the oil LCs will be split on an equal basis between 2 banks (BNPP and CS) whilst humanitarian LCs will be shared, going forward, between 4 banks (BNPP, CS, DB and BBVA) on an basis that had to be defined; all this was going to be implemented gradually by May and June 2002 subject to an agreement between the UN and the Iraqi Government on the practical implementation of the diversification
- May 30, 2002 Phase XII begins.
- October, 2002 Deutsche Bank had finalized the documentation in order to start the issuance of humanitarian LCs with the upcoming start of Phase XIII ; DB credit rating downgraded by Fitch IBCA and informed by the UN it could not issue LC as long as its "individual rating" would be C or below.
- Dec. 5, 2002 Phase XIII begins.
- Apr. 2, 2002 Extension to ABS signed by UN with validity until Dec. 31, 2003.
- Apr. 4, 2003 Amendment no. 5 to ABS signed covering changes resulting from Resolution 1472 (and 1476), UN now assuming the role of the applicant, i.e. Iraqi buyers, for an interim period until June 3rd.

May 14th

BNP Paribas and the UN Oil for Food Program

1) How was BNP selected by the United Nations ?

Resolution 986 of the UN Security Council gave the responsibility of establishing an escrow account to the Secretary-General of the U.N. The Secretary-General was to select an international bank and negotiate the terms of the account under the Memorandum of Understanding Between the Secretariat of the U.N. and the Government of Iraq.

According to the Secretary-General's report, dated November 25, 1996, the selection process for the holder of the escrow account began with the preparation of a "working list 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 consulting with the Government of Iraq, a short-list of those banks were asked in June 1996 via a Request for a Proposal ("RFP"), BNP being one of these banks, to submit written proposals to the U.N. outlining their services and prices. The RFP requested, among other objective criteria, pricing and inquired into the bank's capabilities to handle business of the program's size. According to the UN, only 4 banks made a formal offer : Chase Manhattan, BNP, Credit Suisse and UBS.

In 1996, The Secretary-General reported "after careful consideration of the proposals received, Banque Nationale de Paris was selected as the holder of the escrow account, and the account was subsequently opened." BNP's large international network, notably in Middle-East which was one of the criteria for the UN, and high credit ratings gave it a competitive edge over the other banks, including Credit Suisse which was the only bank who had made a lower bid than BNP. At that time (and still today), BNP had a much larger international network and a strong commodities business than Credit Suisse. Most importantly BNP was able to commit with regards to the confirmation risk on all the buyers' banks whilst Credit Suisse was not willing to do so. Therefore, BNP was a natural choice for the 59 % account (59 % of the funds derived from Iraqi Oil sales are managed on one account whilst the balance is allocated by the UN to the Compensation Commission and the Iraq Northern Governorates. Along with BNP, Chase Manhattan controlled since the inception of the Off those other accounts, i.e. 41 % of the total funds and, particularly, the 13% allocated to the Iraq Northern Governorates.

After six weeks of negotiations, on September 12, 1996, an agreement for banking services for the Oil-for-Food Program was signed by the U.N. and BNP.

It should be noted that the U.N. has repeatedly confirmed that the selection of BNP was based on a competitive bidding process (See Benon V. Sevan, Exec. Dir. Oil-For-Food Program, Oil-For-Food, the U.N. View, N.Y. Times, Apr. 24, 2003).

There has been one story linking one of Paribas' largest private shareholder, an Iraqi-born businessman named Nadhmi Auchi, to the Hussein government, which drives speculation that BNP Paribas was selected because of Iraqi persistence (N.Y. Times, Apr. 30, 2003). Mr. Auchi was indeed a shareholder of Paribas in 1996 but it does not make any sense to imagine that he could have played any part in helping a competitor of Paribas win the account, i.e. BNP. The 2 banks were totally

independent at that time and until 2000 when BNP and Paribas merged, after an aborted proposed merger in 1999 between Paribas and Société Générale. Currently, Mr. Auchy has no involvement in BNP Paribas other than an indirect passive investment in less than one-half of one percent of the bank's outstanding stock.

2) Role of BNP Paribas under Oil for Food.

The role of BNP Paribas consists strictly of delivering banking services to the UN General Secretary / Treasury Department, its client. The bank intervenes only when contracts have been signed between the Iraqi entity and their counterparts, oil traders or exporters of humanitarian goods, these contracts being then approved by the relevant UN departments which report in that respect to the members of the Security Council.

In practice, applications for export of goods to Iraq under SC Resolution 986, for which payment is to be made from the United Nations Iraq account, are submitted to the UN Office of Iraq Programme ("OIP") by relevant National Missions and UN agencies. The applications are reviewed by UN Office of the Iraq Programme ("OIP") experts and provided the application is in compliance with all the requirements of the Memorandum of Understanding between Iraq and the UN, the application is then forwarded for further processing to United Nations Monitoring, Verification and Inspection Commission ("UNMOVIC") and The International Atomic Energy Agency ("IAEA"). The Head of the OIP reports on a regular basis to the UN Security Council about the situation of the Program. From a more practical standpoint, the approval process of the contracts is under the supervision of the UN 661 Committee where all members of the Security Council are represented.

Once all the U.N. paperwork is completed, the Central Bank of Iraq requests the issuance of the LC which is processed by BNP Paribas, once the UN has given its approval. Generally, the goods are then shipped by the exporter. Once the goods arrive in Iraq, they are inspected by independent experts of a Swiss company Cotecna, appointed by the U.N. The payment of these goods can then be processed by BNP Paribas under 3 conditions: i) the shipping documents are compliant with the UN LC, ii) the UN has produced a certificate based on the inspection's report from Cotecna on a case-by-case basis iii) and the UN has approved the specific payment. The pre-requisites i) and ii) are not standard banking practices and have been implemented due to the unique profile of the Program, which allows the UN to be certain about the nature/destination of the goods as well as the payment to the exporter. In other terms this also allows the members of the Security Council, members of the UN 661 Committee, to enforce the global conformity of the transactions with the relevant procedures.

In the same vein, the oil transactions under Oil for Food do comply with the standard industry practice but several additional "control" steps have to be executed in order to complete a transaction : i) each contract between the Iraqi official exporter (SOMO) and a buyer has to be approved by the UN Oil Overseers, two independent experts coming from Oil majors who report to the UN, ii) the loading of the oil is supervised by an independent Dutch company (Saybolt, well known in the oil industry) who has been appointed by the UN, iii) at the stage of the payment all shipping documents are reviewed by the UN Oil Overseers and the oil price is established by the UN 661 Committee before the bank can process the transaction.

3) The management of the Oil for Food funds

BNP Paribas has no control over how money is spent under the Oil-for-Food Program. As explained above, BNP Paribas neither approves the supplies being purchased, nor the list of suppliers, nor the contracts themselves. In addition, BNP Paribas has no involvement in arranging the relationship between the suppliers and Iraq, nor between oil buyers and the SOMO. So the directions of the funds, either incoming or outgoing, is at the sole discretion of the UN General Secretary which reports to the

Security Council members. BNP is not responsible for monitoring or auditing moneys that leave the bank. BNP Paribas' role is to pay the exporter of goods upon confirmation by U.N. inspectors, credit the account, divide the funds and transfer them pursuant to U.N. instructions, and invest the balance pursuant to U.N. Treasury requests. As part of the additional tight controls, Oil for Food LCs are nontransferable and payable only to the named beneficiary. BNP Paribas is audited internally by its audit department, and externally by PriceWaterhouse. In addition, various Federal and State agencies audit the bank. As far as BNP Paribas is aware, no issues have been raised as to improper use of Oil-for-Food funds.

BNP Paribas is not the only bank holding funds for the United Nations Oil-for-Food Program; other banks also holds these funds, particularly Chase since inception..

Other banks have been involved in holding Oil-for-Food funds from the outset of the Program. Although, 100% of the proceeds from the sale of oil flow through BNP Paribas, only 59% remains in its custody for purchasing humanitarian supplies. Upon the receipt of oil proceeds, BNP Paribas is given strict instructions by the UN Treasury Department regarding the division and transfer of funds according to the schema defined by the UN Secretary-General in 1996. Moreover, in 1999, the Secretary-General reported that the allocation of proceeds of Iraqi oil sales were divided amongst "seven funds."

Not knowing the full capacity of the Program, it made sense in the beginning to limit the investment to 53% (later on this number has been increased by the UN Security Council up to 59%) in the U.N. Iraq Account and the issuance of supply LCs to one bank. In the beginning of the Program, the Government of Iraq rejected diversification, Iraq's view being at that time that U.N. sanctions were only temporary and there was no need to complicate the situation by involving numerous banks. Once Iraq accepted the reality that sanctions were remaining for a longer than expected period of time, a debate ensued between Iraq and the U.N. on how the funds should be diversified. One reason for not keeping the funds mainly with BNP Paribas, as expressed in the Financial Times in 2002, was that it would be "easier for Iraqis to play games and abuse the system after the diversification than" with a single bank managing the LCs and a majority of investments (Financial Times, Feb. 2, 2002). As a matter of fact the Iraqi Government pushed actively and publicly in 2000 for a banking diversification of the Program.

By end of 2000 BNP Paribas put together scenarios of how to best diversify; however, the U.N. never seriously entertained BNP Paribas' suggestions. In 2000, other banks were however brought in to "manage" approximately 15-20% of the funds (cf. above mentioned), BNP Paribas finally managing approximately 50% of the total funds. Going forward, the U.N. continued to instruct BNP Paribas as to how, where, and when to transfer these funds. Pursuant to U.N. instructions, three institutions, namely Cr dit Agricole, Credit Suisse First Boston, and BBVA, each took a piece of the 59% account for investment purposes. Between 2000 and 2002, Deutsche Bank and HypoVereinsbank had some deposits too that they no longer hold due to various reasons, Deutsche Bank because of the downgrading of its credit rating. BNP Paribas requires a larger portion of the 59% account to remain in its custody as collateral for the supply LCs it issues under the Program. Along with these banks, Chase Manhattan continued to hold several accounts representing a combined 41%.

In March 2001, the UN launched a Request For Proposal for the issuance of LCs. In late 2002 the last step of this series of three RFPs resulting in an order to execute a deal for overall diversification (LCs and investments) between the U.N. and Deutsche Bank, this however collapsed because Deutsche's Fitch-IBC credit rating dropped below the U.N.'s threshold (to "C"). As a result, even though the U.N. made an attempt to diversify the entire Oil-for-Food Program, the supply LC business remains with BNP Paribas.

In practice UN gives instructions to BNP Paribas to invest every penny in the account, the UN benchmarking on a daily basis BNP market rates with its other banks (notably Chase and CSFB). All interest earned is reinvested in fact in the fund to purchase humanitarian supplies, as publicly attested to by Mr. Benon Sevan, Executive Director of the Oil-for-Food Program (Fox New Channel, Apr. 28, 2003).

4) Impact of Oil for Food on BNP Paribas

All fees received by BNP Paribas are commercially reasonable and its remuneration is made by either the exporter of humanitarian supplies (15 bps flat) or by the oil buyer (11bps flat). This is rather modest compared to normal commercial rates, considering these LCs are not typical and do involve much more paper work and time than normal, notably due to the reconciliation between the Cotecna proof of inspection at the delivery point and the other documents of the LC.

There is, in general, an enormous amount of work involved in issuing or confirming and negotiating LCs under the Program. As an order of magnitude, for the approximately 5000 LCs per year BNP Paribas issues it requires the attention of a 95 person staff whilst normally, in similar BNP Paribas departments, a similar staff process over 20,000 LCs within the year. In the same vein, there were several significant additional costs that the bank had to bear such as telex systems due to the particular situation of Iraq. This extraordinary burden was also due to the change in the nature of the program over the time, from short-term standard transactions at the inception (food and medicine mostly) to fairly long and complicated LCs for spare parts for the Iraqi Ministers of Electricity, Transportation or Oil Ministers. For example, the number of negotiations under one LC has been up to 100 over 2 years, some of them consisting of more than 1,500 pages of documents produced by UN/ Cotecna, for which the bank has got nothing but the initial 15 bps up-front fees. BNP personnel had to go through these reports line by line, item by item to confirm the values of goods shipped.

BNP Paribas had originally charged a "cash management" fee to the U.N. but this has been waived when the paper work required to bill the U.N. became more burdensome than the modest fee was actually worth. At the same time the U.N.'s treasury department is sophisticated and deals with multiple banks on a daily basis (see the comment above). For that reason alone, BNP Paribas is forced to stay competitive with interest and foreign exchange rates

From a more global standpoint, BNP Paribas is the worldwide leader bank in the oil business, its operations in the main marketplaces being significant. The OfF has certainly brought an additional expertise into the bank as well as more knowledge of oil players, nevertheless it represents a small part of the activity of the business line and less than one tenth of a percent of the bank's total revenues.

**A Brief History and Update on the Banking Side
of the United Nations Oil for Food Program**

What is the historical involvement of the banks in the United Nations Oil for Food Program?

The UN Oil for Food Program was established by the UN in 1996. It was established out of the desire to alleviate the suffering of the Iraqi people arising from the sanctions that were imposed on Iraq immediately after Iraq's invasion of Kuwait. The Program permitted Iraq to sell oil but only so long as the proceeds of such sales were used to purchase authorized humanitarian goods and for other purposes permitted by the UN (described below). These goods were originally limited to food and medicine. As the Program progressed, the list of authorized humanitarian goods was expanded to include other goods approved by the UN.

All oil revenues arising from the sale of Iraqi oil under the Program were to be directed to a UN bank account to be established by the UN at an international bank. Of these revenues, 59% were dedicated to the purchase of food, medicine and other humanitarian goods by the Iraqi Government under the control of the UN. The remaining 41% of the oil revenues was allocated to the UN Compensation Funds for damages from the first Gulf War (25%), to supplies for the Northern Part of Iraq under the direct management of UN agencies and departments (13%), as well as to the UN for its management fees and weapons inspection expenses (3% of overall oil sales). Under the Program, the UN Security Council - through its specific "Sanctions 661 Committee" - had to approve each and every oil and humanitarian contract, any disagreement by any member state blocking a transaction.

In connection with the Program, BNP was selected in 1996 by the UN to hold the escrow account and issue or confirm the letters of credit related to the import/export contracts within the OfF Program through a competitive bidding process involving (to our knowledge) approximately 50 banks, four of them being short-listed on the basis of qualitative criteria (credit rating, international network, capacity in trade finance, etc) and pricing.

The UN opened an escrow account at BNP into which the proceeds of the oil sales under the Program were deposited and selected BNP to handle the documentary credit requirements of the Program. From the Program's inception, 41% of the oil proceeds were immediately transferred by the UN to the UN's account at JPMorganChase; the remaining 59% balance was held at BNP to secure BNP's issuance of humanitarian letters of credit under the Program. Any amount of the 59% not then needed as collateral was held (prior to diversification- see below) by BNP pending issuance of humanitarian letters of credit by BNP.

For the documentary part, the role of the selected bank was twofold: i) confirm L/C's issued by the banks of the oil buyers and ii) issue humanitarian L/C's on behalf of the UN in favor of suppliers of goods to Iraq. BNPP handled the first transaction in December 1996.

It must be noted that BNPP has never been involved in the commercial discussion/negotiations between Iraqi counter-parties and buyers of oil or suppliers of goods. BNPP was not aware of the terms of the humanitarian contracts, the bank dealing exclusively with letters of credit, which remain an operating tool distinct and independent from the underlying commercial contract according to UCP 500 rules (which have been applied by the UN to the Off Program).

In late 2000, when the Iraqi government agreed with the UN to switch from USD to EUR for the oil sales, it was also decided that the custody of the 59% escrow account funds (in excess of the amount needed to secure outstanding humanitarian letters of credit) should be diversified. Deutsche Bank, HypoVereinsbank, BBVA, and Credit Agricole have participated over time to the 59% side of this Program. The 41% account remained with JPMorganChase since the inception of the Program. All in all, BNPP held over time, between 50% and 59% of the total funds managed by the UN under the Program

In terms of cash-management, the bank has indeed been in competition with top players in the industry; the UN has bench-marked our interest rates consistently and then made investment decisions. The interests generated by the deposits on the escrow account have been re-invested by the UN in the Off funds. Foreign Exchange transactions were also concluded at the discretion of the UN (the oil revenues were in EUR since the end of 2000, whilst a large portion of the Off expenses were USD-based), BNP Paribas being one of the banks dealing FX with the UN.

Subsequently the UN Treasury Department launched a Request for Proposal early 2001 in order to diversify the documentary part of the Program. In April 2002, after three successive rounds of competition, four banks (CSFB, Deutsche, BBVA, and BNPP) were finally selected for the documentary part of the Off Program, BNPP being best bidder and "virtually" retained for approximately half of the total operation. The UN then started to re-negotiate agreements with banks but, for reasons unknown from us, never implemented that second step of the diversification.

➤ In short, under a competitive bidding process organized by the UN, BNP was selected by the UN in 1996 to handle the documentary transactions involving Iraq under Off. During the Program, a large part of the Off funds was held by other banks.

Which measures were implemented in order to control the Program?

As a general comment, all actions by BNPP took place within a framework designed by the UN General Secretariat on behalf of the Security Council and formalized via the banking contract binding the UN and BNPP.

In addition to the fact that the bank, as is usual in the trade business, was not privy to the commercial negotiations between Iraq and its counterparties, as well as to the contracts approval process within the UN organization, the Off Program was tightly controlled on the banking side. Indeed the lengthy and cumbersome banking process set up by the UN has been a consistent complaint over time from traders and exporters from all over the world, the bank being under the spotlight due to the application of these rules designed by the UN.

In order to execute and process any banking transaction—any oil L/C confirmation, any oil L/C negotiation, any issuance, amendment, or payment of any humanitarian L/C—BNPP systematically required formal approval from the UN. Any other specific request from the Central Bank of Iraq was systematically submitted to the UN for instruction. In addition, the UN L/C's were not transferable and the possibility of assignments of proceeds was significantly restricted.

As mentioned above, all transactions were governed by UCP 500 documentary rules but there were also some extra requirements:

- i) the price of the oil was established by the UN Sanctions Committee in NY after recommendation from UN Oil overseers; this was stated in a formal approval,
- ii) on the ground, the lifting of the oil was controlled by Saybolt (an independent company, well known in the industry, which was appointed by the UN), which had to issue a certificate stating volumes and grade notably,
- iii) any set of documents presented by an exporter of goods for payment had to include two specific documents:
 - a letter from the UN Sanctions Committee approving the contract
 - a Confirmation of Arrival issued by the UN on the basis of an inspection report upon the delivery of the goods at the Iraqi border by an independent company appointed by the UN (for some categories of goods a sample was also sent to an independent lab for double-checking).

Finally, all decisions in terms of cash-management were made by the UN Treasury Department.

From a US regulatory standpoint, all Off transactions were screened through the Office for Foreign Assets Control filter (OFAC).

➤ To summarize, the banking side of the Off was isolated from the contract negotiation and UN approval process and was very strictly designed by the UN, notably due to some additional checks on the ground. It placed at its center the UN Treasury Department, which was the decision-maker overall and on a daily basis, this being in addition to, the usual US tight regulatory context.

The commitment of BNP Paribas NY

Up until 2000, the bank had dedicated some Front-Office and Back-Office resources to the Off Program. Following a sharp increase in the volume of transactions since mid-2000 (from 7,000 transactions per year in 1999 up to 25,000 in 2001), the bank massively re-organized and invested in order to meet the challenge: new managers, additional staff (from 25 up to 90 in 12 months), and IT systems.

This allowed the bank to deliver a good quality of service to exporters and to the UN. In particular, the commitment of the bank was to quick turnaround of transactions, a crucial point for all players. Meanwhile the bank expanded their Customer Service Unit, up to 14 employees, in order to handle inquiries from exporters. This has been appreciated in the market.

Our relationship with the UN

Over the last seven years, under the Off Program, BNPP has overall enjoyed a relatively good relationship with the UN, its client. This was achieved in spite of the "construction of the Program" which at times left the bank in the middle among political and commercial players with divergent interests. In addition, the complexity of the UN organization has to be taken into account .

There were some frictions at times, notably in 2000 for various reasons. Since then, the relationship with the UN and its decision-makers has significantly improved, the UN appreciating the high level of service we have consistently delivered to them. And all this in a context of high volumes.

In the post-war context, in particular, given the sense of emergency and the involvement of many new players such as different UN agencies (UNICEF, UNDP, WHO....etc), the role of the UN Treasury has been more complicated and decisive than in the past. Once again our bank has been pro-active and has efficiently supported our counterparts at the UN, especially during the last several months when assisting the UN with numerous LC issuances and amendments.

➤ *A challenging but overall good relationship with the UN.*

Current situation of the Oil for Food Program and its upcoming evolution

The Off Program was officially terminated on November 21, 2003. Though the deadline has passed, the Program has continued to operate under the joint control of the UN and the Coalition Provisional Authority (CPA). As far as the bank is concerned, it has continued to issue and amend humanitarian Letters of Credit related to priority contracts selected by the tri-partite group consisting of the UN, the CPA and the new Iraqi Ministries in order to meet the urgent needs of the Iraqi population. On the other side, the activity on the oil export side ceased right after the war in April.

The level of cash in the UN's account with BNP amounts to \$6.5Bn as of today, the amount of collateral being \$6Bn. There are some 2,500 humanitarian L/C's on the books, \$4.8Bn of those \$6Bn expiring between now and the end of this year. The bulk of the remaining transactions should expire in 2005 (\$1Bn) although we cannot exclude some further extensions of L/C's due to the situation on the ground. Our current headcount is 30 staff (vs. 90 prior to the war).

Currently and until those L/C's are fully drawn, the exporters will continue to ship goods to Iraq in order to execute those "priority contracts and the related L/C's". The precise timeline for the practical wind-down of the Program and the exact rules that will apply from an operational standpoint—notably the way the new authorities in Iraq will gradually replace the UN and CPA after June 30, 2004, along with some UN agencies—are particularly uncertain. The bank has pro-actively cooperated with the UN as a whole and with the US agencies involved in order to find practical solutions going forward.

Recent Fed requests for Information

The New York Fed has recently requested specific information relating to the Oil for Food Program and we are in the process of complying with those requests.

➤ *In conclusion, BNP Paribas has brought a positive and decisive contribution to the banking side of the Off Program. The commitment and the performance of the bank have helped the UN Treasury Department, our client, to meet its challenges over the past seven years, particularly in the difficult post-war context of this year. We are now at a crossroads in light of the (slow) winding-down of the Program and up-coming handover of the political power in Iraq.*

Pierre VEYRES



M E M O R A N D U M

Date: May 7, 2003

To:

From: Eva Millas Russo

Copy:

Re: Chronology of Oil For Food Program Banking Events

Under the United Nations Office of the Iraq Programme website (www.un.org/depts/oip/background/chron.html) is a chronology of the Oil For Food Program Events. In addition to that chronology, below is a synopsis of events that were significant for BNP/BNP Paribas:

June 3, 1996 Request for Proposal of this date sent to BNP.
June 7, 1996 BNP response to RFP sent to UN Treasury under competitive bidding procedure.
June 18, 1996 Notification that BNP won the bid sent to Pierre Schneider by UN Comptroller.
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Dec. 27, 1996 UN allows BNP to sell risk participations in confirmations of oil L/Cs opened by Turkish banks.
Jan. 17, 1997 Amendment no. 1 to ABS signed changing authorized signatories.
Feb. 14, 1997 First humanitarian L/C issued by BNP.
May 13, 1997 Amendment nos. 2 and 3 to ABS signed changing authorized signatories and oil L/C pricing. (Signed by BNP July 28, 1997).
Extension to ABS signed by UN with validity until Sept. 26, 1997.
June 8, 1997 Phase II begins.
Aug. 28, 1997 Extension to ABS signed by UN with validity until March 26, 1998.
Dec. 5, 1997 Phase III begins.
Mar. 26, 1998? Extension to ABS signed by UN with validity until Sept. 26, 1998.
May 30, 1998 Phase IV begins.
Aug. 23, 1998 Extension to ABS signed by UN with validity until March 26, 1999.
Nov. 26, 1998 Phase V begins.
Extension to ABS signed by UN with validity until Sept. 27, 1999.
May 25, 1999 Phase VI begins.
Sept. 30, 1999 Extension to ABS signed by UN with validity until March 27, 2000.
Dec. 12, 1999 Phase VII begins.
Extension to ABS signed by UN with validity until Sept. 27, 2000.
During 2000 Diversification of funds at banks selected by UN begins.
June 9, 2000 Phase VIII begins.
Sept. 27, 2000 Extension to ABS signed by UN with validity until March 26, 2001.
Nov. 13, 2000 Amendment no. 4 to ABS signed adding Euro Sub-Account and format of oil L/Cs, now to be

denominated in Euros.

Dec. 6, 2000 Phase IX begins.

Mar. 26, 2001 Extension to ABS signed by UN with validity until Sept. 24, 2001.

Mar. 30, 2001 Request for Proposal of this date sent to BNPP for diversification of letter of credit business and new pricing. Sent by Joseph Connor, Under-Secretary-General, Department of Management.

Apr. 27, 2001 RFP bid for diversification of letters of credit sent to UN with validity of June 30, 2001.

June 28, 2001 Extension of RFP bid sent to UN with validity of July 31, 2001.

July 4, 2001 Phase X begins.

July 31, 2001 Extension of RFP bid sent to UN with validity of August 31, 2001.

Aug. 31, 2001 Extension of RFP bid sent to UN with validity of Sept. 30, 2001.

Sept. 24, 2001 Extension to ABS signed by UN with validity until March 25, 2001.

Sept. 28, 2001 Extension to RFP bid sent to UN with validity of November 30, 2001.

Oct. 26, 2001 Letter received from UN Procurement Division rejecting all proposals and indicating that the UN would enter into negotiated agreements directly with each of the invited banks.

Nov. 16, 2001 RFPS-311 and RFPS-312 regarding diversification of oil and humanitarian letters of credit sent to BNPP. Sent by UN Procurement Division.

Nov. 29, 2001 RFPS bids sent to UN with validity of Jan. 31, 2002.

Dec. 1, 2001 Phase XI begins.

Jan. 9, 2002 RFPS-330 for "best and final offer" regarding diversification of humanitarian L/Cs sent to BNPP by UN Procurement Division. It was stated that one of the intended recipients did not receive the solicitation RFPS-312.

Jan. 22, 2002 Response to RFPS-330 sent to UN with a validity of April 23, 2002.

Feb. 6, 2002 Letter from UN regarding RFPS-311, 312 and 330 indicating that the UN intends to enter into direct negotiations for award of contracts for both Oil letters of credit and Humanitarian letters of Credit, respectively.

Feb. 25, 2002 Extension to ABS signed by UN with validity until Dec. 31, 2002.

May 30, 2002 Phase XII begins.

Dec. 5, 2002 Phase XIII begins.

Apr. 2, 2002 Extension to ABS signed by UN with validity until Dec. 31, 2003.

Apr. 4, 2003 Amendment no. 5 to ABS signed covering changes resulting from Resolution 1472, UN now assuming the role of Iraqi buyers for an interim period.

3/21/03

In light of recent anti-French sentiment arising from the Iraqi situation and an unflattering and misleading NBC story on BNP Paribas and its role in the UN Oil for Food Program, we have prepared the following statements which may be used for employee inquiries and conversations with concerned clients.

Anti-French sentiment

- BNP Paribas employs over 10,000 people in the U.S.
- BNP Paribas provides a broad range of financial products and services to a significant number of US corporations, including some of the largest and most profitable US corporations. By doing so, BNP Paribas provides financing and other support to the US economy.
- BNP Paribas is a publicly traded company operating in the private sector whose shareholders reside in locations across the globe.

UN Oil For Food Program

- The United Nations Oil for Food Program is an established humanitarian aid program for the Iraqi people created by the unanimous action of the UN Security Council, and thus specifically endorsed by the United States, one of the five permanent members.
- BNP Paribas was chosen by the UN to provide banking services for the Oil for Food Program through a competitive bidding process. There are several other banks involved in the Program.
- BNP Paribas' participation in the United Nations Oil for Food Program was authorized by the US Government. (If asked - through the US Department of Treasury Office of Foreign Assets Control - OFAC).
- The United Nations approves and monitors any and all purchases made for humanitarian aid for the people of Iraq under the Oil for Food Program.
- [If asked - BNP Paribas' role is limited to providing financial services to its client, the United Nations, and has no role in the selection, approval or distribution of the products or goods that are delivered to Iraq under the Program.]
- Today (3/20/03), the US has reiterated its endorsement of the UN Oil for Food Program as a means to provide humanitarian relief to the Iraqi people.
- For further information on the UN Oil For Food Program, please visit the UN's website at:
<http://www.un.org/Depts/oip/background/fact-sheet.html>

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