Appendix K

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STAFF REVIEW OF THE COMMITTEE'S PROCEDURES AND CONSIDERATION OF THE SECRETARY-GENERAL'S KNOWLEDGE OF THE COTECNA BID

In the light of questions about the Committee's findings in relation to the Secretary-General, as contained in its Second Interim Report, Mr. Volcker requested a full review of relevant Committee procedures and proceedings. This review takes into account the issues raised by the deposition testimony of Robert Parton before staff members of the respective Congressional Committees on September 27, 2005.

In summary, this review concludes that the Committee did not afford Secretary-General Kofi Annan any procedural preference in connection with its Second Interim Report. The Committee did not alter its findings or standard of proof to benefit the Secretary-General. With regard to the Committee's findings, Mr Parton disagreed on a single point: whether the evidence was reasonably sufficient to conclude that the Secretary-General knew of his son's company's bid for an inspection contract under the Oil-for-Food Programme ("the Programme"). However, the Committee's conclusion took into consideration the highly circumstantial evidence, the absence of a proverbial "smoking gun," discrepant witness accounts, and well-founded concerns about the reliability and general credibility of certain witnesses. Moreover, the Committee's Report did not omit material facts concerning the Secretary-General's knowledge. In fact, neither Mr. Parton nor other commentators have presented any such facts bearing on the Secretary-General's knowledge that were not presented in the Second Interim Report.

This review proceeds in three parts:

- *Part A: Background* – a review of the general background of Mr. Parton's employment with the Committee and the scope of his investigation and drafting responsibilities leading up to the Committee's Second Interim Report.
- *Part B: The Committee's Report Included All Material Facts* – a discussion of Mr. Parton's initial acknowledgement in his deposition testimony that the Committee did not omit material facts from the Second Interim Report and a response to his subsequent efforts to modify his testimony to suggest that such material facts were omitted.
- *Part C: The Committee Afforded No Preferential Treatment to the Secretary-General* – a discussion of Mr. Parton's claims and the notes of the Committee's meeting of March 8 in order to show that the Committee did not afford preferential treatment to the Secretary-General, including with respect to: (1) consideration of the potential employment consequences to the Secretary-General of an adverse finding; (2) application of the standard of proof; and (3) provision of information adverse to the Secretary-General in advance of the Committee's report.

A. BACKGROUND

The Committee's first two interim reports addressed, among other things, the United Nations' selection of the Programme's escrow bank and its oil and humanitarian goods inspection companies. Mr. Parton was in charge of the "Procurement Team" of approximately six investigators. As such, he was integrally involved in the drafting and continued investigation relating to the Committee's Second Interim Report on the subject of Cotecna's selection. On March 29, 2005, the Committee issued its Second Interim Report.

With respect to the Secretary-General's specific role, the Committee reached three major conclusions in its Second Interim Report: (1) that there was no evidence that Cotecna's selection in 1998 was subject to any affirmative or improper influence of the Secretary-General; (2) that the evidence was not reasonably sufficient to show that the Secretary-General knew that Cotecna (which employed his son) had submitted a bid on the inspection contract in 1998; and (3) that, once the Secretary-General was apprised in January 1999 of Cotecna's involvement, he failed to undertake an adequate investigation of the matter and should have referred the matter to an appropriate United Nations department for a thorough

and independent investigation.[1] Mr. Parton's only dispute of substance with the Committee was whether the Secretary-General knew during the contract bidding process in 1998 that Coteena was bidding for the inspection contract and, relatedly, whether the Secretary-General lied to the Committee in claiming that he was unaware of Coteena's contract bid.

Mr. Parton left employment with the Committee on April 12, 2005, approximately two weeks after issuance of the Second Interim Report. He was soon replaced by a former federal prosecutor of the United States Department of Justice who conducted the ongoing investigation of Coteena's selection in light of additional information disclosed by Coteena and additional information obtained from Kojo Annan. The results of this investigation were disclosed by the Committee in September 2005 in its Report on the Management of the United Nations Oil-for-Food Programme. The Committee adhered to its view that weighing all of the evidence and the credibility of witnesses, the evidence was not reasonably sufficient to conclude that the Secretary-General knew that Coteena had submitted a bid on the humanitarian inspection contract in 1998.[2]

Much of the questioning at Mr. Parton's deposition concerned informal notes typed by one of his subordinates, whom he had invited to a March 8 meeting of senior staff members with two Committee members to review an early draft of the Second Interim Report. This meeting was the earliest and only one of several meetings among the Committee members in which they weighed the evidence and discussed what conclusions to draw in relation to the Coteena matter. These informal notes therefore present an incomplete picture of the true scope of the Committee's deliberations, and they are neither fully accurate nor complete. For example, they do not capture all comments by meeting participants, and they suggest the participation of Committee member Mark Pieth—even though he did not participate. Prof. Pieth earlier communicated his views to the other Committee members. (Prof. Pieth's views, independently arrived at, reflected the same concerns expressed by the Committee members present at the meeting.) In addition, the notes incorrectly suggest that Mr. Volcker was not fully familiar with the draft—when in fact he had read through the immediately preceding version.

B. The Committee's Second Interim Report Included All Material Facts Concerning the Activities and Knowledge of the Secretary-General

The Committee consistently took the view that its reports should include and evaluate all relevant investigatory facts, and no contrary evidence here appears. There has been little question of this. During conversations with both Committee staff and the Chairman, including an additional conversation with the Chairman after Mr. Parton's resignation, Mr. Parton himself confirmed that all relevant investigatory facts were included. Moreover, this is reflected in the informal notes of the March 8 meeting and in Mr. Parton's comments to Congressional staff. As indicated in the meeting notes of March 8, although Justice Goldstone disagreed with Mr. Parton's assessment of the evidence, he instructed that "[t]he investigation must all stay in, [and there is] no question about not reporting everything we have found."[3]

Mr. Parton was "always involved" in the drafting and revision process, such that he was positioned to insert or request insertion of any material facts that he believed should be in the body of the Report.[4] After Mr. Parton and Miranda Duncan (who worked under Mr. Parton's supervision) prepared an initial draft during January 2005, the draft was edited and revised during the first three weeks of February 2005 by Senior Counsel Jeffrey Meyer (who performed general editing of most of the

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[1] Second Interim Report at 77-80.

[2] Programme Management Report, vol. III, at 195-242.

[3] March 8 meeting notes at 1.

[4] Robert Parton deposition transcript (hereinafter "Parton Deposition Tr.") at 145-46.

Committee's reports). On February 24, Mr. Meyer returned the draft to Ms. Duncan for further drafting and editing, with instructions that she should make sure to re-insert any information that they believed should not have been edited out. The draft remained within the control of Mr. Parton and Ms. Duncan until its submission to the Committee at some point prior to the meeting of March 8.[5] From March 8 until the Report's release on March 29, no facts of significance were removed from the Report. As Mr. Parton noted, "you'll see a sequence of drafts which would reflect essentially the same report is there [but] with changed findings," and except for "some additional facts that come in" as a result of continued investigation, "the *report was the same report* with somewhat different conclusions between the 8th of March and the 29th of March."[6]

Among the documents produced by Mr. Parton to Congress are diary entries that Mr. Parton apparently recorded between March 9 and March 21. Although Mr. Parton complains in these entries (as in his deposition testimony) about one weekend from March 18 to March 20, when he was not permitted access to the Report, this complaint reflects a lack of appreciation that it was the Committee's report and not his own personal statement. Mr. Parton's diary entry for March 19 asserts that there were "facts, mischara[c]terizations, and wrong conclusions" that he needed to correct but could not because he was locked out of the draft. However, his diary entry—like his deposition testimony—did not specify what any of these were. In fact, Mr. Parton failed to identify any facts or evidence that were altered or removed during this "lock out" period when the Report was subject to further review by the Committee members. In any event, a new draft of the report was e-mailed by Mr. Meyer to staff members, including Mr. Parton, on the morning of March 22—one week before the Report's release and with plenty of time for Mr. Parton to propose the inclusion of any further facts or information. Mr. Meyer's e-mail summarized the changes to the draft from the last version and issued an invitation that stated in part that, "[w]ith the assistance of the Procurement Team," more records of conversation needed to be integrated, and, "if there is concern that any item has not been properly incorporated or omitted, please let me know."[7]

Mr. Parton was asked during his deposition whether "there was anything, any material fact, that would have pointed to a problem with Kofi Annan's activities that was left out, as far as you can remember?" He replied: "I think that for the most part, the evidence that was gathered was in one form or

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[5] Jeffrey Meyer e-mail to Michael Cornacchia, Robert Parton, and Miranda Duncan (Feb. 24, 2005) (transmitting the draft and noting that "[i]t is plenty possible and likely that I have missed items that were in the last draft . . . just feel free to tell me what needs to go back in if that is the case"); Jeffrey Meyer e-mail to Michael Cornacchia, Robert Parton, and Miranda Duncan (Feb. 24, 2005) (re-transmitting the draft and stating that "Miranda now 'owns' the electronic version to make further changes" and inquiring whether "[o]ther info that Miranda suggested needs to find its way back in"); Jeffrey Meyer e-mail to Michael Cornacchia, Robert Parton, and Miranda Duncan (Mar. 7, 2005) (noting "further thoughts on the report and additional information I would recommend pursuing (with apologies in advance for items that you already have done or are in works but that I do not know about)").

[6] Parton Deposition Tr. at 135-36 (emphasis added).

[7] Robert Parton electronic diary (Mar. 9-21, 2005); Parton Deposition Tr. at 137-39, 146; Jeffrey Meyer e-mail to Reid Morden et al. (Mar. 22, 2005). Numerous e-mails with information were exchanged between Mr. Meyer and Mr. Parton (or other members of the Procurement Team) in the week prior to the Report's release on March 29. For example, on March 28 at 12:42 a.m., Mr. Meyer sent Mr. Parton and Mr. Cornacchia a draft of the text for Footnote 98 of the Second Interim Report in which the Committee stated that it would not credit Mr. Mouselli's assertion that Kojo Annan advised the Secretary-General of any visit that he made to the Iraq embassy in Nigeria or of any intent to engage in business under the Programme. Mr. Meyer prefaced this proposed draft text with the following: "In light of Mouselli's backpedal last Friday, I have revised the pertinent part of the report to state – please advise if OK." Jeffrey Meyer e-mail to Committee staff (Mar. 28, 2005). No objection was received from Mr. Parton or any other member of the Procurement Team.

another in the report." He added: "Characterizations change[d] based upon how you're coming out, but the evidence is pretty much there."[8]

Mr. Parton then modified this testimony. He asserted that there could have been "a couple of things that were not in the report," but named only one item of evidence: "an E-mail regarding Diana Mills[-Aryee] and Kofi Annan, which wasn't in the Second Interim Report." Mr. Parton did not further describe this e-mail or what bearing it had on the Secretary-General's knowledge of Cotecna's contract bid. Although the Committee has e-mail communications between Ms. Mills-Aryee and Kojo Annan from May and June 1999 concerning Kojo Annan's various business interests, the Committee does not have any e-mail between Ms. Mills-Aryee and the Secretary-General. Most significantly, the Committee does not have any e-mail of Ms. Mills-Aryee that sheds light on whether the Secretary-General knew or had anything to do with Cotecna's contract bid. Furthermore, no Committee record indicates that Mr. Parton ever brought such an e-mail to the Committee's attention.[9]

Mr. Parton also asserted in his deposition that the Report did not spend enough time reviewing discrepancies among the statements made by the Secretary-General during the course of his four interviews. Mr. Parton did not identify those discrepancies or show that they were material, and he has neither suggested nor shown that any such discrepancies were suppressed intentionally from the Report.[10]

Mr. Parton also claimed that the "only specific description [in the Report] of earlier testimony [of the Secretary-General] was with respect to what [the Secretary-General] said about Elie Massey."[11] However, the Report described at length the Secretary-General's failure to recall when first interviewed that he had spoken with Michael Wilson about his son's alleged departure from employment with Cotecna.[12]

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[8] Parton Deposition Tr. at 111-12.

[9] Ibid. at 112; see also Second Interim Report at 38-39 (describing at length the relationship between Ms. Mills-Aryee and the Annan family). In addition, the Committee later returned to review additional evidence concerning Ms. Mills-Aryee. After Mr. Parton's departure, his replacement reviewed Mr. Parton's records and learned that Mr. Parton had telephone records of Kojo Annan showing numerous telephone calls from Kojo Annan to Ms. Mills-Aryee and also to the United Nations procurement department. These telephone call records, along with additional correspondence disclosed by Kojo Annan to the Committee after Mr. Parton's departure, were the subject of extended review in the Committee's report in September 2005 on the United Nations' management of the Programme. Programme Management Report, vol. III, at 201-21.

[10] Parton Deposition Tr. at 113-14. Although Mr. Parton himself did not suggest that such omission was material or deliberate, one of his questioners referenced a portion of the Secretary-General's interview transcript of December 3, 2004, in which the Secretary-General spoke in the future tense with Michael Wilson about his son leaving Cotecna. This suggested by inference that use of the future tense could be evidence that the conversation with Michael Wilson occurred in November 1998—while Kojo Annan was still employed there—rather than in January 1999 after he allegedly had left Cotecna's employment. The Secretary-General, however, insisted during the interview that the conversation with Mr. Wilson took place in January 1999, as it was prompted by the first media story in a British newspaper about this issue. The fact that the Secretary-General used the future tense does not constitute significant evidence that the Secretary-General's conversation occurred in November 1998.

[11] Ibid.; see also Second Interim Report at 41-45 (describing the failure of the Secretary-General to recall meetings with Elie Massey until the Committee's electronic review of documents within the Executive Office of the Secretary-General).

[12] Ibid. at 52-53. Mr. Parton also pointed to the Secretary-General's statement when first interviewed that he did not know someone named "Pierre Mouselli." Parton Deposition Tr. at 76; Kofi Annan interview transcript at 83-85 (Nov. 9, 2004). However, it was never shown that the Secretary-General knew of Mr. Mouselli's full name. At a later interview, when specifically asked about lunch with Kojo Annan in South Africa, the Secretary-General recalled that his son had a friend named "Pierre" whom he met in South Africa, but he did not know the last name of "Pierre." Kofi Annan interview transcript at 52-58 (Mar. 17, 2005). The name "Pierre Mouselli" does not appear in

During his deposition testimony, Mr. Parton disputed the accuracy of the Report's statement that the Committee "'has not encountered any documents that were given or sent to the Secretary-General to apprise him in 1998 that the Iraq inspection contract was put up for bid again, that Cotecna had submitted a bid, or that Cotecna had been awarded the contract.'"[13] When asked whether he agreed with the foregoing statement, Mr. Parton replied: "[T]here is a document which is an attachment or an exhibit to the Secretary-General's March 17th deposition or interview, and that document reflects that the Secretary-General was told both about Lloyds's pull-out and was aware, based [on] his testimony, of the need to have a new selection of a new inspection company."[14]

In fact, the Report discussed at length the temporary withdrawal of the Lloyd's inspectors from their duty stations in mid-November 1998 and specifically cited and quoted from the document at issue concerning the departure of the Lloyd's inspectors from their posts and the Government of Iraq's request to have a new inspection firm appointed.[15]

Mr. Parton's reliance on the evidence of the temporary Lloyd's withdrawal reflects a misunderstanding of the sequence of events involved in the procurement process. In early October 1998, well before the Lloyd's inspectors left their posts, the procurement department had put the inspection contract up for bid. This was because of the rising rates charged by Lloyd's over time. It was not because the inspectors temporarily had left their posts for a few days (and then returned) or that Iraq had requested the appointment of new inspectors. Accordingly, although the Secretary-General was apprised of the temporary departure of the Lloyd's inspectors, this event was of limited significance to understanding whether the Secretary-General was aware that the contract was subject to a new bidding process. In any event, the facts concerning the departure of the Lloyd's inspectors and the Secretary-General's statements were all included in the Report.[16]

When Mr. Parton was asked at his deposition to "summarize your belief as to why you believe that the Secretary-General did have the prior knowledge," he was unable to do so. Instead, he offered a lengthy explanation that he may have forgotten about events that occurred only several months ago and that were the primary focus of his intense investigation efforts: "[I]t's certainly more difficult for me, now having, you know, six months or four months past and not having looked at the documents substantially in the period, to recall the evidentiary record," and "I will attempt to do so, my best recollection of the reasons and, to the extent that I can, the evidential basis for those reasons."[17] In the final analysis, Mr. Parton's professed lack of memory about events that occurred only several months ago is more than ironic given his view that discrepancies in the Secretary-General's testimony about matters occurring as long as six or seven years ago—such as brief meetings with Elie Massey—meant that the Secretary-General was intentionally untruthful.

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the Secretary-General's schedule, and there was no evidence of any other meeting involving the Secretary-General and Mr. Mouselli. Accordingly, because there was no indication that the Secretary-General knew or should have known when first interviewed by Mr. Parton in November 2004 the name "Pierre Mouselli," it was well within proper bounds for the Second Interim Report not to delve into the fact that the Secretary-General did not recognize this name when he was first interviewed.

[13] Parton Deposition Tr. at 62-63 (quoting Programme Management Report, vol. III, at 220).

[14] Ibid. at 63.

[15] Second Interim Report at 21, 55.

[16] Ibid. at 16, 20, 55.

[17] Parton Deposition Tr. at 17. After professing his lack of memory, Mr. Parton then referenced without elaboration the Secretary-General's testimony on certain subjects, but without attempting to explain how any of this testimony in fact established the Secretary-General's knowledge. Ibid. at 18.

C. THE COMMITTEE AFFORDED NO PREFERENTIAL TREATMENT TO THE SECRETARY-GENERAL

Mr. Parton alleges that the Committee afforded preferential treatment to the Secretary-General in three ways: (1) the Committee softened its finding against the Secretary-General because of its concern about forcing the Secretary-General from office; (2) the Committee applied a different standard of proof for the Secretary-General than for other persons; and (3) the Committee sought to give the Secretary-General an advantage by giving him advance notice of the evidence upon which it would rely in its Report on the issue of the Secretary-General's knowledge of Cotecna's contract bid. These arguments are meritless for the reasons set forth below.

In addition, these allegations of preferential treatment should be viewed in the broader context discussed above, namely that the Committee always intended to and actually did include in its Report all material facts concerning whether the Secretary-General knew of Cotecna's bid. The Committee's detailed treatment of all material facts—including those directly supporting the Committee's conclusion and those that might support a contrary conclusion—further undercut any suggestion that the Committee granted the Secretary-General any preferential treatment.

1. The Committee's Findings Were Not Affected by Concerns for Any Effect on the Secretary-General's Employment

When asked his opinion "why there was not a finding made that the Secretary-General had prior knowledge of Cotecna's interest" in the United Nations inspection contract, Mr. Parton replied that "the [C]ommittee was hesitant to make a finding that would potentially cause the Secretary-General to lose his position as Secretary-General."[18] The questioning of Mr. Parton focused on the following statement attributed to Mr. Volcker in the notes of the Committee's March 8 meeting:

> PAV: Well my general feeling about the report is that if you accuse him of lying, he is gone and I don't know if we have the evidence to make that accusation—but, we have a lot of unexplained business. The facts will speak for themselves, but we can't conclude that he lied. But other people may conclude that.[19]

This questioning, however, rested on a misinterpretation of Mr. Volcker's statement to mean that—no matter what the evidence showed—Mr. Volcker would refuse to find that the Secretary-General lied because it could cause the Secretary-General to lose his job.[20] In fact, Mr. Volcker stated his uncertainty about whether sufficient evidence justified a finding that the Secretary-General was lying—"*I don't know if we have the evidence to make that accusation*," and therefore "we can't conclude that he lied."[21]

The quoted passage properly suggests a concern on the part of Mr. Volcker for the momentous effect of a finding that the Secretary-General lied, but it certainly does not indicate any unwillingness to make such a finding if in fact the evidence so warranted. Even Mr. Parton himself conceded that "there is, I think, a difference between having a general concern about . . . the ultimate outcome of the investigation and some specific concern that you don't want to do something because of a predetermined

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[18] Ibid. at 29.

[19] March 8 meeting notes at 4.

[20] Parton Deposition Tr. at 39-40 ("Q. What is your reaction to Mr. Volcker's statement that regardless what evidence is found, the Secretary-General cannot be accused of lying?" "A. Well, Mr. Volcker says what he says, and certainly it was consistent with the notes that were taken.").

[21] March 8 meeting notes at 4 (emphasis added).

notion of what the outcome should be."[22] The meeting notes of March 8 do not establish that Mr. Volcker would alter his findings to favor the Secretary-General, but only that he would not make findings against the Secretary-General without sufficient evidence.

Equally significant, Mr. Volcker's concern for the impact of the Committee's findings was not limited to the Secretary-General. When the subject of discussion at the meeting of March 8 turned to the targets of adverse findings against lower-level employees within the United Nations procurement department, and specifically whether the Committee's report should render an adverse finding against "the [procurement] department [as a whole] or the individual," Mr. Volcker similarly expressed his concern that a mistake by the Committee could result in an individual getting fired.[23]

The Committee ultimately rendered findings in the Second Interim Report that the procurement department failed to follow its rules relating to the financial and background qualifications of prospective bidders. Although the body of the Report described the involvement by name of particular employees of the procurement department, the Committee's formal findings did not name lower-level employees of the procurement department. By contrast, the Report specifically named the Secretary-General and his son (among others), as well as another senior United Nations official, in the body of its Report and in the Report's formal adverse findings. With respect to whether the Secretary-General should share in the blame for the procurement department's failure to disqualify Cotecna from further bidding once its adverse history became known, the notes of the meeting of March 8 reflect Justice Goldstone's statement that "[t]he responsibility must lie where it should be—if the SG's office knew about it than they must take responsibility."[24]

The fact that the Committee specifically named higher-level United Nations officials, but did not always name lower-level United Nations employees negates Mr. Parton's unsupported opinion that "there was certainly, in my view, a hesitancy by the [C]ommittee to publicly name individuals of importance as having done something wrong with respect [to] the Oil-for-Food Programme."[25] Mr. Parton failed to identify any such "individuals of importance" that the Committee failed to "publicly name," and the Committee's record of findings is to the contrary.

The meeting notes elsewhere make clear the focus of concern on the absence of reliable evidence that the Secretary-General was lying to the Committee. Justice Goldstone stated his firmly held view that, based on having personally participated in two interviews of the Secretary-General, the Secretary-General was *not* lying even if his conduct were judged on a more-likely-than-not standard of proof.

> I am really not able to find, *even on a balance of probabilities*, that KA [the Secretary-General] lied to us when he said he didn't remember or that his memory was refreshed. I did not get the impression in my two interviews with him that he was lying. He wasn't the most impressive witness, but I wouldn't reach the conclusion that he was being dishonest.[26]

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[22] Parton Deposition Tr. at 133.

[23] March 8 meeting notes at 7.

[24] Compare Second Interim Report at 77 (Finding #1(b)), with ibid. at 78-80 (Findings #2-#3 (naming Kofi Annan, Kojo Annan, Cotecna, Elie Massey, Robert Massey, and Joseph Connor)); March 8 meeting notes at 8.

[25] Parton Deposition Tr. at 37.

[26] March 8 meeting notes at 1 (emphasis added); see also Jeffrey Toobin, "Annals of Law: Swing Shift," *The New Yorker*, Sept. 12, 2005, p. 48 (describing Justice Goldstone as "among the world's most widely admired judges")

Justice Goldstone later reiterated his view: "I was at two interviews [of the Secretary-General,] and I did not get the impression that [the Secretary-General] was lying."[27] In short, the Committee based its decision strictly on the evidence.

2. The Committee Did Not Alter the Standard of Proof to Favor the Secretary-General

Mr. Parton testified to his belief that the Committee had agreed to a "more likely than not" standard of proof, but departed from this agreement in order to favor the Secretary-General.[28] In fact, the Committee's Investigation Guidelines—which were distributed to all Committee investigators as early as August 2004 and shortly thereafter posted to the Committee's website—provide that the "[t]he standard for evaluating evidence that would result in a finding shall generally be 'reasonably sufficient evidence.'" This is not a standard created by the Committee for the convenience of the Secretary-General. To the contrary, the "reasonable sufficiency" standard is the well-established benchmark recommended and used by the World Bank as well as other leading international organizations for purposes of their international investigations.[29]

According to the notes of the meeting of March 8, when Mr. Parton suggested that the Committee had agreed to a more-likely-than-not standard of proof, Mr. Volcker immediately responded that he had not agreed to this standard. Mr. Volcker stated his view that he must be "pretty damn sure" in order to agree to a finding that Secretary-General lied, and Judge Goldstone stated that he must be "convinced."[30] These common sense formulations do not conflict with a requirement of reasonable sufficiency of evidence—the standard that the Committee expressly articulated in the findings of the Second Interim Report. Nor are they inconsistent with the standard previously applied by the Committee to persons other than the Secretary-General in its First Interim Report.[31]

At one point in his deposition testimony, Mr. Parton claimed without elaboration that "there was hesitancy to apply the standard of more likely than not because of the implications that it would have to the Secretary-General." The notes of the March 8 meeting, however, show that the evidence was considered to be insufficient even if judged under the more-likely-than-not standard. As noted above,

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[27] March 8 meeting notes at 4.

[28] Parton Deposition Tr. at 32-34.

[29] Independent Inquiry Committee, Documents, "Investigations Guidelines," http://www.iic-offp.org/documents.htm; United Nations, Conference of International Investigators, "Uniform Guidelines for Investigations," Part IV-E(5) (noting that "[t]he standard of proof should conform to the standards required by the organization and/or the national jurisdiction for referrals, but should generally be reasonably sufficient evidence"); Susan Ringler e-mail to Committee staff (Aug. 19, 2004) (distributing the Investigations Guidelines); The World Bank Group, "Procurement – Sanctions Committee," sect. 13(b)(2) (identifying the standard of proof for debarment: "If the [debarment] Committee finds that the evidence is reasonably sufficient to support a finding that the Respondent engaged in a fraudulent or corrupt practice in connection with a Bank Project, the Committee shall determine an appropriate sanction . . . .").

[30] March 8 meeting notes at 11.

[31] Although the Committee's First Interim Report did not elaborate on the evidentiary standard contained in the Committee's Investigations Guidelines, the wording of its findings suggested a standard in excess of the more-likely-than-not standard of proof. With respect to the contractor procurement selection issues that were the subject of Mr. Parton's investigation, the findings provided that "[t]he investigatory record reviewed herein [was] *replete with convincing and uncontested evidence*" of the violation of the United Nations rules and that "[t]he investigatory record *clearly and repeatedly demonstrate[d]* 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." First Interim Report at 109-10 (emphasis added) (quoting from the first and second findings). As Mr. Mordan noted without contradiction, the evidence "was beyond a reasonable doubt" for these prior cases. March 8 meeting notes at 11.

Justice Goldstone made clear that even on "the balance of probabilities" he could not conclude that the Secretary-General was lying, thus undermining any allegation that the Committee somehow was choosing a different standard of proof to favor the Secretary-General.[32]

The evidence on the issue of the Secretary-General's knowledge was highly circumstantial and conflicting, in contrast to the more direct and probative evidence that the Committee had concerning others who were the subject of prior adverse findings. As Mr. Parton himself observed at the March 8 meeting, the Committee must "start adding up a collection of individual points" and "maybe no one of them is sufficient alone."[33] Mr. Parton could not accept the possibility that reasonable people could disagree on what significance to attach to the many competing aspects of the evidence, including Mr. Wilson's cryptic-but-recanted statements suggesting that he had talked to the Secretary-General in the fall of 1998.

Moreover, Mr. Parton's conduct and testimony should be viewed in the light of his having pre-determined the issue of the Secretary-General's knowledge before he had cognizable evidence to support his conclusion. After leaving the Committee, an internal confidential e-mail was discovered that Mr. Parton had sent to his team subordinates (sometime before December 8, 2004), which was prominently marked: "This Document is for Internal Use by the Procurement Team Only and is Not Intended for Distribution Outside the Team." The e-mail cited "the need to establish that Kofi Annan knew of Cotecna's involvement in the 1998 selection process" and to do so despite the fact that "we are missing the critical information" to reach such a conclusion:

> Prepare a list of facts that we need to be able to establish, but currently are unable to establish because we are missing the critical information. A good example of this type of fact is the need to establish that Kofi Annan knew of Cotecna's involvement in the 1998 selection process.[34]

As Mr. Parton acknowledged in this e-mail, he did not then have direct evidence to establish the Secretary-General's knowledge of Cotecna's contract bid. There were no witness statements or documents about which Mr. Parton knew to suggest that the Secretary-General had been advised of Cotecna's contract bid. Indeed, Mr. Parton's pre-judgment of the Secretary-General's knowledge foreshadowed his later disagreement with the Second Interim Report.

Ultimately, Mr. Parton was free to state his views to the Committee and, as reflected in the meeting notes of March 8, he forcefully did so. Justice Goldstone made clear to Mr. Parton that his mind was not made up: "I am keeping an open mind and am willing to change it" if additional facts developed to establish the knowledge of the Secretary-General.[35] In the end, however, it was the members of the Committee—and not Mr. Parton—who were charged with the responsibility to interpret the evidence. Mr. Parton has done no more than show a difference of opinion with the Committee members in the interpretation of circumstantial evidence.

The record is clear that, over a period of two weeks or more, the Committee members debated the precise wording of any finding—a finding that recognized that the evidence raised questions, but in the last analysis was inconclusive and not "reasonably sufficient."

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[32] Parton Deposition Tr. at 36; March 8 meeting notes at 1-2, 11.

[33] Ibid. at 4.

[34] Robert Parton memorandum to Procurement Team members (undated) (disclosed to Congress by Mr. Parton).

[35] March 8 meeting notes at 11.

3. The Committee Did Not Afford the Secretary-General any Preference by Identifying Evidence It Intended to Cite Concerning the Issue of His Knowledge

Mr. Parton further claims that the Secretary-General was given preferential treatment because he received as an attachment ("Annex A") to his adverse notice letter from the Committee a listing of evidence that the Committee intended to refer to in its Report concerning the issue of the Secretary-General's knowledge. Even though the Committee was not prepared to make an adverse finding against the Secretary-General on the issue of his knowledge of Cotecna's contract bid, there was little doubt that the information it would describe could damage the Secretary-General and therefore was adverse to him. This was especially so because of the Committee's intent to include in the Report all material facts bearing both ways on the issue of the Secretary-General's knowledge.

The purpose of the Committee's adverse notice process was to ensure fairness by providing recipients of proposed adverse findings an opportunity to respond before the Committee finalized and publicly disclosed its reports and related findings. In numerous instances in which the Committee intended to include facts in a report's narrative that could be interpreted negatively, even though not amounting to an adverse finding, notice letters similarly were sent in advance of the report's publication, and individuals and entities were provided with an opportunity to respond. When requested, cooperating individuals who received adverse notice letters were provided with the opportunity to review underlying evidence that was not otherwise subject to restrictions or confidentiality agreements. In addition, recipients of adverse notice letters were provided with the opportunity to respond in person (with or without counsel) or in writing. In each and every case, the Committee reviewed the oral and written submissions and, where appropriate, modified its findings based upon its review.[36]

It was well within the Committee's interest in accuracy and the bounds of fairness to afford the Secretary-General a full opportunity to comment on information that the Committee soon would publish concerning whether the Secretary-General knew of Cotecna's contract bid. Moreover, the scope of information provided to the Secretary-General was consistent with—and in some cases far less than—that provided to others who received adverse notice letters from the Committee. In the case of Benon Sevan, prior to issuance of the First Interim Report, the Committee permitted Benon Sevan to review considerable information and records collected from the United Nations and other sources. Even before the Committee sent Mr. Sevan an adverse notice letter, it provided him with seventeen CD-ROMs of Programme-related documents—most of which was non-adverse. Subsequently, as part of the adverse finding process, the Committee provided Mr. Sevan access to additional records. These included documents of Iraq's State Oil Marketing Organization and the African Middle East Petroleum Co. Ltd. Inc., as well as various telephone records and data from Mr. Sevan's computer. Furthermore, Committee staff discussed with Mr. Sevan's attorney the substance of some relevant interviews.[37]

The Committee's issuance of Annex A to the Secretary-General did not afford the Secretary-General any kind of unfair advantage. Most significantly, the listing of items merely apprised the Secretary-General of information about which Mr. Parton already had questioned him. For example, Annex A referenced the "[s]tatement by Michael Wilson that in the autumn of 1998 he had a conversation with the Secretary-General in which there was a reference to Cotecna's interest in securing the Oil-for-Food inspection contract with the United Nations."[38] This came as no surprise to the Secretary-General.

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[36] During its investigation, the Committee sent adverse notice letters to more than one hundred individuals and entities discussed in the reports' narratives.

[37] Committee letters to Benon Sevan and Eric L. Lewis (Jan. 4, 2005); Committee letter to Eric L. Lewis (Jan. 28, 2005); H. Bradford Glassman acknowledgement (Jan. 31, 2005). Mr. Lewis and Mr. Glassman both served as counsel to Mr. Sevan.

[38] Committee letter to Kofi Annan, Annex A, para. 8 (Mar. 21, 2005).

When Mr. Parton interviewed the Secretary-General four days *before* the Secretary-General was sent Annex A, Mr. Parton gave the Secretary-General a verbatim excerpt of the exact statement of Mr. Wilson as it appeared in Mr. Wilson's record of conversation (internal interview report) and that the Committee eventually published in its Second Interim Report.[39]

Equally meritless is Mr. Parton's complaint concerning the inclusion of Mr. Mouselli's name in Annex A.[40] When the Secretary-General had been interviewed four days before Annex A was sent, he was questioned at length about his dealings with Mr. Mouselli.[41] The fact that Annex A referenced a statement from Mr. Mouselli did not afford him any unfair advantage or preference.

Mr. Parton's complaint that the disclosure of Mr. Mouselli's name as a witness in Annex A amounted to a breach of the Committee's confidentiality agreement with Mr. Mouselli is irrelevant to the issue of whether such disclosure assisted the Secretary-General in some unfair way. In any event, it was Mr. Parton who was in charge of communications with Mr. Mouselli and who failed to obtain a timely waiver from Mr. Mouselli—despite knowing that Mr. Mouselli's information would be used within days in the Committee's Report. However, Mr. Parton already knew that Mr. Mouselli would not object to the use of his name. In an e-mail to other Committee staff members on March 19, 2005, Mr. Parton stated that he was awaiting Mr. Mouselli's formal approval, but that Mr. Mouselli's counsel previously had represented that Mr. Mouselli "will not object to our disclosure of his identity and use of the information."[42]

In short, the Committee acted in accordance with its procedures and did not afford a preference to the Secretary-General with respect to its provision of information in advance of the Second Interim Report. In addition, much of the information disclosed by the Committee to the Secretary-General in Annex A already had been furnished to the Secretary-General by Mr. Parton himself during the course of his prior interviews of the Secretary-General. Furthermore, because the information disclosed to the Secretary-General could be interpreted negatively, even though not amounting to an adverse finding, the interests of fairness and accuracy fully supported the Committee's decision to disclose Annex A to the Secretary-General.

D. CONCLUSION

For the reasons set forth above, a full review of relevant Committee procedures and proceedings demonstrates that the Committee included all material facts in its Second Interim Report, and it did not grant the Secretary-General preferential treatment. Neither Mr. Parton's testimony nor the related documents support Mr. Parton's claims.

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[39] Kofi Annan interview transcript at 35-36 (Mar. 17, 2005). The item shown by Mr. Parton to the Secretary-General is an excerpt from the report of conversation of the Michael Wilson interview on January 20, 2005, as reproduced verbatim in the Second Interim Report at page 54 and footnote 159.

[40] Committee letter to Kofi Annan Annex A, para. 9 (Mar. 21, 2005) (noting a "[s]tatement by Pierre Mouselli that he and Kojo Annan met with the Secretary-General in Durban, South Africa, when there was [a] reference to Kojo Annan's interest in 'Iraqi oil'").

[41] Kofi Annan interview transcript at 52-58 (Mar. 17, 2005).

[42] Robert Parton e-mail to Committee staff (Mar. 19, 2005). Very soon after Mr. Mouselli's name was disclosed in Annex A, Mr. Parton was instructed to contact Mr. Mouselli's counsel, and Mr. Mouselli in turn consented to the use of his name in the Second Interim Report. Reid Morden letter to Adrian Gonzalez (Mar. 24, 2005) (countersigned by Pierre Mouselli and Adrian Gonzalez).