

**Statement by Joy Gordon**  
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**Hearing on the UN Oil for Food Program**  
**Before the House Committee on Energy and Commerce**  
**Subcommittee on Oversight and Investigations**  
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Mr. Chairman and distinguished members of the committee:

Thank you for this opportunity to testify before this committee. In taking on the difficult endeavor of unraveling the complexities of the Oil for Food Program, this committee is undertaking a tremendously important task, and it is a pleasure to be invited to contribute to that work. This program, its successes and its failures, has broad implications for future US foreign policy, as well as for the future of the United Nations.

My testimony today is based on the research I have done in the field of economic sanctions over the last seven years, including a close study of the Iraq sanctions process from 1990 to 2003. In the course of my research I have become familiar with the scholarly work on economic sanctions in general and on the Iraq sanctions in particular, as well as much of the extensive body of documents generated in the course of the Oil for Food Program. Over the last five years I have also interviewed many of those involved in the 661 Committee—the committee of the Security Council charged with overseeing the sanctions regime imposed on Iraq—and the OFF program.

Over the last year we have heard much about the failures of the Oil for Food Program. A great deal has been blamed on the Secretary-General for what is seen as an institutional failure on the part of the United Nations. As many have noted, there have been failures on the part of nearly everyone involved with the program. Most recently the Volcker Committee has explored the ethical problems involving Cotecna; the possibility of serious improprieties on the part of Benon Sevan, the director of the program; and a critical concern about the scope of the program's audits.

But in recent months there has been growing recognition of the extent to which the Oil for Food Program, as well as much of the oversight, was in fact in the hands of the Security Council and its member states—including the United States—not the Secretariat.

In my testimony today I'd like to address a number of issues concerning the Oil for Food Program and the accusations against it:

1. The effectiveness of the program
2. The magnitude of the accusations
3. Transparency and oversight
  - Monitoring of import contracts
  - Monitoring of oil sales
  - Transparency
4. Sources of illicit funds
  - Overland smuggling
  - Maritime smuggling
  - Kickbacks on import contracts
  - Oil surcharges
  - Iraq's freedom to choose its trade partners
5. The Volcker Committee reports
6. Who was responsible?
  - The consensus decision making rule
  - The US role
  - The State Department's defense of US support for Iraq's illicit trade of Jordan and Turkey
7. Conclusions

#### 1. The effectiveness of the program

I think it is important to begin by recognizing that the Oil for Food Program, and the UN staff involved, were in fact tremendously successful at raising the quality of life for the Iraqi population, in very measurable ways. The nutritional intake nearly doubled, and acute malnutrition in children dropped by half. The health care system was much better able to meet the population's needs—surgical operations increased by 40%; polio was eliminated, and communicable diseases were substantially reduced. Water and sanitation improved considerably, and electricity became much more reliable.

We should be particularly conscious of the significance of these accomplishments as we see how difficult it is been in the last two years for

the US occupation authority and the interim Iraqi government to achieve similar standards. This has been particularly true as the security situation has deteriorated, and will probably worsen as funds for reconstruction are reallocated to security costs.

The fundamental goal of the Oil for Food Program was to improve the lives of the Iraqi population through the import of critical humanitarian goods, and that was unquestionably achieved.

### The magnitude of the accusations

While it is common to hear that Saddam Hussein's regime received \$11 billion in illicit funds through the Oil for Food Program (or more recently, \$21 billion), in fact the credible accusations are much more limited: that the former Iraqi regime obtained somewhere between \$2 billion and \$4.4 billion through oil surcharges and import contracts.

According to both the GAO reports from 2004 and the CIA's report from last September, the bulk of the illicit funds that entered Iraq came from oil smuggling—which took place prior to the Oil for Food Program, and after 1996 occurred entirely outside the program. As earlier congressional hearings have made clear, Iraq had ongoing trade with Jordan, Turkey, and Syria for many years.

The major GAO report maintained that from 1997 through 2002, the former Iraqi regime acquired \$10.1 billion in illegal revenues related to the Oil for Food Program.<sup>1</sup> \$5.7 of this came from oil smuggling and \$4.4 billion from illicit surcharges on oil sales and commissions on imports.<sup>2</sup> The report of the CIA's Iraq Study Group maintains that the bulk of Iraq's illicit funds came from "government to government protocols"—ongoing trade agreements between Iraq and other countries, in violation of the sanctions. Iraq's income from these, according to the report, came to some \$8 billion, while kickbacks from import contracts were estimated to be \$1.5 billion, surcharges from oil sales were \$229 million, and private sector smuggling was estimated at \$1.2 billion.<sup>3</sup>

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<sup>1</sup> "United Nations: Observations on the Oil for Food Program," Statement of Joseph A. Christoff, Director, International Affairs and Trade. Testimony before the Committee on Foreign Relations, U.S. Senate. GAO-04-65IT, p. 2.

<sup>2</sup> "United Nations: Observations on the Oil for Food Program," Statement of Joseph A. Christoff, Director, International Affairs and Trade. Testimony before the Committee on Foreign Relations, U.S. Senate. GAO-04-65IT, p. 2.

<sup>3</sup> "Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD," 30 September 2004, Regime finance and procurement section, p. 23.

Thus, the most credible accusations—the GAO and ISG reports—maintain that the Iraqi regime illicitly received at most \$4.4 billion via some aspect of the Oil for Food Program.

### 3. Transparency and Oversight

I'd like to address some common misconceptions about the program. Over the last year we've heard people say many times that the Oil for Food program had no system of oversight or monitoring, and that there was no transparency. It in fact had an elaborate system of oversight, and there was an enormous amount of information about the program and its operations that was not only available to the UN and the member states, but in fact was maintained for the public on the web site of OIP (Office of Iraq Programme), the agency established within the UN to house the Oil for Food Program and the UN's other Iraq programs.

It is important to understand that to the extent there were kickbacks or improprieties within the program, this occurred not because of a lack of systematic monitoring; but rather took place in spite of an elaborate monitoring system. This monitoring system involved detailed oversight by members of the Security Council, including extensive participation by the United States and the United Kingdom, each of which received copies of all contracts made by the government of Iraq for every purchase of humanitarian supplies and oil spare parts.

It was OIP staff—customs officers—who notified the 661 Committee of possible kickbacks on import contracts, on more than seventy occasions. No member of the 661 Committee, including the US, then exercised its right to block or delay the contract.

It was OIP staff—the oil overseers—who notified the 661 Committee of oil surcharges in October 2000. The US and UK then began withholding pricing approval in response.

#### A. Monitoring of import contracts

Briefly, the multi-tiered monitoring structure for south/center Iraq<sup>4</sup> was:

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<sup>4</sup> Note that in northern Iraq the UN executed the program on behalf of the government of Iraq, and in that capacity took over some governmental functions. In south/center Iraq, the Iraqi government continued to perform normal governmental functions, but was monitored.

1. **Distribution plan:** Before an application could be submitted that would allow Iraq to import goods, Iraq was required to submit an exhaustive list of every single item it wished to import, identifying quantities and sectors where goods would be used, and the justification for prioritizing these goods. The Distribution Plan then had to be reviewed and approved by UN staff, often with modifications.
2. **OIP review:** Once a contract was negotiated between the Iraqi government and the supplier, it was submitted to OIP. OIP staff reviewed it to see that it contained all the information required by the 661 Committee, and corresponded to the Distribution Plan
3. **UNSCOM/UNMOVIC:** The contract was also sent to UNSCOM (later UNMOVIC) and IAEA, to determine if there were any military or dual use goods
4. **661 Committee review:** The contract was circulated to every member of the 661 Committee.<sup>5</sup> Each member had the option of delaying the contract, asking for more information, or simply vetoing it.
5. **Escrow account:** Under the terms of the program as designed, no program funds ever went directly through the hands of the Iraqi government. All proceeds from legal oil sales went into a UN-held escrow account, and all import contracts were paid for from this account.
6. **On-site inspectors:** Upon arrival in Iraq, the goods were inspected by Lloyd's Register (later Cotecna) to see that the quantities conformed to the contract
7. **End use monitors:** Once the goods were in Iraq, staff from the UN agencies conducted thousands of site visits, surveys, and spot checks to determine if the goods were being distributed equitably and efficiently, and to gauge the adequacy of the program.

## B. For oil sales:

1. The Iraqi government proposed pricing formulas, which were then reviewed by oil overseers and submitted to the 661 Committee for approval.

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<sup>5</sup> Some goods that the Security Council considered uncontroversial were eventually put on a "green list" that bypassed the committee (pursuant to Security Council Resolution 1409) but went through all the other monitoring stages. However, where OIP staff found irregularities in "green list" contracts, they then presented those to the 661 Committee.

2. Every oil contract, including the prices, delivery specifications, and all contract terms, was reviewed by “oil overseers”-- consultants from the oil industry, hired by the Secretary General, with the approval of the members of the Security Council. They advised the 661 Committee of any irregularities.

3. Every member of the 661 Committee had the opportunity to review any contract. Any oil contract could be vetoed by any member of the 661 Committee.

### C. Transparency

In many ways the program was highly transparent. There was a considerable amount of information easily available to the general public at all times, and there was even more information available to the members of the Security Council, which was overseeing the program.

- The Distribution Plans, showing every item that the UN permitted Iraq to contract for, for every phase of the program, were (and for phases 5-13 continue to be) posted on the OIP web site
- The Secretary General provided reports every ninety days on the program, including detailed information on both oil sales and import contracts, and on the situation in every sector of the Iraqi economy and society, including health, agriculture and nutrition, education, electricity production, telecommunications, transportation, de-mining. All of these reports were (and still are) posted on the OIP web site
- For every 6-month phase, OIP posted charts showing the status of both oil contracts and import contracts: for every sector of the economy, how many contracts had been submitted, how many approved, how much had been delivered, etc. All of these were posted for each phase on the OIP web site.
- OIP issued weekly updates with details of oil liftings, status of holds on particular contracts, and other items. All of these were (and are) posted on the OIP web site.
- The OIP web site also listed every Security Council resolution, Secretary-General report, and every other major report on the program. These were (and still are) posted on the OIP web site.

The transparency of the Oil for Food Program stands in marked contrast with the way that the sanctions program had operated in the first half of the 1990s. From 1990-1995, Iraq was permitted to apply to the 661 Committee for permission to purchase humanitarian goods (although it could not sell oil to generate funds). However, the 661 Committee was extremely inconsistent in what items it would permit and what it would not; refused to generate any guidelines or criteria that would allow suppliers or the government of Iraq to know what was permitted and what was not; was often inconsistent, permitting a contract for certain goods, such as ambulance tires, on one occasion, and then a few months later denying a contract for similar goods; and once it denied a contract, it would not provide the government of Iraq or the supplier with any information as to why the goods were denied.

#### 4. Who was responsible?

For many months now we've heard accusations leveled against "the UN" for allowing Saddam Hussein to garner illicit funds through the Oil for Food Program. There are some in Congress and elsewhere calling for Kofi Annan's resignation. Yet the Secretariat had no decision making role in setting the terms of the Oil for Food Program. The program itself was a product of a Security Council resolution; all subsequent modifications to the program were established through Security Council resolutions; and implementation of the program, including OIP, was overseen by the 661 Committee, which made the decisions regarding implementation.

Under Article 41 of the UN Charter, it was the responsibility of the Security Council, not the Secretariat, to enforce the sanctions regime. The role of the Secretariat was limited to execution of the program, as the program had been designed by the Security Council; as well as providing the Council members with information, and performing administrative functions. The Security Council and its members, including the United States, played critical roles in allowing smuggling and kickbacks to take place.

#### A. Smuggling

The bulk of Iraq's illicit income, according to the GAO and the CIA's Iraq Study Group, was from smuggling: \$5.7 billion according to the GAO, and \$8 billion according to the ISG.

According to the ISG report, the majority of this trade—\$4.4 billion—was with Jordan. A significant amount of illicit trade (\$710 million) was with Turkey. According to the ISG report, in 1991 Jordan informed the Council of its intention to continue trading with Iraq, and the Council “took note,” but took no measures to reprimand or prevent Jordan from going forward with large-scale, prohibited trade. Similarly, in the case of Turkey, the Council turned a blind eye to large-scale illicit trade. This included the US, which had a strategic alliance with Turkey. All three US administrations over the course of the sanctions regime sent waivers to Congress, asking that aid be continued to Jordan and Turkey despite their illicit trade with Iraq.

## B. Maritime smuggling

In addition to overland smuggling, there was substantial maritime smuggling as well. The Multinational Interception Force (MIF) was charged with interdicting ships engaged in illegal trade with Iraq. The MIF was created by Security Council Resolution 665, which called upon member states with naval forces in the area to intervene to enforce the sanctions.

According to its reports, the MIF was quite active, boarding hundreds of ships each year,<sup>6</sup> and there is no reason to suggest that it was incompetent or poorly run. However, it makes little sense to blame the UN for failing to stop Iraq's illicit oil smuggling. There was no authorization for any UN entity to take actions to intervene; SCR 665 only invited member states to take these measures.

The MIF involved some participation, at various points, from twenty or so different nations. But it was overwhelmingly dominated by US naval forces. The commanders at every point in the MIF's history were US naval rear admirals or vice admirals in the US Fifth Fleet.<sup>7</sup> The force itself consisted overwhelmingly of US ships. In 2000, for example, the US contributed 86 vessels; the UK seven vessels; Canada contributed one vessel

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<sup>6</sup> From 1994 to 2001, there were several hundred boardings per year; in 2002 and 2003, there were over 3000 boardings per year.

<sup>7</sup> The commanders of the MIF were Rear Admiral A.K. Taylor (1991-1992); Vice Admiral D.J. Katz (1992-1994); Vice Admiral J.S. Redd (1994-1996); Vice Admiral T.B. Fargo (1996-1998); Vice Admiral C.W. Moore Jr. (1998-2002); and Vice Admiral T.J. Keating (2002-2003).

for two months, and the Netherlands contributed one vessel for one month.<sup>8</sup> MIF commanders periodically reported to the 661 Committee.

### C. Kickbacks on import contracts

OIP has been accused of failing to stop illegal kickbacks. However, OIP had no authority to block improper contracts. It was authorized to request clarification in the case of irregularities, and provide that information to the 661 committee. Only the members of the Security Council had the power to block contracts. Where price irregularities were clear, the customs officers of the OIP staff did in fact inform the 661 Committee, giving each member the opportunity to block the contract, or to ask for further information before approving. **On over 70 occasions**, this was done. On **none** of those occasions did **any** member of the Council—including the US—seek to delay or block the contract for pricing irregularities.

### D. Oil surcharges

In October 2000, while reviewing Iraq's proposed pricing formulas, the oil overseers noted that the proposed formulas did not reflect fair market value. In their contacts with potential oil buyers, they learned that the Iraqi authorities had started requesting payment of a surcharge of up to 50 cents per barrel. The oil overseers reported both of these facts to the 661 Committee. In March 2001, the Secretary General drew attention to this problem in a public report to the Security Council.

In response to this information, the US and UK implemented a "retroactive pricing policy." The normal practice in the industry, and for the Oil for Food Program, was to set the price for the coming month. Under retroactive pricing, the US and the UK withheld their approval for the price until the month had passed. This meant that buyers literally were required to sign contracts for oil purchases without knowing what the price was until after they were committed. The US and UK took the position that this allowed the committee to determine retroactively what the fair market value of the oil had been the previous month, and charge buyers accordingly. Thus, the argument went, Iraq was receiving no more nor less than fair market value; that eliminated the premia that went to middlemen; and

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<sup>8</sup> In 2001, the US contributed 90 vessels, the UK contributed four, and all other participating countries contributed one or two. In 2002, the US contributed 99 vessels, five nations contributed ten or more, and several other countries contributed less than ten.

consequently eliminated the possibility that the middlemen would pay Iraq illicit surcharges.

The new pricing policies did in fact eliminate any margin for surcharges. But it had another result as well: that oil sales were substantially compromised. Predictably, few buyers were prepared to purchase Iraqi oil without knowing the price. It did not help much to provide assurances that the price they were ultimately charged would be “fair market value,” as determined by the 661 Committee. As a result, the retroactive pricing mechanism created a financial crisis in the OFF program from 2001-2003. In 2001, oil exports averaged 1.7 million barrels per day. In 2002, the average was 1.1 million BPD. By September 2002, that number had dropped to 400,000 BPD. The result was a dramatic shortfall in funding for humanitarian contracts. As of February 2002, there were nearly 700 fully approved contracts, with a value of \$1.6 billion, for which there was no funding; and another \$5.3 billion of contracts on hold, awaiting approval; for a total potential shortfall of \$6.9 billion. One member of the 661 Committee noted that “exports are now so low that the program is on the verge of collapsing.”<sup>9</sup> Income remained at this reduced level for the duration of the program.<sup>10</sup>

#### E. Iraq’s freedom to choose its trade partners

The CIA’s report makes much of the “secret oil voucher” system, by which Iraq designated oil purchasers. However, this appears for the most part to be simply Iraq’s record-keeping system for exercising the rights it had under the terms of the OFF program to select its trading partners. While it may be said that particular purchasers should not have been approved, the fundamental decision to allow Iraq to choose its oil buyers and import contractors—and the political leverage that accompanied that—was a decision made by the Security Council, with the participation and agreement of the United States. It may be that the Council felt that the elaborate system of monitoring and the multi-tiered approval process would serve as a sufficient mechanism of oversight. But the decision to allow Iraq to select its trading partners was not a failure of judgment or oversight on the part of

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<sup>9</sup> In June 2001 Iraq stopped producing oil in protest against a US proposal to modify the sanctions regime, and in April 2002 Iraq again declared a moratorium, to protest Israel’s treatment of Palestinians. However, the retroactive pricing mechanism was by far the major factor in the financial crisis of the OFF program from 2001-2003.

<sup>10</sup> Income from oil exports increased steadily for the first eight phases, from \$2.1 billion in Phase 1 to \$9.6 billion in Phase 8, which ended in December 2000. For Phase 9, the oil exports fell to \$5.6 billion; Phase 10, \$5.4 billion; Phase 11, \$4.6 billion; Phase 12, \$5.6 billion; Phase 13, \$4.4 billion.

the Secretariat. It was a decision of the Security Council, with the agreement of the United States.

## 5. The Volcker Committee Reports

In its February report, the overall finding of the Volcker Committee regarding the account discussed (the 2.2% account) was that it was run carefully and well. The reports generated by the Independent Inquiry Committee chaired by Paul Volcker have been by far the most rigorous and careful studies of the accusations against the Oil for Food Program to date. Of the accusations addressed in the IIC's reports thus far, some concern the operation of the program; some concern individual acts which did not have significant effects on the program; some improprieties served the interests of the Iraqi government, and some did not.

- The most significant issue concerning the program's structure was the claim that the OFF program should have conducted internal audits. This issue raised by the Volcker Committee goes to one of the fundamental problems in the basic structure of the program: that it was a program created, designed, and enforced by the Security Council under its powers in Chapter VII, but administered by the Secretariat. There is no provision in the UN Charter for the Secretariat to override or modify any decision by the Security Council, in any form.

Under the terms of the program's mandate, contained primarily in Security Council Resolution 986 and the Memorandum of Understanding, only external audits were authorized. According to the February report of the Volcker Committee, these were conducted and submitted to the Security Council, as required. Under standard UN practice, contracts to which the UN is a party are audited; but the import and export contracts in the OFF program took place between Iraq and commercial enterprises. While we may now say that internal audits should have been conducted, or that the import and export contracts should have been audited, that was not how the Security Council chose to design the program, and the Secretariat did not have authority to override the Security Council on these or any other aspects of the OFF program.

The other major issues discussed in the Volcker Committee reports released to date do not indicate that program's basic structure or operations were fundamentally compromised:

- A great deal has been said about the claim that Kofi Annan's son may have been involved in the decision to award an inspection contract to Cotecna. But while this issue has gotten enormous attention from the media, it is not a significant factor in the operation of the Oil for Food Program. The Cotecna contract involved a minor part of the program (the 2.2% account). Further, the accusation is that the contract was improperly awarded to Cotecna; not that Iraq's humanitarian imports were compromised by any practices of Cotecna.
- The improprieties in contracting identified by the Volcker Committee in the February report indicate that the program was subject to a series of manipulations for political purposes, but that these generally did not in fact serve the interests of the Iraqi government. The report of February 3 notes that of the three major contracts under the 2.2% account, only one (the banking contract) was awarded with the agreement of the Iraqi government; and that arrangement had the support of the US and UK. The Saybolt contract was improperly awarded to a Dutch company, on the grounds that the Netherlands supported the enforcement of sanctions against Iraq. The inspection contract to Lloyd's Register was improperly awarded to a British company, through the influence of the British Mission to the UN.
- The Volcker Committee gives evidence for serious concerns that Benon Sevan improperly received \$160,000 through his involvement with one company that bought Iraqi oil through the program. If true, Sevan's actions would clearly be improper and may be illegal as well. However, it is not clear that Sevan in fact used his position to serve illicit interests on the part of the Iraqi government. The Volcker report indicates that the Iraqi government wanted Sevan to use his influence to persuade the Security Council members to lift holds on oil spare parts and equipment. The Volcker report notes that the Iraqi government was disappointed that Sevan did not do so, and cancelled further oil allocations. In fact, Sevan did argue for lifting holds on oil spare parts and equipment, on the grounds that these were necessary for oil extraction. But that was also the position held by the oil overseers, as well as most members of the Security Council.

## 6. Who was responsible?

### A. The consensus decision making rule

Prior witnesses at these hearings have suggested that the consensus requirement of the 661 Committee made it difficult to establish effective oversight of the Oil for Food program. However, for the most part the consensus requirement in fact operated in exactly the opposite way: in the absence of consensus, the default position was denial of import or oil sales, not approval. In most contexts, the consensus requirement did not prevent unilateral US action. It was in fact the structure that **enabled** the US to impose many policies and decisions unilaterally.

- Import contracts: All contracts (except those eventually included on the Green List) were circulated to every member of the 661 Committee, and required the approval of every member of the Committee. Thus, any single member could block any contract, regardless of whether other members objected.

The United States unilaterally blocked massive quantities of import contracts, citing security concerns. It was occasionally joined by the UK, but the overwhelming majority of the holds (typically 90-95% at any point in time) were imposed by the US and the US alone.

- Oil contracts: the US, joined by the UK, used the consensus rule to delay approval of oil pricing, and did so over the objections of others in the Council until October 2001, when the 661 Committee finally agreed to retroactive oil pricing.
- The negotiation of “rollover” resolutions (the Security Council resolutions extending the program for an additional six months) were occasions for dispute. On one hand, there was considerable controversy over US holds on humanitarian goods; on the other hand, the US and UK would raise the issue of smuggling, and seek to include stronger measures against smuggling in the rollover resolution. On these occasions, France and Russia opposed such measures, arguably because of their own interests. However, it appears that the US also had little credibility on this issue with the committee, since the US did not want to enforce such measures against its allies, Jordan and Turkey, but only against other nations.

## B. What was the US role?

The history of the program does not support the claim that the US was concerned about illicit funds entering Iraq, or would have done more if it had not been stymied by other members of the council. By all accounts, and based upon the US policies and decisions, the US was singularly preoccupied with military concerns, in particular WMD.

- The US blocked billions of dollars of import contracts-- \$150 million as of November 1998, then growing to \$5 billion as of July 2002. All of these were blocked on the grounds that they contained items that could have military applications, or else contributed to Iraq's infrastructure, thereby creating the possibility of rebuilding its military capacity.

There was nothing in the 661 Committee's procedures that prevented the US from blocking questionable contracts, for either imports or oil sales. To the contrary, the consensus rule was the mechanism that allowed the US to impose far greater restrictions on import and oil sales than other members of the Security Council supported.

- The US **declined** to block any of the import contracts presented, on the more than seventy occasions on which the US and the other member states were explicitly informed by UN staff of pricing irregularities suggesting possible kickbacks.
- US officials did on occasion report rumors of kickbacks and ask for investigations. However, when asked to provide specifics that could be investigated, US officials failed to provide any information on which to base an investigation.
- All three US administrations explicitly permitted large-scale illicit overland trade between Iraq and Jordan, and between Iraq and Turkey, throughout the history of the sanctions regime.
- To the extent that there was maritime smuggling, this occurred not through failures on the part of the UN, but rather on the watch of the US Fifth Fleet. The MIF fleet was overwhelmingly made up of vessels from the US Fifth Fleet, and was at all times commanded by US naval officers.
- The US approved the hire of every oil overseer hired by the Secretariat
- When the oil overseers—UN staff—informed the 661 Committee of pricing irregularities in oil sales, the US and UK implemented a harsh

policy of retroactive pricing. Far from being stymied by other members on the Council, this practice began despite the objections of others on the Council.

- The US voted for Security Council Resolution 986 and agreed to the Memorandum of Understanding, which gave the government of Iraq the right to select its trading partners. This was crucial in permitting Iraq to use the OFF program to generate political support.
- The US voted for Security Council Resolution 986, which only required the OFF program to be subject to external audits, not internal audits.

### C. The State Department's defense of US support for Iraq's illicit trade with Jordan and Turkey

In the congressional hearings that have taken place over the last several months, it has become known publicly what research specialists have known for the entire Iraqi sanctions episode—that all three US administrations turned a blind eye to this smuggling, and in fact took efforts to prevent the imposition of penalties under US law.<sup>11</sup> Despite more than a year of harsh attacks on the United Nations—particularly the Secretariat—for claimed mismanagement of the Oil for Food Program, the fact is that the bulk of the illicit funds that the Iraqi regime acquired in fact had nothing to do with the Oil for Food Program.

It is clearly a matter of some embarrassment to the State Department that the United States itself knew, approved of, and took efforts to protect the ongoing smuggling which generated the majority of these funds, specifically in regard to Turkey and Jordan. The current response of the State Department is that *this* smuggling was legitimate and transparent, unlike *that* smuggling, done by Syria, or other corrupt practices such as kickbacks and bribery. Such a claim seems quite absurd in light of the actual history of US policy choices.

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<sup>11</sup> As Mr. Schweich explained in his testimony, since 1991, under federal law there have been restrictions on US assistance to countries not in compliance with Security Council sanctions against Iraq. However, all three administrations filed waivers with Congress throughout the history of the sanctions regime, finding that it was in the national interest to provide aid despite these violations.

- In light of the research conducted by Dr. Paul Conlon, who testified before Congress last month, it is not correct to portray Jordan as being honest and above-board, when there was evidence from nearly the beginning that Jordan misrepresented its activities to the Committee on an ongoing basis. Indeed, it was Dr. Conlon himself who wrote the report informing the 661 Committee of this.<sup>12</sup>
- In the case of Turkey, it was precisely the fault of the United States that Turkey's ongoing illicit trade was not granted any legitimacy. Whereas other countries on the 661 Committee repeatedly asked that Turkey's appeal for relief under Article 50 be considered, and Turkey placed this on the Committee's agenda over a dozen times, it was the United States (occasionally joined by the UK) that blocked the Committee from considering Turkey's request.

### The State Department's current position

In his testimony on April 12 before the House Committee on Government Reform, Thomas Schweich of the State Department maintained that the large-scale ongoing illegal trade that Iraq maintained with Jordan and Turkey was "in no way comparable to the kind of corruption, bribery, or kick backs" that have been investigated by congressional committees.<sup>13</sup>

According to Mr. Schweich, the 661 Committee's decision to turn a blind eye to Jordan's smuggling was "not a back room deal." Rather, he said, in 1991 Jordan sought relief under Article 50 of the UN Charter, and the Committee never acted. Consequently, Jordan informed the Committee that a loss of trade with Iraq would cause considerable damage to its economy, and simply notified the Committee that it intended to continue importing oil from Iraq. The Committee "took note" of this without objection, and asked Jordan to report on its trade. Thus, according to Mr. Schweich, "it wasn't really secretive." Similarly, according to Mr. Schweich, in 1996 Turkey requested Article 50 relief, also because of the consequences of sanctions on the economy. He stated:

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<sup>12</sup> "Data on Iraqi Trade/Rev.3," memorandum dated 1 December 1993 from Paul Conlon to James C. Ngobi

<sup>13</sup> All quotes from Mr. Schweich are from the Federal News Service transcript of his testimony (unpaginated).

The Jordanian and Turkish protocols were done to alleviate economic hardship, it was an exception to the sanctions regime because of the severe consequences that a failing Jordanian and Turkish economy might have on the world, it was done transparently, openly with the knowledge of the entire 661 Committee and the international community and for a valid purpose.

And to allow countries and individuals to equate that with the type of corruption that went on could seriously undermine our efforts to reform the UN that are going on now.

Other countries, such as Syria, did not receive similar relief, according to Mr. Schweich; Turkey and Jordan, by contrast, “came hat in hand, asked for Article 50 relief, and really did it by the book. Syria just engaged in massive fraud...”

Contrary to the State Department’s claims, the open smuggling was never considered legal. There was clear favoritism based upon US strategic alliances, not altruism or international law; and the US in fact blocked attempts to grant proper, transparent, legal relief under Article 50.

### Jordan

In his 1996 article “How Legal Are Jordan’s Oil Imports from Iraq?”<sup>14</sup>, Dr. Paul Conlon wrote about this issue in great detail. He noted that:

- When India made a similar request, citing the Security Council’s approval of Jordanian trade, it was rejected. In a formal opinion “of considerable precision and clarity” from the office of the UN’s Legal Counsel, “the Committee concluded that an exemption would be illegal.”<sup>15</sup>
- Although Jordan provided annual reports to the 661 Committee concerning its Iraq trade, by 1993 it was apparent that these reports were not truthful. Jordan’s official reports to the UN data base on world trade reported much higher amounts.<sup>16</sup> An internal report

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<sup>14</sup> Florida State University Journal of Transnational Law & Policy, vol. 6 (Fall 1996).

<sup>15</sup> *Ibid.*, p. 112.

<sup>16</sup> *Ibid.*, p. 115.

- regarding these discrepancies was circulated to multiple members of the 661 Committee, but the committee declined to discuss it.<sup>17</sup>
- Research conducted in 1994 indicated that “considerable manipulation was involved” in Jordan’s reports to the 661 Committee: Jordan’s actual oil imports from Iraq—according to Jordan’s own reports to other UN bodies—were 81% greater (in dollar value) than the amount it reported to the 661 Committee.<sup>18</sup>
  - There in fact was no transparency on this issue. Some countries believed that the committee had actually granted Article 50 relief.<sup>19</sup> While the illicit trade was widely known, “[o]riginally, the pseudo-agreement’s existence was held to be a secret. It was never mentioned in any published UN document.”<sup>20</sup>
  - The practice of “taking note” of Jordan’s practices, which occurred each year, had no basis in any relevant legal authority, either Article 50 or paragraph 23 of Resolution 687.<sup>21</sup>
  - This arrangement continued well past any legitimate concerns with Jordan’s inability to obtain substitute oil supplies. Far from seeking alternate sources of oil, Jordan actually increased its dependence on Iraqi oil during the sanctions regime.<sup>22</sup>

In the case of Jordan, there was no transparency. An open secret of improper activities is not “transparency.” Nor could the 661 Committee view this as legal, in light of the legal opinion stating strongly that it was not.

## Turkey

In a letter dated August 5, 1996, Turkey submitted a formal request to the 661 Committee for relief, citing the economic hardship due to trade disruption with Iraq resulting from the sanctions. Turkey sought permission to resume oil imports, and to in turn provide Iraq with goods for the civilian population. Far from supporting Turkey’s appeal for Article 50 relief, the

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<sup>17</sup> Ibid., p. 116.

<sup>18</sup> Ibid., p. 117.

<sup>19</sup> Ibid., p. 118.

<sup>20</sup> Ibid., p. 115.

<sup>21</sup> Ibid., p. 114.

<sup>22</sup> Ibid., p. 116.

US delegate on the 661 Committee said in an August 1996 meeting (meeting no. 142) that Turkey's request would compromise the integrity of the sanctions regime, and that the matter should be postponed to a later time. The issue was raised again, and again, and again—in meeting 143 (August 28, 1996); meeting 144 (October 14, 1996); meeting 145 (December 3, 1996); meeting 146 (December 18, 1996); meeting 148 (January 28, 1997); meeting 150 (February 21, 1997); meeting 151 (March 17, 1997); meeting 152 (March 24, 1997); meeting 155 (May 14, 1997); meeting 157 (June 11, 1997); meeting 159 (July 17, 1997); meeting 160 (August 27, 1997); meeting 166 (January 4, 1998); meeting 171 (May 12, 1998); meeting 172 (June 18, 1998); and meeting 176 (December 1, 1998).

As the issue dragged on for years, the US position remained unchanged. Again and again, the US delegate reiterated the same position: that the view of the United States had not changed, thus blocking any possibility of considering Turkey's appeal for relief in a public, legal, and transparent form.

It was the US who maintained that the Committee did not have authority to grant a sanctions exemption to Turkey—over the opposition of others on the 661 Committee. In one instance, the US objected to a French proposal that the Secretariat provide a report on the effects of the sanctions on neighboring states.<sup>23</sup> The delegates from China and Bahrain spoke in support of the proposal. However, the US (joined by the UK) refused to agree, thus preventing consensus (effectively vetoing) even a request to the Secretariat to provide information on the impact of sanctions on Turkey and other nations.

## Conclusion

In the cases of Jordan and Turkey, the State Department currently maintains that the US did not approve of or participate in any impropriety, on the grounds that these arrangements were transparent and honest. They were not.

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<sup>23</sup> Meeting 171, May 12, 1998.

## 7. Conclusions

- The bulk of the illicit funds that arrived in Iraq over the course of the sanctions regime had no relation to the Oil for Food Program. They occurred through large-scale ongoing smuggling, which began well before the OFF program, and had no relation to the program at all.
- Contrary to common views, the Oil for Food Program did not “give Saddam Hussein a free hand” to use oil proceeds as he wished, without oversight or monitoring. Rather, the OFF program had multiple levels of oversight for both import contracts and oil sales, involving scrutiny by UN staff and by every member of the Security Council, of nearly every aspect of every transaction. To the extent that there were kickbacks or other improprieties in the program, these occurred not for lack of oversight; but rather occurred despite an elaborate system of oversight.
- Contrary to common views, the Oil for Food Program was not characterized by an absence of transparency. In many regards the program was highly transparent, not only to the members of the Security Council—which authorized and supervised the program—but to the general public as well.
- Contrary to common views, the UN Secretariat was not responsible for what are seen as the major failures of the program: the ability of Iraq to choose its trade partners; the kickbacks on import contracts; the surcharges on oil contracts; the large-scale smuggling. The design of the program, and the enforcement of the sanctions, was in the hands of the Security Council and its members, not the Secretariat.
- Contrary to common views, the US did not show significant concern regarding smuggling and kickbacks. Rather, the US was preoccupied with blocking military goods from entering Iraq. The US generally showed a lack of interest in stopping illegal funds from entering Iraq, and this was particularly true where US strategic allies were involved in illicit trade with Iraq.
- It is not plausible to attribute the poor humanitarian situation in Iraq to the failures of oversight of the Oil for Food program. These kickbacks and oil surcharges are estimated to be at most \$4.4 billion, over the seven-year course of the program. What was far more damaging to Iraq’s economy and society were the limitations that compromised oil sales

(including retroactive oil pricing) and large-scale holds on equipment and goods necessary for infrastructure and for the operation of an industrialized society—electricity production, water and sewage treatment, telecommunications, transportation, construction, industrial production, agriculture. These were imposed almost entirely by the United States. US holds on critical humanitarian and infrastructure supplies at just one point in time—July 2002—totaled some \$5 billion. In the end, the total goods that actually arrived in Iraq from the program’s inception through May 2003 came to only \$4.6 billion per year, or about \$191 per person per year. The extreme impoverishment of the Iraqi population would not have been significantly affected if that amount were increased to \$200 per person per year, which is approximately the difference that \$4.4 billion would have made.

We may be shocked that as much as \$4.4 billion in illicit funds slipped through the oversight structures of the Oil for Food Program. But the reality is that in the face of such severe, longstanding, and widespread impoverishment, the actual impact of the kickbacks and surcharges that have been denounced by many as a scandal of historic proportions was in fact negligible in comparison to the economic sanctions themselves, and the additional strictures imposed by the US and the UK.