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SECURITY COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 (1990)
CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT

PROVISIONAL SUMMARY RECORD OF THE 164th MEETING (CLOSED)

Held at Headquarters, New York,
on Tuesday, 9 December 1997, at 3.30 p.m.

Chairman:

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OTHER MATTERS

The meeting was called to order at 3.55 p.m.

ADOPTION OF THE AGENDA

The agenda was adopted.

MATTERS RELATING TO PARAGRAPH 9 OF SECURITY COUNCIL RESOLUTION 1143 (1997)

The CHAIRMAN recalled that in paragraph 9 of resolution 1143 (1997), the Security Council had requested the Committee to refine and clarify working procedures in order to expedite the approval process and to report to the Council no later than 30 January 1998. He therefore invited members of the Committee to send suggestions in that regard to the Secretariat by 16 December 1997 so that the Secretariat could prepare a working paper for consideration in early January 1998. The Committee would work closely with the Secretary-General in that exercise so that it could deal more efficiently with the approval of contracts for humanitarian supplies.

Mr. SEVAN (Executive Director of the Iraq Programme) said that the Committee needed to move fast because of time constraints. The Secretariat would prepare draft terms of reference for the report and would hold an informal meeting with Committee members on 18 December 1997 to finalize them.

Mr. BIGOT (France) said that the Committee also needed to review the financial procedures relating to the approval process.

The CHAIRMAN said that the suggestions from Committee members did not have to be limited to the Committee's working procedures. He took it that the Committee wished to proceed as he had suggested.

It was so decided.

NOTE VERBALE DATED 5 AUGUST 1996 FROM TURKEY (S/AC.25/1996/COMM.7649)

The CHAIRMAN said he took it that the Committee wished to defer consideration of the note verbale dated 5 August 1996 from Turkey concerning the resumption of imports of petroleum and petroleum products from Iraq.

It was so decided.

LETTERS DATED 5 NOVEMBER 1996 AND 23 JANUARY 1997 FROM TURKEY
(S/AC.25/1996/COMM.11293 and Add.1)

The CHAIRMAN said that Turkey had requested the Committee's approval to ship to Iraq spare parts and equipment with a view to securing the medium-

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and long-term safety of the Kirkuk-Yumurtalik pipeline. The list of spare parts and equipment attached to the letter containing the Turkish request (S/AC.25/1996/COMM.11293/Add.1) was identical to the list attached to the contract submitted under Security Council resolution 986 (1995), which had already been approved by the Committee, as reflected in paragraph 17 of its report of 2 December 1997 (S/1997/942). He had signed a letter to the Permanent Mission of Turkey to the United Nations informing the Mission that the exporter was eligible for payment from the Iraq account.

Mr. BIGOT (France) said he assumed that the Chairman's letter was clear and unambiguous and without conditions, and that the Turkish Mission would be able to inform the company concerned that it could proceed to send the spare parts to Iraq for the maintenance of the pipeline.

The CHAIRMAN said he understood from contacts with the Permanent Missions of Turkey and the United States of America, of which the Committee was aware, that those Missions were in agreement that the spare parts must be stored in Turkey until needed in Iraq; that the parts could be used only for emergency repairs or normal maintenance of the pipeline approved for use in accordance with Security Council resolutions 986 (1995) and 1111 (1997); and that all parts replaced in the pipeline must be removed from Iraq. That agreement had facilitated the Committee's work.

Mr. BIGOT (France) said that the Permanent Mission of Turkey had indicated that those conditions made the operation impossible: the first contract, for short-term maintenance, had been carried out by a public company, but the second contract, for medium- and long-term maintenance, involved a private company which could not undertake to cover the costs of storage. The approval letter for the second contract mentioned no conditions; any conditions that might be imposed must be agreed upon by the Committee. The request had been pending for a long time, and it was important that the spare parts should arrive in Iraq as soon as possible. However, a solution needed to be found in the Committee, not at the bilateral level.

The CHAIRMAN said that the Committee had sought a pragmatic solution to expedite approval of the request, and it had been felt that the talks between the Permanent Missions concerned would facilitate a solution. He could seek clarification from the Permanent Mission of Turkey that there was indeed an agreement on the matter.

Mr. BIGOT (France) said he had been informed by the Permanent Mission of Turkey that morning that there was no agreement between the two Missions. The representative of the United States of America should provide information about its consultations with the Permanent Mission of Turkey. The matter was of vital importance for the implementation of Security Council resolution 986 (1995), because without a pipeline Iraq could not export petroleum to Turkey. The Committee must be fully informed about all aspects of the case.

Mr. MCGURGAN (United Kingdom) said that he, too, had contacted the Permanent Mission of Turkey that morning, and he had been informed that there was an agreement. He agreed that the Chairman should contact the Permanent Mission of Turkey directly for clarification.

Mr. BROWN (United States of America) said that it was not clear why the representative of France was interested in a contract between Turkey and Iraq. There was no bilateral agreement between Turkey and the United States of America. His delegation had stated its position many times: the United States had been unable to agree to an approval of the request unless certain conditions were placed on that approval, and had therefore placed a hold on the request. After consultations undertaken with the Permanent Mission of Turkey as requested by the Committee, his delegation had found that it could agree to lift the hold. His delegation's concerns were embodied in the approval letter signed by the Chairman.

It was not unusual for the Committee to impose conditions on an approval. The questions his delegation had raised about the second request had been identical to those raised in connection with the first, and the approval letters were more or less the same. If Turkey had difficulties in carrying out the contract, it could raise them with the Committee.

Mr. BIGOT (France) said that there was nothing surprising about his delegation's interest in the case. He simply sought clarification as to whether the approval letter for the second contract laid down conditions.

The CHAIRMAN said that the approval letter he had signed laid down no conditions. At the time he had signed it, he had been informed that an understanding had been reached between the United States of America and Turkey. He regarded that understanding as part of the same package.

Mr. BROWN (United States of America) said that his delegation's understanding was that the initial approval letter, which did not mention

conditions, had been prepared in error and signed by the Chairman. The Secretariat had then issued an amended approval letter, which had also been signed by the Chairman, that included the conditions. The Secretariat's error had been a clerical one, and not one of substance. When his delegation had lifted its hold on the request, it had made it clear in its communication to the Secretariat that there were certain conditions it expected to see reflected in the approval letter.

Mr. WAN (Secretary of the Committee) said that the problem had come to the Secretariat's attention when paragraph 17 of the Committee's report (S/1997/942) had been taken up at the previous meeting. The Secretariat had received a fax from the Permanent Mission of the United States of America on 17 November 1997 lifting various holds, including the hold on the Turkish request, and setting forth conditions. Unfortunately, someone in the Secretariat had omitted the conditions from the approval letter. However, the letter had not actually been sent, and the matter had been put back on the Committee's agenda so as to close the case.

Mr. SMIRNOV (Russian Federation) said that he supported the representative of France. The processing of the letter by the Secretariat was a technical matter; what was relevant was the procedure for lifting holds: when the Secretariat received comments containing proposals that had not been considered by the Committee, they must be sent to the Committee as new proposals. For example, the Secretariat could include the current proposal in a draft letter and circulate it under the "no-objection" procedure.

Mr. BIGOT (France) said that since there were clearly different perceptions of the position of the Permanent Mission of Turkey, the Chairman should seek clarification from that Mission. If the Turkish company concerned could not implement the contract because of the conditions that had been imposed, the supply of oil to Turkey would be threatened in the medium and long terms.

Mr. BROWN (United States of America) said that since an approval letter had already been issued, no purpose would be served by circulating another letter. Turkey was free to return to the Committee if it was experiencing difficulties.

Mr. SMIRNOV (Russian Federation) said that the representative of France had introduced new information which placed the matter in a different

perspective, and might make it necessary for the Committee to re-examine the whole issue. He agreed with the representative of France that the necessary measures should be taken swiftly, in order to clear up the apparent discrepancies in the facts of the situation. A reply to the Turkish Government could then be circulated under the "no-objection" procedure.

Mr. BROWN (United States of America) noted that since the contract had been approved, the Committee had received no further communication from the Turkish Mission.

The CHAIRMAN suggested that he should contact the Turkish Mission in order to clarify the situation. He would then hold informal consultations with members of the Committee, after which he hoped it would be possible to remove the question from the Committee's agenda.

LETTERS DATED 27 AUGUST AND 10 NOVEMBER 1997 FROM THE UNITED ARAB EMIRATES (S/AC.25/1997/COMM.6658 and Add.1)

The CHAIRMAN recalled that, at a previous meeting, the Committee had considered the proposal of the United Arab Emirates concerning a United Nations presence in Dubai and had decided to seek more information on the nature of the request and the kind of assistance which the United Arab Emirates was willing to offer.

The United Arab Emirates had replied that a United Nations representative in Dubai could facilitate efforts to survey and control the export of certain goods from and through its territory, pursuant to Security Council resolutions 661 (1990) and 968 (1995). The Government of the United Arab Emirates would provide a convenient locality for the United Nations office, as well as other necessary facilities, such as free electricity and water. The Committee secretariat would be responsible for the salaries and housing of United Nations personnel.

Mr. SMIRNOV (Russian Federation) reiterated his delegation's belief that an official United Nations presence in Dubai was currently unnecessary, particularly since it would involve additional expenditure. A negative reply should be given to the Government of the United Arab Emirates, and the item should be removed from the Committee's agenda.

Mr. MCGURGAN (United Kingdom) said that his delegation welcomed the proposal from the United Arab Emirates and, following bilateral contacts,

understood that the United Arab Emirates would also bear the salary and accommodation costs.

Mr. BROWN (United States of America) recalled that there had been much favourable comment at the Committee's previous meeting on the request by the United Arab Emirates for technical assistance.

Further clarification should be obtained regarding the question of expenses. Should the Committee be unable to agree to the current proposal, its reply should encourage the United Arab Emirates to seek technical assistance and make it clear that other options were available for the purpose.

Mr. SMIRNOV (Russian Federation) said he could not agree to an official United Nations presence in the United Arab Emirates in the context of the sanctions regime. That State could take whatever other steps it considered appropriate to obtain the desired international expertise, but the Committee should make no recommendations in that regard.

Mr. BIGOT (France) agreed with the concerns expressed by the United Arab Emirates, which reflected a commendable intention on the part of that State. The issue had wider implications, however, and there was a risk of setting a precedent. Also, it was not clear what the competence or functions of an official United Nations representative in the United Arab Emirates might be.

Mr. SMIRNOV (Russian Federation) said that if the Government of the United Arab Emirates required help with a substantive matter relating to the implementation of the sanctions regime, it could obtain it from the Committee in the usual way. As to the need for international expertise, there was no shortage of sources from which such assistance could be obtained.

The CHAIRMAN said that it was important to encourage the States bordering Iraq to intensify their implementation of the relevant Security Council resolutions. In that context, he would hold an informal discussion with the Permanent Representative of the United Arab Emirates regarding that State's need for technical assistance.

Mr. CONG Guang (China) suggested that the reply to the United Arab Emirates should mention the Committee's appreciation for the efforts made by that country.

Mr. BROWN (United States of America) agreed with the representative of China: a simple negative reply would not accurately reflect the Committee's thinking on the matter.

The CHAIRMAN said that he would draft an appropriate reply to the Government of the United Arab Emirates that reflected the points that had been made.

NOTE VERBALE DATED 15 SEPTEMBER 1997 FROM THE UNITED ARAB EMIRATES AND LETTER DATED 6 NOVEMBER 1997 FROM THE LEGAL COUNSEL (S/AC.25/1997/COMM.7314 and COMM.10589)

The CHAIRMAN recalled that the Committee had previously discussed the request from the United Arab Emirates regarding passenger shipping service between its territory and Iraq, and had decided to seek the opinion of the Legal Counsel. That opinion, contained in document S/AC.25/1997/COMM.10589, was that the operation of a maritime passenger service with Iraq would not violate the mandatory sanctions imposed by the Security Council, provided that the vessels involved transported only passengers and their personal effects and did not load fuel or other cargo in Iraq; that the service was operated under arrangements which excluded economic or financial benefits in favour of Iraqi agencies or companies, with the exception of customary fees for ports or navigational services; and that the vessels concerned cooperated with the multinational interception force operating in the area pursuant to Security Council resolution 665 (1990).

He suggested that the Committee should respond to the United Arab Emirates along the lines indicated by the Legal Counsel.

It was so decided.

LETTER DATED 28 AUGUST 1997 FROM INDIA AND LETTER DATED 23 OCTOBER 1997 FROM THE LEGAL COUNSEL (S/AC.25/1997/COMM.6687 and COMM.9756)

The CHAIRMAN recalled that the Committee had previously considered the request from India for clarification as to whether any imports for the exclusive use of diplomatic missions and their staff were exempt from the sanctions, and had decided to seek the opinion of the Legal Counsel. The Legal Counsel's view, contained in his letter dated 23 October 1997 (S/AC.25/1997/COMM.9756), was that, since none of the resolutions imposing mandatory measures against Iraq contained any provision affecting diplomatic relations between Iraq and third countries or imposing restrictions on either foreign or Iraqi diplomatic staff, States could continue to maintain diplomatic relations with Iraq and, in particular, could continue to operate diplomatic missions in Baghdad and to appoint staff thereto. Based on his reading of the relevant provisions of Security Council resolutions and the Committee's practice, the Legal Counsel

considered that the trade and financial measures imposed by the Security Council were not applicable to diplomatic missions in Iraq and their staff.

He had asked the Secretariat to draft a press release to be circulated under the "no-objection" procedure in the light of the practice followed by the Security Council Committee established pursuant to resolution 724 (1991) concerning Yugoslavia.

Mr. SMIRNOV (Russian Federation) supported the issuing of a press release in addition to the reply that would be sent to the Permanent Representative of India. Paragraph 5 of the Legal Counsel's letter referred to the treatment that shipments for the use of diplomatic missions had received under other sanctions regimes of comparable scope. It also quoted part of a press release dated 11 May 1993 issued by the Chairman of the Security Council Committee established pursuant to resolution 724 (1991) concerning Yugoslavia, specifying that shipments destined for diplomatic missions should be effected through the border crossing points approved by that Committee.

Since shipments for the use of diplomatic missions were exempt from the sanctions regime, he did not see why any constraints regarding border crossing points should be applicable to them; there was no reason why such shipments could not arrive by air.

Mr. CONG Guang (China) fully endorsed the Chairman's suggestion and suggested that inspectors at the relevant border crossing points should be informed accordingly.

Mr. BROWN (United States of America) suggested that the press release should fully reflect the conclusions set out in paragraph 8 of the Legal Counsel's letter.

Mr. BIGOT (France) said that the issue of the entry points used for the shipments concerned was a practical matter, rather than one of principle. The Legal Counsel had not clearly stated that diplomatic shipments arriving in Iraq must pass through the approved entry points.

Mr. SMIRNOV (Russian Federation) said it was important to avoid giving the impression that the Committee was issuing a directive concerning the point of entry to be used for those shipments. Diplomatic goods were not covered by the sanctions, and their entry into the territory concerned should be a matter for the discretion of the mission concerned. The question was one of diplomatic immunity, and thus constituted a very specific and exceptional case. The

Committee had no authority to restrict diplomatic immunity, and his delegation could not agree to a text that implied otherwise.

The CHAIRMAN said that the press release would be drafted accordingly.

LETTERS DATED 31 JULY, 4 SEPTEMBER AND 23 OCTOBER 1997 FROM THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO) (S/AC.25/1997/COMM.6590, COMM.6994 and COMM.9750)

The CHAIRMAN said that, based on the clarifications provided by the Food and Agriculture Organization of the United Nations (FAO) in document S/AC.25/1997/COMM.9750, the Polish request submitted on 13 March 1997 for the supply of spare parts for agricultural helicopters, referred to in the FAO communications, had recently been approved subject to various conditions, namely: all parts replaced or destroyed should be removed from Iraq; FAO should account for all parts and submit full records to the Committee together with each request for new parts; and all parts requiring notification and monitoring by the Special Commission under Security Council resolution 1051 (1996) should not be shipped to Iraq until the Special Commission resumed full monitoring activities in Iraq.

He reminded the Committee that it had yet to respond to the FAO request relating to aerial pest-control activities and the supply of specific inputs (S/AC.25/1997/COMM.6994), which it had considered at its 162nd meeting. He therefore suggested that the Committee should first inform FAO that the Polish request submitted under Security Council resolution 986 (1995) had been approved with certain conditions attached and that the Polish authorities had received an approval letter from the Committee. Secondly, the Committee should draw the attention of FAO to those conditions and request FAO to account for all parts and submit full records to the Committee together with each request for new parts. Thirdly, the Committee should approve, in principle, the FAO request to carry out aerial pest-control activities in late 1997 and early 1998 and await applications from FAO for the supply of specific inputs.

Mr. BIGOT (France) expressed concern at the development whereby conditions could seemingly be attached to the approval of a request. In the case of the Polish request, for instance, he assumed that the condition relating to long-term monitoring was no longer valid, as the experts had since resumed their work in Iraq. He also remarked that, in the interest of facilitating

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transparency and discussion, a written statement of any conditions to be imposed would be preferable to an oral presentation.

Mr. BROWN (United States of America) asserted that the Committee could approve a request subject to any conditions it wished to impose. Approval of the entry of helicopter spare parts into Iraq, however, had consistently been subject to conditions with a view to ensuring that such parts were not diverted for non-humanitarian uses, bearing in mind that they could equally be used for Iraqi military helicopters. Such conditions had always been clearly stated in the approval letters issued by the Committee. He therefore failed to understand the reason for concern over transparency.

Mr. WAN (Secretary of the Committee) confirmed that the Committee, whether in its meetings or under the "no-objection" procedure, could approve applications with conditions attached. Conditions had always been attached to the entry into Iraq of helicopter spare parts.

Mr. BIGOT (France) said that he took the absence of any further remarks by the Committee concerning the condition of long-term monitoring by the Special Commission to mean that the condition had been waived. The lengthy discussion concerning Turkish spare parts, however, had demonstrated that conditions imposed by the Committee were not necessarily conveyed to all of its members and that errors could occur.

The CHAIRMAN said that every effort would be made to avoid errors and pursue the practice of discussing conditions in meetings of the Committee.

Mr. SMIRNOV (Russian Federation) added that, while some delegations preferred to seek the advice of the Legal Counsel in such circumstances, he favoured the "no-objection" procedure, which ensured clarity and addressed the need for information and understanding.

The CHAIRMAN said that the response which he had suggested would be circulated under the "no-objection" procedure.

NOTE VERBALE DATED 23 SEPTEMBER 1997 FROM LEBANON (S/AC.25/1997/COMM.7772)

The CHAIRMAN reminded the Committee that it had decided at its 162nd meeting to defer a decision on the request by Lebanon for the release of funds in order to allow one member time to study the annex to the communication concerned (S/AC.25/1997/COMM.7772).

Mr. BROWN (United States of America) said that his delegation's study of the documentation submitted by Lebanon in connection with its request had

failed to demonstrate that the conditions existed for the Committee to consider approval of the request.

Mr. BIGOT (France) suggested that the Permanent Mission of Lebanon to the United Nations should be given an opportunity to answer the questions raised by the request.

Mr. BROWN (United States of America) confirmed that his delegation would be pleased to provide a list of specific questions for forwarding to the Lebanese Mission.

LETTER DATED 17 OCTOBER 1997 FROM SWITZERLAND (S/AC.25/1997/COMM.9509)

The CHAIRMAN, responding to a request from Switzerland, sought the Committee's views on a recent allegation by officials of the Iraqi Central Bank that Iraqi funds held by the Bank for International Settlements might be unfrozen to settle Iraqi debts to foreign commercial companies. The Swiss company which had reported that allegation had also reported that such transfers had been carried out in several countries.

Mr. BROWN (United States of America) said that the Committee was in no position to consider the issue without first obtaining further details from the Swiss authorities concerning the information received from the Iraqi authorities about specific transfers of frozen funds.

The CHAIRMAN said that he would try to obtain that information and, supported by Mr. MUBARAK (Egypt), suggested that, with the Committee's agreement, the question of Iraqi frozen funds should be addressed in an informal meeting.

LETTER DATED 24 OCTOBER 1997 FROM MOROCCO (S/AC.25/1997/COMM.9877)

The CHAIRMAN said that Morocco sought the Committee's opinion as to whether the transaction requested by the Office Chérifien des Phosphates (OCP) (S/AC.25/1997/COMM.9877) to import up to 1.5 million tons a year of Iraqi sulphur, valued at \$50 million-\$70 million, was permissible under Security Council resolution 986 (1995).

Mr. McGURGAN (United Kingdom) said that the transaction was not permissible under that resolution, which did not provide for the export of petroleum derivatives, and that Morocco should be so advised in writing.

Mr. BIGOT (France) suggested that the three oil overseers present at the meeting should clarify the meaning of the term "petroleum products" contained in paragraph 1 of Security Council resolution 986 (1995).

Mr. BROWN (United States of America) agreed with the representative of the United Kingdom that the transaction was not permissible, as Security Council resolution 986 (1995) permitted the export of petroleum and petroleum products only through the Turkish pipeline or the Mina al-Bakr oil terminal. In his view, the fact that sulphur could not be exported by either of those two channels provided some insight into the intended meaning of the term "petroleum products".

Mr. STEPHANIDES (Deputy Director of the Security Council Affairs Division) remarked that any export of petroleum products would have to be deducted from the ceiling allowed under Security Council resolution 986 (1995) and would also have to be monitored. Given the current limit on the export of petroleum, he believed that the matter should be addressed at a later date, particularly since any increase in that limit was unauthorized and a plentiful quantity of petroleum was already available for export. Further exports would merely pose complications, especially if one considered the views expressed by the representative of the United States of America, which, in the light of the negotiations held with the Iraqi authorities, were fully valid.

The CHAIRMAN invited the oil overseers to give their opinion as to whether sulphur could be regarded as a petroleum product.

Mr. LORENZ (Oil Overseer, Sanctions Branch, Department of Humanitarian Affairs) said that the sulphur contained in crude oil was normally removed and discarded when the crude was refined, in which case it was technically a petroleum product. He agreed that the establishment of a new monitoring system for the export of a small amount of product would pose practical complications.

The CHAIRMAN suggested that the matter could be addressed in the January report of the Secretary-General.

Mr. BIGOT (France) reiterated that Security Council resolution 986 (1995) contained no definition of the term "petroleum products" and suggested that products which could not be shipped through the Turkish pipeline could nevertheless be legally exported from the Mina al-Bakr oil terminal, in which case the Moroccan request conformed with the resolution and would thus be difficult to refuse. It was essential, however, to draw a distinction between the principles of the resolution and the practical questions raised by the request. He proposed that the issue should be included in the discussions on improving implementation of Security Council resolution 986 (1995) and that the