

COPY

CONTRACT PD/CO144/01

between

THE UNITED NATIONS

and

COTECNA INSPECTION S.A.

FOR THE PROVISION OF INDEPENDENT INSPECTION AGENTS

SPECIMEN

HA001077

This Contract is entered into by and between the UNITED NATIONS, an international inter-governmental organization, with its headquarters, located in New York, N.Y. 10017, USA (hereinafter referred to as the "UN"), and COTECNA INSPECTION S.A., a corporation incorporated under the laws of Switzerland, having its headquarters at 58, Rue de la Terrassiere, Geneva, Switzerland (hereinafter referred to as the "Contractor"). The UN and the Contractor are collectively hereinafter referred to as the "Parties".

WITNESSETH

WHEREAS the UN, in furtherance of the mandate of United Nations Security Council Resolutions, wishes to engage the Contractor to provide all services and supplies in order to verify and confirm that the description, value and quantity of humanitarian supplies and oil spare parts and equipment arriving in Iraq, are in accordance with the requirements established by the Committee, all on the terms and conditions set forth in this Contract;

WHEREAS the Contractor represents that it is qualified, ready, willing and able to provide these services on the terms and conditions set forth in this Contract;

NOW, THEREFORE, subject to the terms and conditions hereinafter set forth, the Parties agree as follows.

A. GENERAL

Article I: Contract Documents

1.1 This document and all annexes hereto, together with the following named documents, which are incorporated herein by reference, constitute the entire contract (herein referred to as the "Contract" or this "Contract") between the UN and the Contractor:

(a) The Request for Proposal issued by the UN and dated 30 March 2001 under reference "Request for Proposal for the Provision of Services by Independent Inspection Agents for Humanitarian Supplies/LM" as modified or supplemented by the answers to queries dated 24 April 2001, (hereinafter referred to as the "RFP") and;

(b) The Contractor's Proposal dated 24 April 2001, as modified or supplemented by fax dated 23 July 2001 confirming its acceptance of the negotiated rates (hereinafter referred to as the "Proposal").

Contract no. PD/CO144/01

1.2 The following Annexes shall form an integral part of this Contract:

- Annex I: UN General Conditions for General Contracts;
- Annex II: Security Council Resolution 986 (1995), 1111 (1997), 1143 (1997), 1153 (1998) and 1175 (1998) (as such Resolutions may be modified or supplemented after the date hereof, hereinafter referred to as the "Resolutions");
- Annex III: Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the Implementation of Security Council Resolution 986 (1995) (hereinafter referred to as the "MOU");
- Annex IV: The Procedures to be Employed by the Security Council Committee Established by Resolution 661 (1990) Concerning the Situation between Iraq and Kuwait in the Discharge of its Responsibilities as Required by Paragraph 12 of Security Council Resolution 986 (1995) (as such Procedures may be modified or supplemented after the date hereof, hereinafter referred to as the "Procedures");
- Annex V: Transportation Release Form;
- Annex VI: Medical Release Form;
- Annex VII: Form of Performance Bond/Guarantee.

1.3 In the event of any inconsistency among the documents constituting this Contract, the following order of priority shall apply:

- (a) this document and Annexes I – VII hereto;
- (b) the RFP; and.
- (c) the Proposal.

1.4 It is expressly agreed that this Contract embodies the entire agreement of the Parties with regard to the subject matter hereof, and that no promises, understandings, obligations or

Contract no. PD/CO144/01

agreements, verbal or otherwise, exist between the Parties except as herein expressly set forth.

Article 2: Term of Contract

This Contract shall be in force for an initial term of one (1) year, from 1 August 2001 through 31 July 2002, unless earlier terminated in accordance with the terms of this Contract. The UN shall have the right, at its sole option, to extend this Contract on the same terms and conditions (including price), for an additional period of one (1) year or of such shorter duration as the UN may in its sole discretion determine, by giving the Contractor written notice of its intention to do so not less than fifteen (15) days prior to the expiration of the then current term of the Contract.

Article 3: Objective of Contract

The Resolutions direct the Security Council Committee established by UN Security Resolution 661 (1990) (hereinafter referred to as the "Committee"), *inter alia*, to monitor the import into Iraq of certain humanitarian supplies and spare parts and equipment for the petroleum industry (such supplies, spare parts and equipment hereinafter referred to as "Supplies"). Under this Contract, the Contractor will provide all services, equipment and materials to verify and confirm (i) that the description, value, quantity and quality of Supplies arriving in Iraq (including those imported in connection with the United Nations Inter-Agency Humanitarian Programme) are in accordance with the requirements established by the Committee and (ii) that services ancillary to the import of Supplies are performed in accordance with the requirements established by the Committee. The activities referred to in clauses (i) and (ii) above hereinafter together referred to as the "Services".

*AP
to
what
extent?*

B. RESPONSIBILITIES OF THE CONTRACTOR

Article 4: Scope of Work: Representations

✓ 4.1 The Contractor undertakes to provide independent inspection agents and related personnel (hereinafter referred to as the "Agents") as required to perform the Services. The Contractor shall perform the required Services on a 24-hour, 7-day per week basis and in accordance with the specifications and procedures set forth in the RFP and the Proposal.

✓ 4.2 The Contractor shall provide a total of sixty-two (62) Agents, present at all times at the border entry points of Al-Waleed, Trebil, Umm Qasr and Zakho, and at no additional cost to

No 6 free
Contract no. PD/CO144/01

✓ the UN, one (1) field manager, one (1) senior liaison officer, and one (1) chemist, all of whom shall be posted as specified in the Proposal. The Agents assigned to perform the Services shall be selected by the UN from among the individuals identified by the Contractor as experienced and qualified to perform their duties. There shall be no substitution of the Contractor's personnel without the UN's prior written consent in each instance. The UN reserves the right, in its sole discretion, to increase or reduce the number of Agents at any time, in which event the contract price set forth in Article 7.1 hereof shall be proportionately adjusted based on the labour cost per man/day differentials as set forth in the Proposal. Notwithstanding anything in the Proposal to the contrary, any adjustment in the contract price arising from an increase in the number of Agents shall be based on the actual number of days worked by such additional Agents.

4.3 The Agents shall confirm imports of Supplies into Iraq in accordance with Article 4.9 hereof, the RFP, and the Proposal, including without limitation the verification, inspection, and testing procedures set forth in the Proposal. In particular the Agents will cross-check and compare the appropriate documentation, such as bills of lading, other shipping documents or cargo manifests, with the letter of approval and other documents issued by the Committee against humanitarian supplies and oil spare parts and equipment arriving in Iraq. They shall, among other matters, conduct quantity inspection by weight and count, including visual inspection, sampling, and when necessary, timely laboratory testing. If the shipment is in order, the Agents shall add their authenticated confirmation of arrival, stating that the exporter is eligible for payment, to a copy of the letter of approval issued by the Committee. The Agents shall immediately report any irregularities to the Secretary-General and the Committee. *daily with photos E-mail* The Agents shall submit electronically to the Secretary-General daily shipment inspection reports authenticating the delivery of supplies, and written weekly reports via facsimile describing in detail the services performed.

4.4 The Agents shall also undertake special inspection and authentication procedures. The UN shall notify the Agents, through a monthly update, of the relevant items that require special inspection and authentication procedures. Separate lists shall be prepared for humanitarian supplies and oil spare parts and equipment. This monthly update shall also be provided to the independent oil inspection agents contracted separately by the United Nations. The item(s) in question shall be inspected and authenticated by the Agents upon arrival at the border entry point to Iraq. The Agents shall report on a weekly basis to the UN on the arrival of the designated humanitarian supplies and, with regard to oil spare parts and equipment, also to the oil inspection agents, until delivery is completed. As required, the Agents shall apply a Unique Reference Number (URN) seal on a specified item(s) upon their arrival at the relevant border crossing point to Iraq. The item shall be inspected and authenticated by the Agents upon arrival at the relevant border crossing point to Iraq. The Agents shall then apply a URN seal to the consignment and annotate the relevant documentation with that number accordingly.

Contract no. PD/CO144/01

This seal may only be removed by the United Nations at the time of the visit to the end-user facility. Subsequent to the inspection and authentication of this consignment, the Agents shall inform the United Nations and, with regard to oil spare parts and equipment, the oil inspection agents, of the arrival at the border of the item(s) in question and also transmit details of the warehouse or storage site location and, where available, details regarding end-use or the end-user facility.

4.5 Should the Government of Iraq consider certain commodities to be defective upon receipt and not in accordance with contractual specifications, it may make arrangements for the export of an item(s) from Iraq back to the supplier (or other approved destination). On such occasions, the supplies will also be subject to special inspection procedures by the Agents to ensure the appropriate export of the item(s) in question. This will involve the same measures as indicated in Article 4.4 above but in reverse order. Upon being informed by the Government of Iraq, the Agents shall also undertake special inspection and authentication procedures for the transport of an item(s) for the purposes of repair abroad. On such occasions, the Agents shall inspect and verify the pre-shipment packing, preparation and export of the item(s) in question.

*View
formerly
day bolt*

*Need to
Keep
Close
Monitor on
Frequency
& Costs
associated
with this
request*

4.6 The Agents will immediately report all irregularities to the UN Secretary-General and the Committee. In case of shipments other than those in connection with the United Nations Inter-Agency Humanitarian Programme, if the problem is related to normal commercial practice (e.g., some shortlanded goods), the Committee and the Government of Iraq shall be informed, but normal commercial resolution practices (e.g., claims) shall go forth. If the Agents determine that the matter is of serious concern, they will hold the shipment in question pending guidance from the UN. The Contractor shall have no liability in respect of any disputes arising between buyer and seller of the supplies and services for which the Contractor is not responsible; provided however, that the Contractor shall cooperate with any requests by the UN to provide assistance in connection with the Resolution of any such disputes.

*Some
geny
goods!*

*Inland -
Additional
transport
& Manpower
\$.*

*What is
the
liability
& scope
of cooperation*

4.7 The Contractor shall also be responsible for operating the convoy control system at the Zhako/Faida border crossing, including without limitation, preparing convoy lists, collecting passports, and providing such documents to the relevant authorities.

✓

4.8 The Contractor shall be responsible for making the necessary arrangements to ensure the fulfilment of its obligations under this Contract. The Contractor shall perform its obligations under this Contract in accordance with the highest professional standards.

✓

4.9 In performing their obligations under this Contract, the Contractor and its personnel shall comply with all the relevant aspects of applicable UN documents and procedures, including without limitation, the Resolutions, the MOU, the Procedures, any other procedures

✓

Contract no. PD/CO144/01

and decisions approved by the Committee, and instructions and applicable reports of the UN Secretary-General.

✓ 4.10 The Contractor acknowledges that (i) the UN shall have no obligation to provide any assistance to the Contractor in performing the Services other than as expressly set forth herein and (ii) the UN makes no representations as to the availability of any facilities or equipment in Iraq or the conduct of Iraqi authorities. The Contractor represents and warrants that all information in the Proposal is true and correct.

? (A) 4.11 The UN reserves the right at any time, including during the term of this Contract or an extension thereof, to enter into any agreements or arrangements with any other entities or persons for performance of all or any part of the Services. The UN shall incur no liability to the Contractor by virtue of its entry into such agreements or arrangements. The UN may at any time expand the responsibilities of the Contractor, subject to the UN's obligation to pay for any additional agents that may be required as a result thereof.

costs included
per 7.1

4.12 The Contractor shall supply all equipment, materials, and facilities necessary to perform the Services, including without limitation all equipment for taking and storing samples, all vehicles for transporting the Agents, all equipment for transmitting authenticated confirmations and other reports required under this Contract, and all other equipment, materials, and facilities set forth in the Proposal. The communications and electronic data processing equipment and software supplied and utilized by the Contractor in performing its obligations under this Contract shall be of the highest quality and be fully compatible with the equipment and software utilized by the UN in connection with this Contract. The Contractor shall supply all hardware, software and other information technology related equipment in order to perform its duties. Furthermore, the Contractor shall provide all personnel to support its information technology operations in Iraq. In particular, the Contractor shall supply the following equipment and software to perform the Services:

✓ (a) Each duty station shall be equipped with at least three (3) desktop PC's (with additional PC's as work volume may require); one (1) server with minimum Pentium III, 700 Mhz Processor, with 512 Mb PC 133 MHz SDRAM memory, with four (4) 9 GB hard disk drives and one (1) DAT 12/24 GB SCSI DDS3; and Routers to facilitate data transmissions. Each server and PC will run Lotus Notes 4.6 or higher and be Y2K compliant. The Contractor shall create a Lotus Notes-based application to record authentications and transmit them directly to the UN Notes server in New York. The Contractor shall be responsible for ensuring that the integrity of all authentication data is maintained.

(b) Each duty station shall be equipped with UPS (uninterrupted power supply) back

Contract no. PD/CO144/01

⊗ For IT group
Item 4.12
We should once again ensure that our current equipment is in compliance.

up capable of sustaining operations for a minimum of twelve (12) hours. Each duty station utilizing local power shall also be equipped with a back-up generator with adequate power capacity to power the entire station.

(c) Subject to the Parties' mutual agreement to an appropriate adjustment to the contract price and an amendment of this Contract to effect such price adjustment, each duty station shall be equipped with either a V-SAT terminal (earth station) or INMARSAT B capable of transmitting at a minimum of 64 Kbps; at least one (1) MINI M (Inmarsat) or better equipment with a separate fax machine capable of transmitting data as back-up to the V-SAT or INMARSAT B.

4.13 The Contractor shall safeguard the security of all documents, equipment, materials and facilities used in connection with the performance of this Contract, including without limitation through the measures set forth in the Proposal.

Article 5: Contractor's Personnel

5.1 No person shall be assigned by the Contractor to perform the Services under this Contract unless the United Nations has approved in advance the selection of such person in writing. Without limiting the United Nations' rights of approval under Articles 4.2 and 5.2 hereof, in addition to the sixty-two (62) Agents selected by the United Nations under Article 4.2 hereof, the United Nations shall designate ten (10) additional persons from among the candidates identified by the Contractor who are acceptable to serve as replacement Agents under this Contract.

5.2 The United Nations may request, at any time, the withdrawal or replacement of any personnel of the Contractor assigned to perform the Services under this Contract. The Contractor shall, at its own cost and expense, withdraw or replace such personnel forthwith. The assignment by the Contractor of any replacement personnel shall be subject to the UN's prior written approval. A request by the United Nations for withdrawal or replacement of the Contractor's personnel shall not be deemed a termination of the Contract.

5.3 The Contractor shall be fully responsible for all work and services performed by its employees, agents, servants and sub-contractors. The Contractor shall take all reasonable measures to ensure that they conform to the highest standards of moral and ethical conduct and respect the local customs which are not otherwise inconsistent with the provisions of this Contract, including without limitation the Resolutions, the MOU and the Procedures.

5.4 The Contractor shall ensure that all personnel used to perform services under this

✓ Contract are (i) medically fit to perform the Services and (ii) adequately covered by insurance for any service-related illness, injury, death or disability. The Contractor shall submit proof of such medical fitness and such insurance satisfactory to the UN before commencing any work under this Contract.

✓ 5.5 The UN shall not be liable for any action, omission, negligence or misconduct of the Contractor's employees, agents, servants or sub-contractors, nor for any insurance coverage which may be deemed necessary or desirable for the purpose of this Contract, nor for any costs, expenses or claims associated with any illness, injury, death or disability of the Contractor's employees, agents, servants or sub-contractors performing Services in connection with this Contract.

5.6 The Contractor shall ensure that the Agents are at their stations and ready to commence work under this Contract, in accordance with the RFP and the Proposal, on 1 August 2001. The duty stations shall be staffed as specified in the RFP and the Proposal, and the Agents shall carry out their work in accordance with a shift structure acceptable to the UN. The Contractor shall employ the management structure set forth in the Proposal. The UN reserves the right, at any time, to alter the shift structure or the duty stations to which the Agents are assigned, including the number of each Agents assigned to each duty station, at no additional cost the UN. The Agents assigned to each duty station shall at all times include at least one (1) information technologist capable of undertaking routine support tasks on hardware and software, one (1) food technologist, and one (1) person fluent in Arabic.

✓ 5.7 It is understood and agreed that the Agents performing the Services, whose names will be communicated to the Government of Iraq pursuant to Section VIII of the MOU, shall be deemed "experts" within the meaning of Article VI of the Convention on the Privileges and Immunities of the United Nations, and shall enjoy all of the privileges and immunities accorded to "experts" therein.

Article 6: Reporting Requirements

✓ 6.1 The Contractor shall submit to the Committee, the UN Secretary-General, and the United Nations Office of the Humanitarian Coordinator for Iraq daily and weekly reports in writing describing in detail the Services performed under this Contract. Such reports shall be transmitted via satellite facsimile and, if available, electronic mail. These reports shall be in such format and provide such information, as the UN shall specify.

Article 7: Contract Price and Payment Terms

7.1 In full payment for the complete and satisfactory performance by the Contractor of all its obligations under this Contract, the UN will pay the Contractor a price not to exceed (N.T.E.) a total of **U.S. DOLLARS ELEVEN MILLION SEVEN HUNDRED SIXTY-SEVEN THOUSAND SIX HUNDRED (US\$11,767,600.00)**, at the all inclusive man/day rate of US\$520.00, subject to any adjustment in such price pursuant to Articles 4.2 and 12.1 hereof. This price includes all costs relating to the Services to be provided under this Contract, including without limitation, salaries, benefits, insurance, board, lodging, security, transportation and communications, electronic data processing and other equipment. This price also includes all taxes, duties, levies and other charges of any nature imposed by any authority, whether inside Iraq or in any other countries. Such amount shall be payable to the Contractor monthly in arrears.

Costs may be billed in arrears (VISA's, permits etc.)

(A)

7.2 Payments under this Contract shall be made only against receipt of Contractor's written invoices and certification by the UN that the services represented by the invoice have been satisfactorily completed. The Contractor shall submit its invoices to the UN, together with such supporting documentation as the UN may require to enable payment to the Office of the Iraq Programme, United Nations, New York, New York 10017, Attn: Senior Customs Officer, with a copy to the Procurement Division, United Nations, #304 East 45th Street, New York, New York, 10017, Attn: Chief of Procurement Division. All invoices shall make reference to the number of this Contract (PD/CO) and shall be payable net thirty (30) days from the date of the UN's receipt of the invoice and all required supporting documentation; provided that the UN shall be entitled to a two percent (2%) discount on any invoice amounts paid within fifteen (15) days of its receipt of such invoice and documentation.

✓

7.3 The UN may offset any amounts which are due to it from the Contractor against any payments due from the UN to the Contractor.

C. RESPONSIBILITIES OF THE UN

Article 8: Identification Cards

The UN shall provide the Contractor's personnel with appropriate identification cards.

Article 9: Access to Transport and Medical Facilities

9.1 Without limiting the Contractor's obligation under this Contract to provide all transportation, the United Nations agrees to allow the Contractor's personnel, on an

UN Transport related to operations advised.

Contract no. PD/CO144/01

exceptional basis and to the extent practicable, to travel on UN-provided transport to, in, and from Iraq strictly for the following purposes:

- (a) evacuation due to security developments, on the understanding that such evacuation shall be to the nearest safe area; and
- (b) medical evacuation due to serious medical conditions, provided that emergency medical evacuation of the Contractor's personnel will be from in-country sites to an in-country medical facility or transportation out of Iraq to an out-of-country medical facility in an appropriate neighbouring country.

9.2 In consideration of the Contractor's personnel being permitted to travel on UN-provided transport, each of such personnel shall sign a release from liability in the form attached hereto as Annex V, prior to their transport on any UN-provided transportation. The Contractor undertakes to obtain the signed release from each such person and to deliver the signed original to the UN prior to such person's initial use of any UN-provided transportation.

9.3 Without limiting the Contractor's obligation under this contract to provide all medical services, in the event that the Contractor's personnel require emergency medical treatment, the UN agrees, on an exceptional basis and to the extent practicable, to allow such personnel access to available UN medical facilities. In consideration of the Contractor's personnel being permitted to utilize such UN medical facilities, and prior to their using any such UN medical facilities, each of such personnel shall complete and sign the release from liability in the form attached hereto as Annex VI. The Contractor undertakes to obtain the signed release from each such person and to deliver the signed original to the UN prior to such person's initial use of any UN medical facility.

9.4 The Contractor hereby releases the UN and its officials, employees and agents from any and all liability of any nature arising in connection with the provision of any services to the Contractor's personnel under this Article 9 and waives any claims the Contractor may have against the UN, its officials, employees or agents arising in connection with the provision of such services. The Contractor agrees to reimburse the UN for any costs incurred by it in connection with this Article 9 and to indemnify and hold harmless the UN and its officials, employees, and agents for any claim or liability of any nature arising in connection with this Article 9.

D. MISCELLANEOUS MATTERS:

Contract no. PD/CO144/01

Article 10: Contractor's Obligations Upon Expiration or Termination

✓ Upon expiration or termination of this Contract, the Contractor shall take immediate steps to terminate its operations in a prompt and orderly manner and shall provide such information and take such actions as may be reasonably requested by the UN for the preservation and protection of (i) the work and services already performed by the Contractor and the results thereof and (ii) all property of the UN provided to the Contractor.

→ should be identified + inventoried in advance.

Article 11: Liaison and Inspection

New! ✓ 11.1 The UN reserves the right to inspect and test all Services performed by the Contractor under this Contract, to the extent practicable, at all reasonable places and times during the term of this Contract. The UN shall perform inspections and tests in a manner that will not unduly hinder the performance of the services by the Contractor. The Contractor shall cooperate with all inspections and tests.

* New! 11.2 If any work or services performed by the Contractor do not conform with the requirements of this Contract, the UN shall have the following options:

(a) If the UN determines that the improper performance can be remedied by way of re-performance or other corrective measures by the Contractor, the UN may request the Contractor in writing to take and the Contractor shall take, at no expense to the UN, the measures necessary to re-perform or take other appropriate actions to remedy the improperly performed work or services within fourteen (14) days of receipt of the written request from the UN or within such shorter period as the UN may have specified in the written request if emergency conditions so require, as determined by the UN.

* (b) If the Contractor does not promptly take corrective measures or if the UN reasonably determines that the Contractor is unable to timely remedy the improper performance, the UN may obtain the assistance of other entities or persons and have corrective measures taken at the expense of the Contractor.

✓ (c) If the UN reasonably determines that the improper performance cannot be remedied by re-performance or other corrective measures by the Contractor, the UN may terminate the Contract in accordance with Article 15 of the UN General Conditions for General Contracts without prejudice to any of its other rights and remedies under this Contract.

Article 12: Termination at Will

12.1 In addition to the termination rights provided in Article 15 of the UN General Conditions for General Contracts (Annex I), the UN may terminate this Contract without cause, in whole or in part, upon thirty (30) days written notice to the Contractor. In the event of termination pursuant to this clause, the UN shall only be responsible for payment to the Contractor for Services satisfactorily performed in accordance with this Contract prior to the effective day of termination and any reimbursement to which the Contractor shall be entitled pursuant to Article 12.2 hereof. In the event of partial termination, the contract price shall be proportionately reduced as set forth in Article 4.2 hereof.

Handwritten: New!
 12.2 Notwithstanding the provisions of Article 14 of the UN General Conditions of Contract (Annex I), in the event of any circumstance constituting or potentially constituting *force majeure*, the Contractor shall not withdraw any of its personnel from their duty stations except with the prior written approval of the UN, which approval shall not be unreasonably withheld. The Parties agree that it shall not be unreasonable for the UN to withhold its consent so long as UN personnel remain similarly situated in Iraq.

✓ 12.3 Without limiting any of the UN's other rights under this Contract, in the event that circumstances, whether or not constituting *force majeure*, shall render it impossible for the Contractor to perform the Services as contemplated in this Contract, the Contractor shall comply with any contingency plans designated by the UN to ensure continued performance of the Services.

Handwritten: (A) Identify + synchronize / contingency plans

Article 13: Customs Clearance, Licenses, Etc.

✓ The Contractor shall be responsible for customs clearance and obtaining all licenses, permits, and authorizations from governmental or other authorities necessary for the performance of this Contract. The UN shall provide reasonable assistance to the Contractor, by liaising as appropriate with relevant authorities, in obtaining visas for the Contractor's personnel and permits for clearing through customs any equipment, material and supplies in connection with this Contract. Notwithstanding the foregoing, the UN's sole obligation with respect to customs clearance shall be to provide the Contractor with a documentary certificate identifying the items concerned and stating that such items are for the sole consumption or use of the Agents. If any further documentation is required in the future by Government authorities in Iraq or elsewhere, the Contractor will advise the UN and the UN will provide reasonable assistance to the Contractor in obtaining such documents.

Article 14. Performance Bond

✓ Within fifteen (15) days of signature of this Contract by the Parties, the Contractor shall provide the UN with a Performance Bond in the form set forth in Annex VII hereof, or a similar guarantee acceptable to the UN, in the amount of U.S. Dollars One Million One Hundred Seventy Six Thousand Seven Hundred and Sixty (US\$ 1,176,760.00) (i.e., ten percent (10%) of the maximum amount payable specified in Article 7.1 above), which bond or guarantee shall remain in force until at least two (2) months after the expiration of the Contract. The UN shall be entitled to claim the performance bond/guarantee upon first written demand of the UN, without having to prove the liability of the Contractor and in accordance with the terms and conditions set forth in Annex VII.

Article 15: Notices

Except as otherwise specified in this Contract or instructed by the UN, all notices and other communications required or contemplated under this Contract shall be in writing and shall be delivered either by: (i) personal delivery; (ii) recognized overnight delivery service; (iii) postage prepaid, return receipt requested, certified mail; (iv) confirmed facsimile transmission; or (v) telegram, addressed to the Party for whom intended at the address shown below or such other address as the intended recipient previously shall have designated by written notice previously given pursuant to this Contract.

IF TO THE CONTRACTOR

COTECNA INSPECTION S.A.
58, Rue de la Terrassiere
1211 Geneva 6
Switzerland
Attn: Chairman
Fax No.: 41-22-849-69-89

IF TO THE UN (communications/notices of a contractual nature)

Procurement Division
United Nations
#304 East 45th Street, Room FF-202
New York, New York, 10017
Attn: Chief
Procurement Division/OCSS

Contract no. PD/CO144/01

Fax no. (212) 963-6315

IF TO THE UN (communications/notices of an operational nature)

Office of the Iraq Programme
United Nations
New York, New York 10017
Attn: Senior Customs Officer
Fax No.: (212) 963-8083

Notice by overnight mail or recognized overnight delivery service shall be effective on the date it is officially recorded as delivered to (or refused by) the intended recipient by return receipt or equivalent. All notices and other communications required or contemplated by this Contract delivered in person, by facsimile, or by telegram shall be deemed to have been delivered to and received by the addressee and shall be effective on the date of the actual receipt.

IN WITNESS THEREOF, the Parties hereto have executed this Contract.

For and on behalf of:

COTECNA INSPECTIONS S.A.

THE UNITED NATIONS

SIGNATURE _____

SIGNATURE _____

NAME: _____

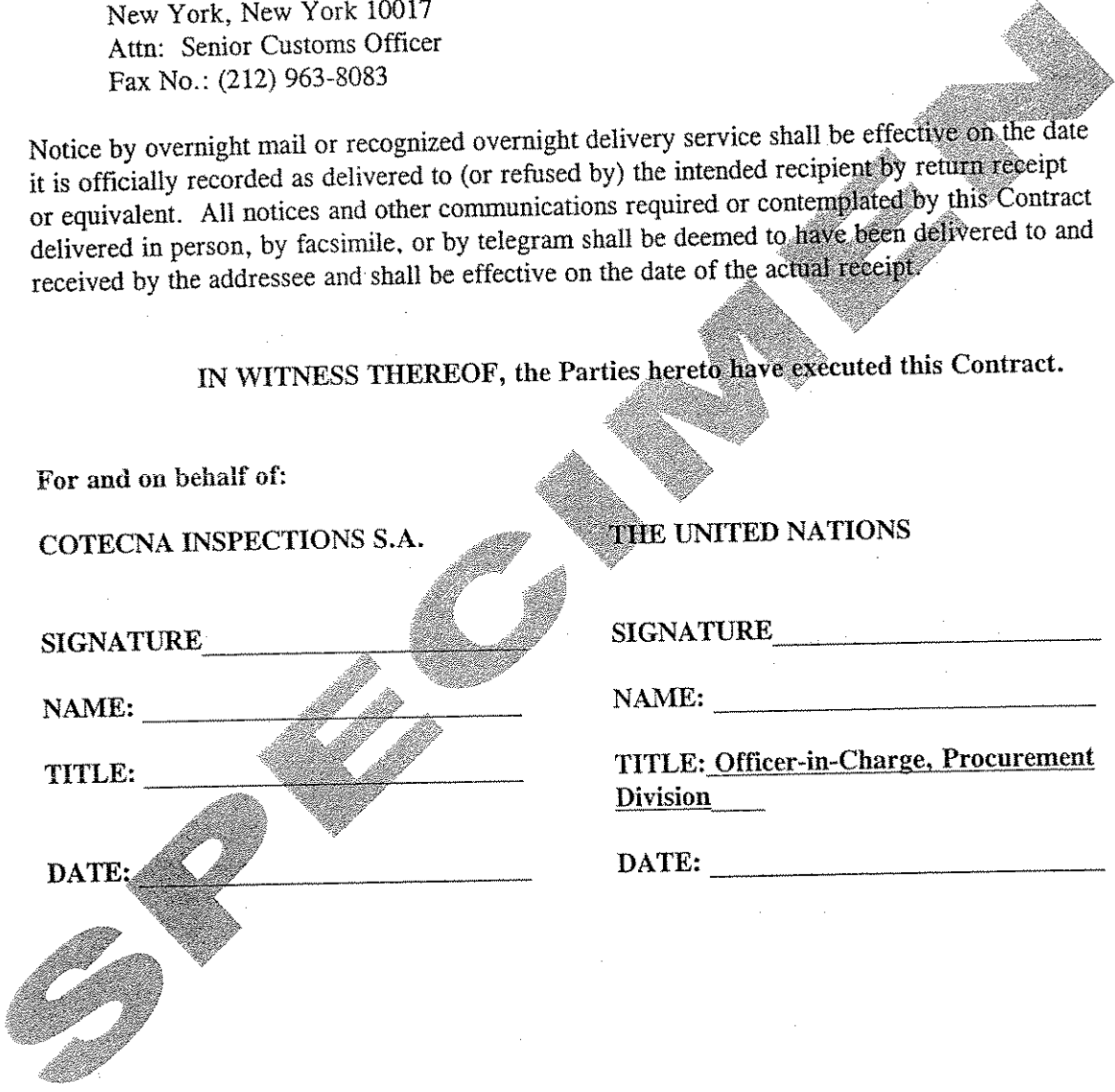
NAME: _____

TITLE: _____

TITLE: Officer-in-Charge, Procurement Division

DATE: _____

DATE: _____



Contract no. PD/CO144/01

ATTACHMENTS

- Annex I - UN General Conditions for General Contracts
- Annex II - Security Council Resolutions
- Annex III - Memorandum of Understanding
- Annex IV - Procedures of the 661 Committee
- Annex V - Transportation Release Form
- Annex VI - Medical Release Form
- Annex VII - Form of Performance Bond

SPECIMEN

Contract no. PD/CO144/01

HA001092

ANNEX I

[UN GENERAL CONDITIONS FOR GENERAL CONTRACTS]

SPECIMEN

UNITED NATIONS GENERAL CONDITIONS OF CONTRACT

- 1.0 **LEGAL STATUS:** The Contractor shall be considered as having the legal status of an independent contractor vis-a-vis the United Nations. The Contractor's personnel and sub-contractors shall not be considered in any respect as being the employees or agents of the United Nations.
- 2.0 **SOURCE OF INSTRUCTIONS:** The Contractor shall neither seek nor accept instructions from any authority external to the United Nations in connection with the performance of its services under this Contract. The Contractor shall refrain from any action which may adversely affect the United Nations and shall fulfil its commitments with the fullest regard to the interests of the United Nations.
- 3.0 **CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES:** The Contractor shall be responsible for the professional and technical competence of its employees and will select, for work under this Contract, reliable individuals who will perform effectively in the implementation of this Contract, respect the local customs, and conform to a high standard of moral and ethical conduct.
- 4.0 **ASSIGNMENT:** The Contractor shall not assign, transfer, pledge or make other disposition of this Contract or any part thereof, or any of the Contractor's rights, claims or obligations under this Contract except with the prior written consent of the United Nations.
- 5.0 **SUB-CONTRACTING:** In the event the Contractor requires the services of sub-contractors, the Contractor shall obtain the prior written approval and clearance of the United Nations for all sub-contractors. The approval of the United Nations of a sub-contractor shall not relieve the Contractor of any of its obligations under this Contract. The terms of any sub-contract shall be subject to and conform with the provisions of this Contract.
- 6.0 **OFFICIALS NOT TO BENEFIT:** The Contractor warrants that no official of the United Nations has received or will be offered by the Contractor any direct or indirect benefit arising from this Contract or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of this Contract.
- 7.0 **INDEMNIFICATION:** The Contractor shall indemnify, hold and save harmless, and defend, at its own expense, the United Nations, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Contractor, or the Contractor's employees, officers, agents or sub-contractors, in the performance of this Contract. This provision shall extend, inter alia, to claims and liability in the nature of workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Contractor, its employees, officers, agents,

servants or sub-contractors. The obligations under this Article do not lapse upon termination of this Contract.

8.0 INSURANCE AND LIABILITIES TO THIRD PARTIES

- 8.1 The Contractor shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.
- 8.2 The Contractor shall provide and thereafter maintain all appropriate workmen's compensation insurance, or its equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.
- 8.3 The Contractor shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to property, arising from or in connection with the provision of services under this Contract or the operation of any vehicles, boats, airplanes or other equipment owned or leased by the Contractor or its agents, servants, employees or sub-contractors performing work or services in connection with this Contract.
- 8.4 Except for the workmen's compensation insurance, the insurance policies under this Article shall:
- (i) Name the United Nations as additional insured;
 - (ii) Include a waiver of subrogation of the Contractor's rights to the insurance carrier against the United Nations;
 - (iii) Provide that the United Nations shall receive thirty (30) days written notice from the insurers prior to any cancellation or change of coverage.
- 8.5 The Contractor shall, upon request, provide the United Nations with satisfactory evidence of the insurance required under this Article.
- 9.0 **ENCUMBRANCES/LIENS:** The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with the United Nations against any monies due or to become due for any work done or materials furnished under this Contract, or by reason of any other claim or demand against the Contractor.
- 10.0 **TITLE TO EQUIPMENT:** Title to any equipment and supplies that may be furnished by the United Nations shall rest with the United Nations and any such equipment shall be returned to the United Nations at the conclusion of this Contract or when no longer needed by the Contractor. Such equipment, when returned to the United Nations, shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear. The Contractor shall be liable to compensate the United Nations for equipment determined to be damaged or degraded beyond normal wear and tear.
- 11.0 **COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:** The United Nations shall be entitled to all intellectual property and other proprietary rights including but not limited to patents, copyrights, and

trademarks, with regard to products, or documents and other materials which bear a direct relation to or are produced or prepared or collected in consequence of or in the course of the execution of this Contract. At the United Nations's request, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring them to the United Nations in compliance with the requirements of the applicable law.

12.0 **USE OF NAME, EMBLEM OR OFFICIAL SEAL OF THE UNITED NATION:** The Contractor shall not advertise or otherwise make public the fact that it is a Contractor with the United Nations, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of the United Nations, or any abbreviation of the name of the United Nations in connection with its business or otherwise.

13.0 **CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION**

13.1 All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under this Contract shall be the property of the United Nations, shall be treated as confidential and shall be delivered only to United Nations authorized officials on completion of work under this Contract.

13.2 The Contractor may not communicate at any time to any other person, Government or authority external to the United Nations, any information known to it by reason of its association with the United Nations which has not been made public except with the authorization of the United Nations; nor shall the Contractor at any time use such information to private advantage. These obligations do not lapse upon termination of this Contract.

14.0 **FORCE MAJEURE; OTHER CHANGES IN CONDITIONS**

14.1 In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to the United Nations, of such occurrence or change if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Contractor shall also notify the United Nations of any other changes in conditions or the occurrence of any event which interferes or threatens to interfere with its performance of this Contract. On receipt of the notice required under this Article, the United Nations shall take such action as, in its sole discretion, it considers to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform its obligations under this Contract.

14.2 If the Contractor is rendered permanently unable, wholly, or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Contract, the United Nations shall have the right to suspend or terminate this Contract on the same terms and conditions as are provided for in Article 15, "Termination", except that the period of notice shall be seven (7) days instead of thirty (30) days.

14.3 Force majeure as used in this Article means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force.

15.0 **TERMINATION**

- 15.1 Either party may terminate this Contract for cause, in whole or in part, upon thirty (30) days notice, in writing, to the other party. The initiation of arbitral proceedings in accordance with Article 16 "Arbitration" below shall not be deemed a termination of this Contract.
- 15.2 The United Nations may terminate forthwith this Contract at any time should the mandate or the funding of the Mission/Agency be curtailed or terminated, in which case the Contractor shall be reimbursed by the United Nations for all reasonable costs incurred by the Contractor prior to receipt of the notice of termination.
- 15.3 In the event of any termination by the United Nations under this Article, no payment shall be due from the United Nations to the Contractor except for work and services satisfactorily performed in conformity with the express terms of this Contract.
- 15.4 Should the Contractor be adjudged bankrupt, or be liquidated or become insolvent, or should the Contractor make an assignment for the benefit of its creditors, or should a Receiver be appointed on account of the insolvency of the Contractor, the United Nations may, without prejudice to any other right or remedy it may have under the terms of these conditions, terminate this Contract forthwith. The Contractor shall immediately inform the UN of the occurrence of any of the above events.

16.0 SETTLEMENT OF DISPUTES

16.1 Amicable Settlement

The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of this Contract or the breach, termination or invalidity thereof. Where the parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the parties.

16.2 Arbitration

Any dispute, controversy or claim between the Parties arising out of this Contract or the breach, termination or invalidity thereof, unless settled amicably under the preceding paragraph of this Article within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in this Contract, the arbitral tribunal shall have no authority to award interest *in excess of* (*...%*) *percent, and any such interest shall be simple interest only.* The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

17.0 PRIVILEGES AND IMMUNITIES: Nothing in or relating to this Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

18.0 TAX EXEMPTION

18.1 Section 7 of the Convention on the Privileges and Immunities of the United Nations provides, *inter-alia*, that the United Nations, including its subsidiary organs, is exempt from all direct taxes, except charges for public

utility services, and is exempt from customs duties and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognize the United Nations exemption from such taxes, duties or charges, the Contractor shall immediately consult with the United Nations to determine a mutually acceptable procedure.

- 18.2 Accordingly, the Contractor authorizes the United Nations to deduct from the Contractor's invoice any amount representing such taxes, duties or charges, unless the Contractor has consulted with the United Nations before the payment thereof and the United Nations has, in each instance, specifically authorized the Contractor to pay such taxes, duties or charges under protest. In that event, the Contractor shall

provide the United Nations with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized.

- 19.0 **OBSERVANCE OF THE LAW:** The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this Contract.

- 20.0 **AUTHORITY TO MODIFY:** Pursuant to the Financial Regulations and Rules of the United Nations, only the Procurement Division at New York possesses the authority to agree on behalf of the United Nations to any modification of or change in this Contract, to a waiver of any of its provisions or to any additional contractual relationship of any kind with the Contractor. Accordingly, no modification or change in this Contract shall be valid and enforceable against the United Nations unless provided by an amendment to this Contract signed by the Contractor and the Chief or Deputy Chief of the Procurement Division.

ANNEX II

[SECURITY COUNCIL RESOLUTION 986 (1995)]

SPECIMEN



Security Council

Distr.
GENERAL

S/RES/986 (1995)
14 April 1995

RESOLUTION 986 (1995)

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

The Security Council,

Recalling its previous relevant resolutions,

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

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

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

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

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

1. Authorizes States, notwithstanding the provisions of paragraphs 3 (a), 3 (b) and 4 of resolution 661 (1990) and subsequent relevant resolutions, to permit the import of petroleum and petroleum products originating in Iraq, including financial and other essential transactions directly relating thereto, sufficient to produce a sum not exceeding a total of one billion United States dollars every 90 days for the purposes set out in this resolution and subject to the following conditions:

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

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

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

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

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

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

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

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

7. Requests the Secretary-General to establish an escrow account for the purposes of this resolution, to appoint independent and certified public accountants to audit it, and to keep the Government of Iraq fully informed;

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

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

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

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

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

(d) To meet the costs to the United Nations of the independent inspection agents and the certified public accountants and the activities associated with implementation of this resolution;

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

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

/...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. Decides to remain seized of the matter.

S P E C I A L

ANNEX III

[MEMORANDUM OF UNDERSTANDING]

SPECIMEN



Security Council

Distr.
GENERAL

S/1996/356*
20 May 1996

ORIGINAL: ENGLISH

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

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

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

(Signed) Boutros BOUTROS-GHALI

* Reissued for technical reasons.

96-12771 (E) 220596 230596



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

Section I

General provisions

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

Section II

Distribution Plan

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

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

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

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

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

Section III

Establishment of the escrow account and audit of that account

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

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

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

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

Section IV

Sale of petroleum and petroleum products originating in Iraq

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

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

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

Section V

Procurement and confirmation procedures

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

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

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

22. Each export of goods to Iraq shall be at the request of the Government of Iraq pursuant to paragraph 8 (a) of the Resolution. Accordingly, exporting States will submit all relevant documentation, including contracts, for all goods to be exported under the Resolution to the 661 Committee for appropriate action according to its procedures. It is understood that payment of the supplier from the "Iraq Account" can take place only for items purchased by Iraq that are included in the categorized list referred to in Section II of the present Memorandum. Should exceptional circumstances arise, applications for the export of additional items may be submitted to the 661 Committee for its consideration.

23. As noted above, the 661 Committee will take action on applications for the export of goods to Iraq in accordance with its existing procedures subject to future modifications under paragraph 12 of the Resolution. The 661 Committee will inform the Government of Iraq, requesting States, and the Secretary-General of the actions taken on the requests submitted.

24. After the 661 Committee has taken action on the applications for export in accordance with its procedures, the Central Bank of Iraq will request the bank holding the "Iraq Account" to open irrevocable letters of credit in favour of the beneficiaries. Such requests shall be referred by the bank holding the "Iraq Account" to the United Nations Secretariat for approval of the opening of the letter of credit by the latter bank, allowing payment from the "Iraq Account" upon presentation of credit-conform documents. The letter of credit will require as condition of payment, *inter alia*, the submission to the bank holding the "Iraq Account" of the documents to be determined by the procedures established by the 661 Committee, including the confirmations by the agents referred to in paragraph 25 below. The United Nations, after consultations with the Government of Iraq, shall determine the clause to be inserted in all purchase orders, contracts and letters of credit regarding payment terms from the "Iraq Account". All charges incurred in Iraq are to be borne by the applicant, whereas all charges outside Iraq are for the account of the beneficiary.

25. The arrival of goods in Iraq purchased under the plan will be confirmed by independent inspection agents to be appointed by the Secretary-General. No payments can be made until the independent inspection agents provide the Secretary-General with authenticated confirmation that the exported goods concerned have arrived in Iraq.

26. The independent inspection agents may be stationed at relevant Iraqi entry points, customs areas or other locations where the functions set out in paragraph 27 of this Section can be performed. The number and location of the stationing points for the agents will be designated by the United Nations after consultations with the Government of Iraq.

27. The independent inspection agents will confirm delivery to Iraq of shipments. They will compare the appropriate documentation, such as bills of lading, other shipping documents or cargo manifests, and the documents issued by the 661 Committee, against goods actually arriving in Iraq. They will also have the authority to perform duties necessary for such confirmation, including: quantity inspection by weight or count, quality inspection including visual inspection, sampling, and, when necessary, laboratory testing.

28. The inspection agents will report all irregularities to the Secretary-General and to the 661 Committee. If the problem is related to normal commercial practice (e.g., some shortlanded goods), the 661 Committee and the Government of Iraq are informed, but normal commercial resolution practices (e.g., claims) go forth. If the matter is of serious concern, the independent inspection agents will hold the shipment in question pending guidance from the 661 Committee.

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

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

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

Section VI

Distribution of humanitarian supplies purchased under the Distribution Plan

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

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

Section VII

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

GENERAL PROVISIONS

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

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

OBSERVATION PROCEDURES

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

Food items

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

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

Medical supplies and equipment

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

Water/sanitation supplies and equipment

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

/...

Other materials and supplies

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

COORDINATION AND COOPERATION

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

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

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

Section VIII

Privileges and Immunities

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

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

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

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

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

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

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

Section IX

Consultations

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

Section X

Final clauses

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

/...

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

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

For the United Nations

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

For the Government of Iraq

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

SPECIMEN

Annex I

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

/...

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

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

SPECIMEN

Annex II

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

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

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

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

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

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

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

SPECIMEN

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

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

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

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

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

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

ANNEX IV

[PROCEDURES OF THE 661 COMMITTEE]

SPECIMEN



Security Council

Distr.
GENERAL

S/1996/636*
12 August 1996

ORIGINAL: ENGLISH

LETTER DATED 8 AUGUST 1996 FROM THE CHAIRMAN OF THE SECURITY
COUNCIL COMMITTEE ESTABLISHED BY RESOLUTION 661 (1990)
CONCERNING THE SITUATION BETWEEN IRAQ AND KUWAIT ADDRESSED
TO THE PRESIDENT OF THE SECURITY COUNCIL

On behalf of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait, I have the honour to communicate to you the following:

Pursuant to paragraph 12 of Security Council resolution 986 (1995), the Committee was requested to develop, in close coordination with the Secretary-General, expedited procedures as necessary to implement the arrangements in paragraphs 1, 2, 6, 8, 9 and 10 of that resolution. I am pleased to inform you that after several weeks of intensive deliberations the Committee, at its 142nd meeting held on 8 August 1996, adopted the procedures to be employed by it in the discharge of its responsibilities as required by paragraph 12 of resolution 986 (1995). A copy of the procedures is attached herewith for the information of the members of the Council.

(Signed) Tono BITEL
Chairman

Security Council Committee established
by resolution 661 (1990) concerning the
situation between Iraq and Kuwait

* Reissued for technical reasons.

96-20488 (E) 120896 130896



/...

PROCEDURES TO BE EMPLOYED BY THE SECURITY COUNCIL COMMITTEE
ESTABLISHED BY RESOLUTION 661 (1990) CONCERNING THE
SITUATION BETWEEN IRAQ AND KUWAIT IN THE DISCHARGE OF ITS
RESPONSIBILITIES AS REQUIRED BY PARAGRAPH 12 OF SECURITY
COUNCIL RESOLUTION 986 (1995)

SECTION I

Sale of petroleum and petroleum products originating in Iraq

1. The Committee will select, upon recommendation by the Secretariat of the Committee, at least four independent experts in international oil trade, to be appointed by the Secretary-General as "overseers" at the United Nations Headquarters. The number of the overseers will be reviewed depending on the volume of transactions to be processed. The overseers will have the authority and responsibilities set forth in this section.
2. Notwithstanding the obligations of States under the relevant Security Council resolutions, States may, if they so wish, forward to the Committee a list of national oil purchasers (private companies, State-owned companies, State agencies, ministries, etc.) authorized to communicate with the overseers. States may present changes to the list at any time. Once the Committee has taken note of these lists or the changes thereto and passed them on to the overseers, these purchasers are entitled to communicate directly with the overseers. If States do not submit such a list, or if a certain purchaser is not included in the list, the communication with the overseers shall be submitted through the Permanent Mission of the State of purchase.
3. A contract for the purchase of petroleum and petroleum products will only be considered for approval if it has been endorsed by the Government of Iraq, or the Iraqi State Oil Marketing Organization (hereinafter SOMO) on behalf of the Government. The submission by the Government of Iraq or SOMO of a copy of a contract is acceptable as an endorsement.
4. SOMO's contracts with purchasers will include all the details specified in paragraph 1 (a) of resolution 986 (1995). In particular, the contract shall indicate the export route, the payment by way of a confirmed letter of credit consistent with paragraph 9 below, quantity and quality of petroleum or petroleum products purchased, duration of contract, credit and payment terms and pricing mechanism. The pricing mechanism for petroleum should include the marker crude oil and type of quotations to be used, adjustments for transportation and quality, and pricing dates.
5. The Government of Iraq or SOMO may submit at any time pricing mechanisms for sales of petroleum for review by the Committee. The overseers will assess these pricing mechanisms, in particular whether they reflect fair market value and will provide analysis and recommendations to the Committee. The Committee will then review the pricing mechanism according to its no-objection procedure within two business days. The pricing mechanism should include the elements listed in paragraph 4 above. In

/...

order to facilitate this process, regular consultations between the overseers and representatives of SOMO will take place consistent with paragraph 6 of annex II of the Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of resolution 986 (1995) dated 20 May 1996 (hereinafter Memorandum of Understanding).

6. When market conditions so require, and in particular during the first month of the implementation of resolution 986 (1995) adjustments to pricing mechanisms may be submitted by the Government of Iraq or SOMO for review by the Committee in accordance with paragraph 5 above. The pricing mechanisms will in any case be reviewed in accordance with paragraph 5 above whenever the Government of Iraq or SOMO submits a revision. Current approved price mechanisms will remain in effect until new ones are approved by the Committee.
7. The Secretariat of the Committee will set up a new fax line to be used exclusively for correspondence with regard to the petroleum and petroleum products transactions. The national oil purchaser or the Permanent Mission of the State of purchase shall forward by fax to the overseers an application for approval, together with a copy of the contract and, if necessary, other supporting documents. States and national oil purchasers shall use only the Standard Application Form annexed to the present procedures. Other correspondence with the Committee shall go through the already existing channels.
8. A contract for the sale of petroleum which employs a pricing mechanism approved by the Committee under paragraph 5 above, will be reviewed by two overseers on behalf of the Committee to determine whether the contract meets the criteria set forth in paragraph 9 below. Such review should be completed within 24 hours. No overseer shall review a contract submitted by or on behalf of an oil purchaser with the same nationality as the overseer or which employed him or her within the last two years.
9. To ensure that all contracts comply with the provisions of resolution 986 (1995) and do not contain any attempt at fraud or deception, the overseers on duty review the contracts and supporting documents to determine that:
 - the contract and the documents comply with the requirements provided for in resolution 986 (1995) and in the present procedures, including details of a confirmed irrevocable letter of credit to be opened, with the irrevocable undertaking that the proceeds of the letter of credit will be paid directly to the escrow account established by the Secretary-General under paragraph 7 of resolution 986 (1995) (hereinafter Iraq account). The letter of credit should contain the information as set out in Annex II to this document.
 - the conditions of payment envisaged in the letters of credit are in conformity with the existing market practices;

/...

- the contract price is fair in view of all relevant circumstances, in particular that it is consistent with a currently approved pricing mechanism, and competitive given world prices and market trends and taking into consideration the provisions of paragraph 6 of annex II of the Memorandum of Understanding;
 - the transaction does not exceed the limits established by resolution 986 (1995), including the requirements set out in paragraph 6 of the resolution.
10. If the contract and supporting documents reviewed under paragraph 9 above are found to be in order, the overseers, on behalf of the Committee, shall immediately approve the contract and inform by fax the national oil purchaser or the Permanent Mission concerned, as well as SOMO and the bank holding the Iraq account. The Committee and the parties concerned shall be informed immediately upon rejection of any contract by an overseer. In circumstances other than rejection for technical reasons the overseers will make a full report to the Committee for appropriate action.
 11. Contracts for the sale of petroleum or petroleum products which do not employ a pricing mechanism approved by the Committee under paragraph 5 above will be reviewed by the overseers who will provide their analysis and recommendations to the Committee. In addition to the factors in paragraph 9 above, the overseers shall consider whether the contract's pricing mechanism reflects fair market value. Such review should be completed within 24 hours. Upon receipt of the analysis and recommendations from the overseers, the Committee will consider the contracts under its expedited no-objection procedure within two business days.
 12. Once a contract is approved pursuant to these procedures, the national oil purchaser shall cause a letter of credit consistent with paragraph 9 above to be opened and transmitted to the bank holding the Iraq account. The bank transmits the letter of credit to the overseers. The overseers immediately review the opened letter of credit in order to determine whether it complies with the information given in the application.
 13. If the opened letter of credit complies with the information given in the application the overseers inform the bank holding the Iraq account which adds its confirmation to the letter of credit and, for information purposes only, forwards the letter of credit to the Central Bank of Iraq for the purpose of advising SOMO. Furthermore, the overseers send notification of sales approval, together with a copy of the contract and, if necessary, supporting documents to the inspectors at Ceyhan and at the metering station at the Iraq-Turkey border, or at Mina-al-Bakr. If the opened letter of credit does not comply with the information given in the application the overseers shall immediately inform the Committee.
 14. The overseers will submit a substantive report to the Committee, in a standardized format, at least once a week on the contracts considered by them, including the cumulative quantity and approximate value of petroleum authorized for export, and inform the Secretary-General accordingly. In

/...

the light of this report, any document submitted as part of an application to the Committee will be available for consultation by Committee members in the Secretariat.

15. The export of petroleum and petroleum products will be monitored by United Nations independent inspection agents, appointed by the Secretary-General, who will be stationed at the loading facilities at Ceyhan and Mina-al-Bakr and at the metering station at the Iraq-Turkey border. Such on-site monitoring will make use of the documents received from the overseers, direct observation, as well as quality and quantity verification. The independent inspection agents will authorize the loading, after they receive the information from the overseers that the relevant contract has been approved, and inform the overseers accordingly. The independent inspection agents will also have the authority to stop the loading of petroleum if there is any evidence of irregularity. They will immediately report any irregularity to the Committee and the Secretary-General.
16. In accordance with paragraph 3 of resolution 661 (1990) and the provisions of resolution 665 (1990) shipments of Iraqi oil must not be performed by Iraqi vessels. In order to facilitate the efficient maritime export of oil under resolution 986 (1995) oil purchasers will communicate to the Secretariat information when available concerning vessels contracted for shipping approved oil exports.
17. The Committee will be informed of the appointments of the independent inspection agents made by the Secretary-General under paragraph 6 of resolution 986 (1995).
18. The independent inspection agents shall report weekly to the Committee, through the overseers, on their assessment of the export operations. When the loading of oil under a contract is completed, they shall inform the overseers on the details for comparison with the original approved contract.
19. Payment of the full amount of each purchase of petroleum and petroleum products shall be made into the Iraq account as provided for in paragraph 1 (b) of resolution 986 (1995).
20. Once a week, the Secretary-General forwards to the Committee and to the Government of Iraq statements of the Iraq account, including outlines of anticipated future payments to and from that account.
21. The regime for the sale of petroleum products will be broadly similar to that described above, and the precise arrangements, consistent with paragraph 6 of resolution 986 (1995), can be elaborated at a later stage, as and when the need arises.
22. The overseers will receive monthly reports from SOMO on the actual volume and type of petroleum and petroleum products exported under the relevant sales contracts.

/...

23. At a meeting, the Committee may provide additional guidance to be followed by the overseers.
24. If any Committee member judges the circumstances to be serious enough, that member may call for a review by the Committee of the system for approving oil contracts established in this section. At an urgent meeting, the Committee will decide, according to its normal procedures, whether to continue or revise the system. In the meantime, decisions on oil contracts can only be made in accordance with paragraph 11 above.

SECTION II

Import by Turkey of petroleum and petroleum products originating in Iraq pursuant to paragraph 2 of resolution 986 (1995)

25. The import by Turkey of petroleum and petroleum products originating in Iraq will be undertaken in accordance with the requirements of paragraphs 2 and 6 of resolution 986 (1995), so as to meet the pipeline tariff charges, verified as reasonable by the independent inspection agents, after the deduction of the percentage referred to in paragraph 2 of resolution 705 (1991) for the Compensation Fund. The import of petroleum and petroleum products will be authorized and monitored in accordance with the relevant provisions of section I of the present procedures.

SECTION III

Export to Iraq of humanitarian supplies

26. The Government of Iraq will prepare a categorized list of humanitarian supplies which it intends to purchase and import pursuant to resolution 986 (1995). This list will be submitted to the Secretary-General together with the distribution plan referred to in paragraph 8 (a) (ii) of the resolution.
27. After approving the distribution plan, the Secretary-General will forward the list, which constitutes a part of the plan, to the Committee, and will make it known to all States.
28. The Government of Iraq or the United Nations Inter-Agency Humanitarian Programme will contract directly with suppliers to arrange the purchase of humanitarian supplies, and will conclude the appropriate contractual arrangements.
29. Export to Iraq of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs (hereinafter humanitarian supplies) financed from the Iraq account shall be undertaken in accordance with the following provisions.
30. Applications for each export of humanitarian supplies, to be financed from the Iraq account consistent with paragraph 22 of the Memorandum of Understanding, shall be submitted to the Committee at the request of the Government of Iraq by the exporting States with all relevant documentation,

/...

including the concluded contractual arrangements. Payment from the Iraq account can take place only for items included in the categorized list, unless the Committee exceptionally decides otherwise on a case-by-case basis.

31. The Committee will take action on such applications in accordance with paragraph 20 of resolution 687 (1991), its existing procedures and the provisions of this section. The Committee will inform the Government of Iraq, the requesting States, the Secretary-General and, if appropriate, the independent inspection agents at the intended point(s) of entry into Iraq of the actions taken on the applications submitted.

32. Such applications shall be submitted as follows:

(a) Medicines and Health Supplies

The exporting State informs the Committee that the exporter requests payment from the Iraq account. A copy of the relevant documentation, including the concluded contractual arrangements and intended point(s) of entry into Iraq, must be attached to this communication.

(b) Foodstuffs

The exporting State notifies the Committee. The notification must indicate that the exporter requests payment from the Iraq account. A copy of the relevant documentation, including the concluded contractual arrangements and intended point(s) of entry into Iraq, must be attached to the notification.

(c) Other Materials and Supplies for Essential Civilian Needs

The exporting State submits an application for approval by the Committee under its no-objection procedure. The application must indicate that the exporter requests payment from the Iraq account. A copy of the relevant documentation, including the concluded contractual arrangements and intended point(s) of entry into Iraq, must be attached to the application.

33. Experts in the Secretariat examine each contract, in particular the details of price and value, and whether the items to be exported are on the categorized list referred to above. They will also take into consideration the reports of the Secretary-General provided for in paragraph 20 above, in order to check availability of funds in the Iraq account for the contract. They will inform the Committee of their findings.

34. The Committee acts upon the findings of the experts as set forth below:

(a) Medicines and Health Supplies

If the Committee finds, under its expedited no-objection procedure within two business days from the circulation of the application, that the contract is in order, it immediately informs the parties concerned that the exporter is eligible for payment from the Iraq account. If the contract is

/...

not found in order, the Committee informs the parties concerned that payment cannot be made from the Iraq account, but the medicines and health supplies can be shipped anyway if the exporter so desires.

(b) Foodstuffs

If the Committee finds, under its expedited no-objection procedure within two business days from the circulation of the application, that the contract is in order, it immediately informs the parties concerned that the exporter is eligible for payment from the Iraq account. If the contract is not found in order, the Committee informs the parties concerned that payment cannot be made from the Iraq account, but the foodstuffs can be shipped anyway if the exporter so desires.

(c) Other Materials and Supplies for Essential Civilian Needs

If the Committee approves the supplies, under its no-objection procedure within seven days, and if the contract is found in order, the Committee informs the parties concerned of the approval and that the exporter is eligible for payment from the Iraq account. If the contract is not found in order, but the Committee approves the supplies under its no-objection procedure, it informs the parties concerned that payment cannot be made from the Iraq account, but that the supplies are approved and can be shipped anyway if the exporter so desires. If the Committee cannot approve the supplies, whether or not the contract is found in order, it informs the parties concerned that the supplies cannot be shipped.

35. When the Committee has informed the parties concerned that the exporter is eligible for payment from the Iraq account, the Central Bank of Iraq will request the bank holding the Iraq account to open an irrevocable, non-transferable, non-assignable (except to the supplier's bank for the repayment of financing for the purchase of the humanitarian supplies) letter of credit for the account of the Iraqi purchaser in favour of the supplier, which will be available only at the bank holding the Iraq account, and provide for payment from the Iraq account. Such requests shall be submitted by the bank holding the Iraq account to the Secretary-General for expeditious approval, so that payment from the Iraq account can be made without delay. The letter of credit will require as condition of payment the submission to the bank holding the Iraq account of the usual commercial documentation, and of the following documents: a copy of the Committee's letter stating that the exporter is eligible for payment from the Iraq account, and a standardized confirmation by the Secretary-General of the arrival of the humanitarian supplies in Iraq.
36. The arrival of the humanitarian supplies in Iraq will be confirmed by independent inspection agents appointed by the Secretary-General pursuant to resolution 986 (1995) and stationed at relevant entry points and other locations in Iraq as referred to in paragraph 26 of the Memorandum of Understanding. The independent inspection agents will add their authenticated confirmation of arrival to a copy of the Committee's letter stating that the exporter is eligible for payment from the Iraq account and to a copy of the invoice, and will inform the Secretary-General in

/...

accordance with paragraph 8 (a) (iii) of Security Council resolution 986 (1995). This information should be given without delay and in any case within 24 hours. The inspection agents will report all irregularities to the Secretary-General and to the Committee. If the problem is related to normal commercial practice, the Committee and the Government of Iraq will be informed but normal commercial resolution practices will go forth. Performance bonds may not be opened. Payments in favour of the purchaser resulting from normal commercial resolution practices should be made to the Iraq account. If the matter is of serious concern, the independent inspection agents will hold the shipment in question, pending guidance from the Committee. The Committee will make every effort to provide such guidance in the most expeditious manner.

37. The bank holding the Iraq account shall effect payment under any letter of credit only if all documents (listed in para. 35 above) stipulated in the letter of credit are presented to it and the terms and conditions of any such letter of credit are complied with. When specified in the contract and the supporting documents, payment can be made in several instalments corresponding to actual deliveries to Iraq. Documentary discrepancies can only be waived by the Secretary-General.
38. The provisions of this section are without prejudice to the application of the existing procedures of the Committee for goods which are not supplied pursuant to resolution 986 (1995).

SECTION IV

Export to Iraq of parts and equipment, and financial transactions related thereto, pursuant to paragraphs 9 and 10 of resolution 986 (1995)

39. The export to Iraq of the parts and equipment which are essential for the safe operation of the Kirkuk-Yumurtalik pipeline system in Iraq will be undertaken in accordance with the procedures set out in section III of the present procedures. Requests for such exports to Iraq will be approved by the Committee on a case-by-case basis under its no-objection procedure. The Committee may request relevant United Nations personnel in Iraq to verify that the equipment exported to Iraq pursuant to paragraph 9 of resolution 986 (1995) is used only for the purposes permitted.
40. In accordance with paragraph 10 of resolution 986 (1995), until proceeds from the sale of petroleum and petroleum products are deposited into the Iraq account, the Committee may approve, on a case-by-case basis, the exceptional financing of the export of parts and equipment by letters of credit drawn against future oil sales. The Committee will seek, if necessary, the advice of the overseers in considering such requests. In this case the provisions of paragraph 35 above shall apply.

/...

SECTION V

Approval of reasonable expenses other than expenses payable in Iraq

41. Pursuant to paragraph 8 (f) of resolution 986 (1995), the Committee can approve, under its no-objection procedure, the financing from the Iraq account of reasonable expenses, other than expenses payable in Iraq, which are determined by it to be directly related to the export by Iraq of petroleum and petroleum products permitted under paragraph 1 of resolution 986 (1995) or to the export to Iraq of the parts and equipment referred to in paragraph 9 of resolution 986 (1995), and of activities directly necessary therefor.
42. Requests for meeting the expenses referred to in the previous paragraph will be submitted by the Government of Iraq together with all necessary documentation, and will be approved on a case-by-case basis by the Committee under its no-objection procedure. The Committee will seek, if necessary, the advice of the overseers or the independent inspection agents in reaching a decision.

SECTION VI

General provisions

43. The Secretariat will arrange for the establishment of the appropriate communication links to permit immediate communication among the overseers, the independent inspection agents, the bank holding the Iraq account and the coordinator of the Multinational Interception Forces operating in the area under resolution 665 (1990), as well as with the Central Bank of Iraq and SOMO.
44. The Secretary-General reports regularly to the Committee on the details of the disbursements made pursuant to paragraph 8 of resolution 986 (1995).
45. Letters of credit mentioned in these procedures should conform with the Uniform Customs and Practice for Documentary Credit.
46. The Committee will amend or revise the present procedures, if necessary, in the light of future developments.

/...

Annex I

Standard application form to request approval of contracts
for sale of Iraqi petroleum and/or petroleum products

The attached contract with the Iraqi State Oil Marketing Organization (SOMO) for the purchase of petroleum and/or petroleum products is submitted for approval in accordance with paragraph 1 (a) of Security Council resolution 986 (1995) and the procedures of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait, adopted at its ... meeting held on ... (S/....).

Information about the purchaser

Name of purchasing entity:

Place of registration:

Address:

Contact person:

Telephone:

Telefax:

Telex:

Summary of contract terms

Quantity of crude petroleum and/or petroleum products:

Quality of crude petroleum and/or petroleum products:

Pricing formula and/or price per U.S. barrel:

Date(s) of loading at Ceyhan:

Date(s) of loading at Mina al-Bakr:

Name of vessel and destination (if available):

Payment details (draft irrevocable letter of credit, etc.)

Please find attached a copy of the contract, draft irrevocable letter of credit to be opened and all supporting documents.

Signature
Name of signatory
Title

/...

Annex II

Information to be included in the letter of credit

1. As provided for in paragraph 2 of Annex II of the Memorandum of Understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of Security Council resolution 986 (1995), signed on 20 May 1996, the following clauses will have to be inserted in each letter of credit:

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

2. Other information to be included:

- nature of the petroleum or petroleum product
- forecast quantity of petroleum or petroleum product
- date of loading
- unit price
- forecast amount of the transaction

SPECIMEN

ANNEX V

GENERAL RELEASE FROM LIABILITY ON ACCOUNT OF
USE OF UN-PROVIDED TRANSPORT

I, the undersigned, hereby recognize that all my travel on the UN-provided transport, pursuant to Contract No. PD/CON/324/98 between the United Nations and Cotecna Inspection S.A., is solely for my own convenience and benefit and may take place in areas or under conditions of special risk. In consideration of being permitted to travel on such means of transport, I hereby:

- (a) Assume all risks and liabilities during such travel;
- (b) Recognize that neither the United Nations nor any of its officials, employees or agents are liable for any loss, damage, injury or death that may be sustained by me during such travel;
- (c) Agree, for myself as well as for my dependents, heirs and estate, to hold harmless the United Nations and all its officials, employees and agents from any claim or action on account of any such loss, damage, injury or death.

Nothing in or relating to this Release shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

Passenger

Date

Witness

HA001134

ANNEX VI

GENERAL RELEASE FROM LIABILITY ON ACCOUNT OF
PROVISION BY UN OF EMERGENCY MEDICAL CARE

I, the undersigned, hereby recognize that all emergency medical care provided to me at UN medical facilities, pursuant to Contract No. PD/CON/324/98 between the United Nations and Cotecna Inspection S.A., is solely for my own convenience and benefit and may take place in areas or under conditions of special risk. In consideration of receiving such medical care, I hereby:

(a) Assume all risks and liabilities in connection with the provision of such medical care;

(b) Recognize that neither the United Nations nor any of its officials, employees or agents are liable for any loss, damage, injury or death that may be sustained by me during the provision of such medical care;

(c) Agree, for myself as well as for my dependents, heirs and estate, to hold harmless the United Nations and all its officials, employees and agents from any claim or action on account of any such loss, damage, injury or death.

Nothing in or relating to this Release shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

Employee

Date

Witness

FORM OF PERFORMANCE BOND

Know all men by these presents, that we, a company incorporated in and under the laws of, the principal shareholders of which are
..... as Principal (hereinafter called "the Supplier")
and the a corporation organized under the laws of and duly organized to transact business in as Surety (hereinafter called "the Surety") are held and firmly bound unto the United Nations, an international intergovernmental organization with its headquarters at New York, New York, USA, as Obligee (hereinafter called "the Employer") in the amount of (USD), for the payment whereof which sum, well and truly to be made, the Supplier and the Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Whereas the Supplier has entered into a written contract with the Employer dated the day of, 19.... for the said Contract being by reference made part hereof and hereinafter referred to as "the Contract".

Now, therefore, for valuable consideration, the receipt whereof is hereby acknowledged by the Surety, the Surety hereby irrevocably undertakes to, whenever Supplier shall be declared by Employer to be in default under the Contract, without any objection, opposition or recourse, promptly pay the Employer the amount required by Employer to remedy the default and complete the Contract in accordance with its terms and conditions, any amount up to a total not exceeding the amount of the Bond, or remedy the default and complete the Contract in accordance with its terms and conditions.

The Surety shall not be liable for a greater sum than the specified amount of the Bond.

The Condition of this obligation is such that if the Employer shall notify the Surety in writing that the Supplier has promptly and faithfully performed the said Contract (including any amendment thereto) then this obligation shall be null and void, otherwise it shall remain in full force and effect until the Employer shall by written instrument declare the obligation discharged, except that the obligation shall continue for at least three months following termination of the Contract.

This Bond shall be enforceable without the need to have recourse to any judicial or arbitral proceedings.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators or successors of the Employer.

Nothing herein or related hereto shall be deemed a waiver or an agreement to waive any of the privileges or immunities of the United Nations.

Signed on

Signed on

on behalf of

on behalf of

by

by

in the capacity of

in the presence of

in the capacity of

in the presence of

SPECIMEN