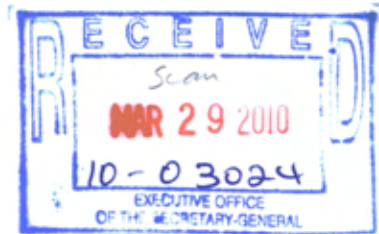


ACTION ✓✓
COPY ✓✓



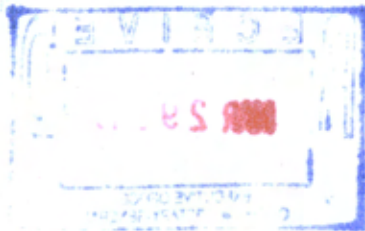
Note to Mr. Nambiar

Re: First report of the Secretary-General pursuant to paragraph 3 of resolution //
1905 (2009)

1. Enclosed is a draft report of the Secretary-General pursuant to paragraph 3 of Security Council resolution 1905 (2009).
2. The report is to appraise the Security Council on the activities of the Development Fund for Iraq (DFI) and the International Advisory and Monitoring Board (IAMB), including details on progress made in strengthening financial and administrative oversight of the Development Fund for Iraq, as well as the legal issues and options to be considered to implement successor arrangements and an assessment of the Government of Iraq's progress in preparing for the successor arrangements for the Development Fund.
3. The Security Council plans to discuss the report on April 6, 2010.
4. In light of the above, I would appreciate if the Secretary-General could consider the draft for approval at the earliest convenience.

Jun Yamazaki
Assistant Secretary-General, Controller
26 March 2010

cc: Ms. Kane



United Nations



Nations Unies

Executive Office of the Secretary-General
Cabinet du Secrétaire général

OPPBA

To: Mr. Nambiar,

The Office of the Controller has submitted for approval a draft of the "First report of the SG pursuant to paragraph 3 of resolution 1905 (2009).

The Political Unit has read the report and discussed necessary changes (see paras 26 and 37, and see email exchanges attached between the Controller's Office, OLA and EOSG on the subject). The draft report is thus ready to go. The approval of the report is sought by SCAD urgently to enable SC members to read over the weekend.

Details regarding successor arrangements from the IAMB to COFE are currently under discussion between the Iraq Mission and DPA, hence the absence of specifications regarding this aspect in the report. However, the same will be presented by the Controller to the Security Council during informal consultations on the report.

Nicholas Haysom
31 March 2010

cc: KWS

10-03024

APR - 2 2010

Introduction


Vijay Nambiar

1. The present report is submitted pursuant to paragraph 3 of Security Council resolution 1905 (2009), in which the Council requested me to provide written reports to the Council on a quarterly basis, with the first briefing no later than 1 April 2010, to include details on progress made in strengthening financial and administrative oversight of the current Development Fund for Iraq (DFI), as well as the legal issues and options to be considered to implement successor arrangements and an assessment of the Government of Iraq's progress in preparing for the successor arrangements for the Development Fund.

Background

2. The DFI established pursuant to United Nations Security Council Resolution 1483 (2003) holds the proceeds of oil export sales from Iraq, as well as the transferred balances from the UN Oil-for-Food Programme and transfers by Member States of funds, other financial assets or economic resources of the former Iraqi regime, its senior officials, their immediate family members, including entities owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction.
3. In 2003, the Security Council also decided that all export sales of petroleum, petroleum products, and natural gas from Iraq shall be made consistent with prevailing international market best practices, to be audited by independent public accountants reporting to the International Advisory and Monitoring Board (IAMB) in order to ensure transparency, and all proceeds, except as provided in paragraph 4 below, from such sales shall be deposited into the DFI.
4. The Security Council further decided that 5 per cent of the proceeds referred to in paragraph 3 above shall be deposited into the Compensation Fund established in accordance with the United Nations Security Council Resolution 687 (1991).
5. The IAMB as the audit oversight body for the DFI was established to fulfill the mandate set forth in United Nations Security Council Resolution 1483 (2003). This mandate has been subsequently extended under resolutions, 1546 (2004), 1637 (2005), 1723 (2006), 1790 (2007), 1859 (2008) and 1905 (2009). Resolution 1905 also extended the immunity of the petroleum and petroleum products and proceeds deposited in the DFI until 31 December 2010.
6. The IAMB has met 27 times since December 2003, including 2 times in 2009. All documentation, including press statements, the minutes of all IAMB meetings, completed audit reports and key documents related to the IAMB mandate and operations continue to be available on the IAMB website (www.iamb.info).

7. In 2006, the Republic of Iraq's Council of Ministers established the Committee of Financial Experts (COFE) to work alongside the IAMB and takeover the tasks of the IAMB in monitoring the DFI upon the expiration of the IAMB's mandate. Since its inception, COFE has been working closely with the IAMB and attending all its meetings. COFE itself meets regularly and has acquired increasing role in the follow-up and implementation of recommendations contained in the IAMB commissioned independent audit reports.
8. The issues covered in the present report were on the agendas of the recent IAMB meetings held in Washington DC, United States of America on December 16, 2009 and in Amman, Jordan on January 31, 2010 and reflect recent activities with regard to both, IAMB and DFI.

Recent Activities with regard to the Development Fund for Iraq and the International Advisory and Monitoring Board

9. In accordance with the IAMB Terms of Reference, the nomination and appointment by the Government of Iraq of the DFI external auditor is subject to approval by the IAMB.
10. In September 2009, the IAMB approved the audit appointment process and concurred with the recommendation of the Government of Iraq to appoint KPMG to conduct the 2009 audit of the DFI, including an interim review for the period from January 1, 2009 to June 30, 2009.
11. At the meeting held in Washington DC, the IAMB reviewed draft interim Statements of Cash Receipts and Payments for the DFI and the Oil Proceeds Receipts Account. The IAMB was also briefed by KPMG on the results of their interim work. The interim report reiterated earlier findings about reporting of revenues in the DFI Statement of Cash Receipts and Payments. A summary of the results of the KPMG interim report is available on both, the IAMB (www.iamb.info) and the COFE website (www.cofe-iq.net).
12. At the meeting held in Amman, the IAMB was informed that the audit is well underway and the external auditor, KPMG, expects to issue a comprehensive summary and brief the IAMB when it meets in late April 2010.
13. With regard to the 2010 audit, in the same meeting in Amman, COFE briefed the IAMB on the proposed evaluation process to select an external audit firm to conduct the 2010 audit of the resources and disbursements of the DFI.
14. The representative of the Government of Iraq to the IAMB, the President of the Board of Supreme Audit (BSA), and the representative of COFE provided regular briefings to the IAMB on progress in implementing earlier IAMB recommendations as well as on progress in implementing recommendations contained in the IAMB commissioned audit reports.
15. In order to enhance the transparency and accountability of the DFI, COFE has published monthly summaries of DFI cash inflows and outflows in its website.

16. In addition, COFE has finalized a time-bound action plan to implement a comprehensive oil metering system scheduled to become fully operational by the end of 2011, except for one company that will be completed by 2012. The action plan to implement comprehensive oil metering system as well as the implementation status is available on the IAMB website (www.iamb.info) and COFE website (www.cofe-iq.net).
17. In this respect, I welcome the detailed update from COFE and strongly urge full implementation of the action plan as envisaged by the Government of Iraq.
18. In January 2010, the Controller of the United Nations, Mr. Jun Yamazaki, my designated representative on the International Advisory and Monitoring Board for Iraq, briefed the Council on the activities of the Development Fund for Iraq and the International Advisory and Monitoring Board.
19. The next meeting of the IAMB, with the participation of COFE, is tentatively scheduled for late April 2010.

Legal issues and options relating to the Successor Arrangements for the DFI

Iraq Escrow Account and other Transfers to the DFI

20. Further to my report pursuant to paragraph 5 of Security Council resolution 1859 (2008) (S/2009/385), once all outstanding activities under the Oil-for-Food Programme (OFFP) are concluded, and taking into account (a) any necessary residual activities, (b) any indemnities that may be provided by the Government of Iraq as well as (c) the need to ensure the availability of sufficient funds for the Organization to meet (i) the costs and expenses that have been incurred, (ii) that are associated with the winding-down of the OFFP and/or (iii) the costs and expenses arising from the United Nations' cooperation with Member States in respect of investigations and proceedings related to the OFFP, all other remaining funds should be transferred from the Iraq Escrow Account to the DFI.
21. In the light of the need to make the above-mentioned transfers, it would be preferable if all outstanding activities under the OFFP were terminated prior to the transition to a post-Development Fund mechanism with a view to ensuring the transparency and efficiency of that transition. If that is not feasible, the remaining unencumbered funds in the Iraq Escrow Account shall be transferred directly to the successor arrangement.
22. In the light of Member States continuing obligations under operative paragraph 29 of Security Council resolution 1546 (2004), the Security Council may also wish to take into account the possibility that additional funds, other financial assets or economic resources may be identified or discovered as belonging to the former Iraqi regime, its senior officials, their immediate family members, including entities owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction. In the event that such funds, other financial

assets or economic resource are found and frozen in accordance with paragraph 23 of Security Council resolution 1483 (2003), it will be necessary to establish a mechanism for the transfer of such funds to the post-DFI successor arrangement.

Obligatory payments to the UN Compensation Commission Fund

23. The issue of arrangements for ensuring payments to the Compensation Fund following the transfer of the oversight function from IAMB to COFE has been highlighted in two previous reports of the Secretary-General: the report prepared pursuant to paragraph 5 of Security Council Resolution 1859 (2008) and the report of the Security-General pursuant to paragraph 3 of the same resolution.
24. In operative paragraph 21 of Security Council resolution 1483 (2003), the Security Council decided not only that 5 per cent of the proceeds of all export sales of petroleum, petroleum products, and natural gas from Iraq shall be deposited into the Compensation Fund established in accordance with resolution 687 (1991), it also decided that “unless an internationally recognized, representative government of Iraq and the Governing Council of the United Nations Compensation Commission [UNCC], ... decide otherwise, this requirement shall be binding on a properly constituted, internationally recognized, representative government of Iraq and any successor thereto” (emphasis added).
25. Thus, unless the Iraqi Government and the Governing Council of the UNCC mutually agree to change the percentage or terminate such payments (and/or all outstanding UNCC awards have been paid off), it is imperative that the Government of Iraq continue to be obliged to deposit 5 per cent of the proceeds of all export sales of petroleum, petroleum products, and natural gas from Iraq into the Compensation Fund. It is also necessary to ensure that the present mechanism is maintained or an alternative equally effective mechanism is established to ensure the payment into the Compensation Fund.
- On a practical level, ^{from an accounting perspective} 26. As an alternative mechanism to ensure such payment, the banking services agreement to be established by the Government of Iraq for any accounts that would be used to hold proceeds of export sales of petroleum, petroleum products, and natural gas from Iraq could include an article specifying the percentage that would be taken from the total and deposited into the Compensation Fund. I recognize the difficulty in ensuring all proceeds from the export sales of petroleum and others would be recorded. However, a mechanism that would trigger possible audit of the fund could be established. Alternatively, the Security Council may request that a fixed yearly amount is paid by the Government of Iraq into the Compensation Fund, irrespective of the amount of oil proceeds.

Privileges and immunities of the DFI

27. In accordance with operative paragraph 22 of its resolution 1483 (2003), the Security Council accorded the DFI privileges and immunities equivalent to those enjoyed by the United Nations subject to certain exceptions. From its inception, it was clearly understood that the DFI would enjoy such privileges and immunities for a limited and specified period of time. While the original expiration date of 31 December 2007 has been extended several times, including most recently in operative paragraph 1 of Security Council resolution 1905 (2009), there is no legal basis on which to perpetuate the protected status of the DFI once it became a fully nationally owned and controlled fund. Unless otherwise decided by the Security Council, the DFI should thus cease to enjoy such privileges and immunities on 31 December 2010.
28. In addition to the environmental and contractual claims to which the DFI is currently exposed under the exceptions to the privileges and immunities specified in operative paragraph 22 of Security Council resolutions 1483 (2003) and operative paragraph 27 of Security Council resolution 1546 (2004), the Government of Iraq should be prepared to assume responsibility for any claims and liabilities to which the successor arrangement may be exposed.

Dissolution of the International Advisory and Monitoring Board

29. Following the adoption of resolutions 1483 (2003) and 1511 (2003), and having approved the Terms of Reference of the IAMB, the Secretary-General of the United Nations, the Managing Director of the International Monetary Fund, the Director General of the Arab Fund for Economic and Social Development and the President of the International Bank for Reconstruction and Development jointly signed an instrument on 21 October 2003 establishing the IAMB.
30. Further to the extension of its mandate through 31 December 2010 in Security Council resolution 1905 (2009) and in accordance with Section 9B of the revised Terms of Reference of the IAMB, "arrangements will be made for the prompt dissolution of the IAMB no later than December 31, 2010". Thus, to the extent that the Executive Heads of the four organizations concerned established the IAMB, it would be for them to make the necessary arrangements to dissolve it once the Council has terminated its mandate.
31. Given that among the purposes of the IAMB is the promotion of the objectives of Security Council resolutions 1483(2003) and subsequent resolutions, in particular that the proceeds from export sales of petroleum, petroleum products and natural gas need to be used for the benefit of the Iraqi people, the Government of Iraq may wish to consider re-affirming its continued adherence to this principle as the successor arrangements to the DFI are being developed.

An Assessment of the Government of Iraq's progress in preparing for the successor arrangements for the DFI

32. In paragraph 4 of Security Council resolution 1905 (2009), the Security Council called upon the Government of Iraq to put in place the necessary action plan and timeline by 1 April 2010 and to ensure the timely and effective transition to a post-Development Fund mechanism by 31 December 2010, which takes into account IMF Stand-By Arrangement requirements and includes external auditing arrangements and enables Iraq to meet its obligations as established in the provisions of paragraph 21 of resolution 1483 (2003).
33. I recognize the view of the IAMB that COFE is ready to assume the oversight responsibilities and conduct competent and independent oversight of the DFI.
34. I welcome the first quarterly report of the Government of Iraq to the Security Council. The report provides an action plan and timeline for the transition from the Development Fund for Iraq and I commend the Government of Iraq for acknowledging their obligations pursuant to paragraph 21 of Security Council resolution 1483 (2003).
35. I recognize that the action plan and timeline as presented by the Government of Iraq is realistic and I am pleased that the Government of Iraq plans to select an independent international auditor to confirm that all proceeds of export sales of petroleum, petroleum products and natural gas from Iraq are accounted for.
36. COFE has finalized a time-bound action plan to implement a comprehensive oil metering system and I encourage the Government of Iraq to provide an update on this matter in their next quarterly report to the Security Council.
37. ^{Also work} It is apparent that much remains to be done to fully implement the transition to successor arrangements for the DFI and I look forward to keeping the Security Council informed on the Government of Iraq's progress in preparing for such arrangements.

~~Conclusion/Recommendation?~~
~~(Not necessary)~~
~~according to~~
~~of the folder~~

the action plan as
presented by the Government of
Iraq for

Kishore Mandhyan/NY/UNO
31/03/2010 03:53 PM

To Silva Armani/NY/UNO@UNHQ
cc
bcc
Subject Fw: SG report to the Security Council - UNSCR 1905 (2009)

And the final attachment - grateful

----- Forwarded by Kishore Mandhyan/NY/UNO on 31/03/2010 03:52 PM -----

Genc Osmani/NY/UNO
31/03/2010 01:18 PM

To Kishore Mandhyan/NY/UNO@UNHQ
cc
Subject Fw: SG report to the Security Council - UNSCR 1905 (2009)

Dear Kishore,
As agreed, I am fwd you the suggested language to be included in para 26.
Please let me know whether tomorrow or next Thursday would work for you for lunch.
Thank you again for all your help.

Genc

----- Forwarded by Genc Osmani/NY/UNO on 31/03/2010 01:20 PM -----

Mona Khalil/NY/UNO
29/03/2010 07:22 PM

To Genc Osmani/NY/UNO@UNHQ
cc
Subject Re: SG report to the Security Council - UNSCR 1905 (2009)



Dear Genc

If the new obligatory payment paragraph (paragraph 26) on the accounting mechanisms is to be retained after EOSG review, don't forget to add something along the lines, "on a practical level" or "from an accounting perspective", at the beginning of the paragraph.

No need to worry about the concerns I raised about the OFFP paragraph (paragraph 21)
GLD assures me that there it would be difficult to use this as a pretext to prolong the DFI; I am told that all major activities are long over.

Have a good night
Mona

Genc Osmani---29/03/2010 11:33:53 AM---Dear Loraine, Enclosed is the advanced copy of the above su...

From: Genc Osmani/NY/UNO
To: Loraine Sievers/NY/UNO@UNHQ
Cc: Darko Mocibob/NY/UNO@UNHQ, Mona Khalil/NY/UNO@UNHQ
Date: 29/03/2010 11:33 AM
Subject: SG report to the Security Council - UNSCR 1905 (2009)

Dear Loraine,

Enclosed is the advanced copy of the above subject report that was sent earlier this morning to Mr. Nambiar's office for his clearance.

Once approved I will forward the final report.

Regards,
GO



Written report to SC pursuant to SC 1905 final.doc

Kishore Mandhyan/NY/UNO

31/03/2010 12:09 PM

To Silva Armani/NY/UNO@UNHQ

cc

bcc

Subject Fw: SG report to the SC (UNSCR 1905)

Please print

----- Forwarded by Kishore Mandhyan/NY/UNO on 31/03/2010 12:08 PM -----

Genc Osmani/NY/UNO

31/03/2010 07:52 AM

To Linda Taylor/NY/UNO@UNHQ

cc Kishore Mandhyan/NY/UNO@UNHQ

Subject Re: SG report to the SC (UNSCR 1905) [1]

Dear Linda/Kishore,

Thank you for your email and your comment relating on the draft report. I will try to address your comment but I am also available to discuss and provide any additional information relating to the report.

With regard to the comments on the preceding paragraphs to the last paragraph (para. 34-36), we recognize that this is the first report prepared by the GoI (enclosed for easy reference) and that the GoI report includes action plan and timeline to be taken for the successor arrangements.

The GoI report includes GOI's acknowledgments of their obligations pursuant to para 21 of SCR 1483 (2003) relating to the 5 percent of the proceeds of all export sales of petroleum, petroleum products, and natural gas from Iraq and we assessed that the action plan and timeline as presented in the report are workable. In addition, we recognized that the action plan includes the selection of international auditors to confirm that all proceeds of export sales of oil are accounted for (para 34 and 35).

Notwithstanding the above, we realize that the report does not touch upon the comprehensive oil metering system. As you might be aware, the International Advisory Monitoring Board (IAMB) has remained concerned that one of its earliest recommendations from 2004 concerning oil metering remains incomplete. In the absence of an overall comprehensive system of controls over petroleum extraction, we cannot be assured that all extracted petroleum quantities are accounted for. Therefore, we deemed that an update on this important issue should be included in the next GoI report (para 35).

While we recognize that the action plan is workable, the conclusion of the report is that there is much to be done to implement the action plan as presented by the GoI. It should be noted that actions based on the presented action plan are still pending and work is yet to be done. We could use the following language to make this paragraph clearer.

37. It is apparent that much remains to be done to fully implement the action plan as presented by the Government of Iraq for the transition to successor arrangements for the DFI and I look forward to keeping the Security Council informed on the Government of Iraq's progress in preparing for such arrangements.

Regards,

Genc




Gol First report_SCR 1905.doc
Linda Taylor/NY/UNO

Linda Taylor/NY/UNO

30/03/2010 09:15 PM

To Genc Osmani/NY/UNO@UNHQ

cc Kishore Mandhyan/NY/UNO@UNHQ

Subject Re: SG report to the SC (UNSCR 1905) 

Dear Genc,

The Political Unit has reviewed the report and has a question/comment concerning the last paragraph. The preceding paragraphs in that section outline the steps that have been taken, without mentioning any gaps or steps left to be taken. Then the last paragraph states that much remains to be done, without specifying what that is. Also, there are no conclusions or recommendations in the report - can you comment?

I am copying this message to Kishore Mandhyan, who is the individual in the Political Unit who conducted the review.

Linda

Genc Osmani/NY/UNO

Genc Osmani/NY/UNO

30/03/2010 03:43 PM

To Linda Taylor/NY/UNO@UNHQ

cc

Subject Re: SG report to the SC (UNSCR 1905) 

Linda,
Thank you. I really appreciate your help with this.

Regards,

Genc

Linda Taylor/NY/UNO

Linda Taylor/NY/UNO

30/03/2010 03:11 PM

To Genc Osmani/NY/UNO@UNHQ

cc

Subject Re: SG report to the SC (UNSCR 1905) 

Hi Genc,

There are several layers of clearance within EOSG. The report is currently with the Political Unit for review and clearance, after which it will come to CdC's office. I have asked the Political Unit to turn it around as quickly as possible.

Linda

Genc Osmani/NY/UNO

Genc Osmani/NY/UNO

30/03/2010 02:08 PM

To Genc Osmani/NY/UNO@UNHQ

cc Linda Taylor/NY/UNO@UNHQ

Subject Re: SG report to the SC (UNSCR 1905) [1]

Dear Linda,

I am sorry I missed your call earlier this afternoon.

Due to the upcoming Easter holiday the SC members asked whether we could provide them with the advanced copy of the above mentioned report as cleared by your office by COB today. Otherwise, the SC might not be in a position to discuss the report as scheduled on April 6, 2010. My understanding is that the SC members will be undertaking a one week official trip in April and the change of the date of the SG report might affect the rest of the SC work for the month of April.

While I understand the tight deadline, in light of the above I would appreciate if the draft report is given urgency and if possible cleared by your office today.

Thank you,

Genc

Genc Osmani/NY/UNO

Genc Osmani/NY/UNO

29/03/2010 11:30 AM

To Linda Taylor/NY/UNO

cc

Subject SG report to the SC (UNSCR 1905)

Dear Linda,

Enclosed is the soft copy of the above mentioned report that was delivered to your office earlier this morning.

Thank you,

Genc

[attachment "Written report to SC pursuant to SC 1905 final.doc" deleted by Linda Taylor/NY/UNO]