


OLA
Iraq Programme

CENTRAL

Note to Mr. Michel

Request to Release Independent Inquiry Committee (IIC) Documents

1. I refer to your note of 13 April 2007 transmitting a request from the United States Government to release IIC documents for an upcoming trial which lists as defendants, certain companies and persons named in the report of the IIC. We note that the Secretary-General had earlier approved the disclosure of certain documentation in connection with this case and that the IIC representative is now recommending the disclosure of additional information.
2. The above recommendation has the Secretary-General's approval.


Vijay Nambiar
23 April 2007

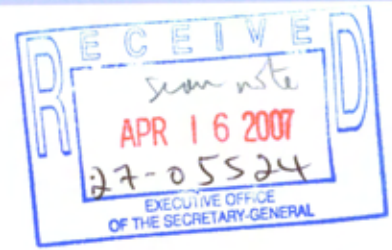
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RUSH

Note to the Secretary-General

LK



Re: Request to Release Independent Inquiry Committee (IIC) Documents

1. Attached please find a request from defense counsel, forwarded to the Organization by a communication from the United States Government, to release IIC documents for the upcoming criminal trial United States of America v. David B. Chalmers, Jr., *et al*, which lists as defendants, certain companies and persons named in the report of the IIC, dated 27 October 2005.
2. Pursuant to ST/SGB/2006/16 on the "Disposition of the Documents of the Independent Inquiry Committee into the United Nations Oil-for-Food Programme", documents from the IIC may be made available to Member States upon written request to the Secretary-General. Pursuant to Section 4.2, an IIC representative shall determine which documents, if any, are responsive to the request and make recommendations to the Secretary-General on their disclosure.
3. Upon its initial review of the request from the United States Government, the Office of the IIC had recommended the disclosure of certain documentation, and following your concurrence with this recommendation, the documents in question were disclosed through the appropriate channels. After further review of the request, the Office of the IIC has made recommendations regarding disclosure of additional documentation, attached hereto. As you will note, the IIC representative supports the release of such additional documentation corresponding to parts of the request communicated by the United States Government, and seeks from the Secretary-General authority to release these documents.
4. I would be grateful if you would inform me whether you concur with this recommendation so that I may notify the United States Government accordingly.

Nicolas Michel
13 April 2007

If this is in consonance with the earlier decision by SG. to release information to the Swiss government, we may agree to such release of information to the US government also

B. Amha
19/04

JENNER & BLOCK

January 11, 2007

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VIA FACSIMILE AND HAND

Mr. Alejandro D. Wolff
Chargé d' affaires, a.i.
Deputy Permanent Representative of
The United States of America to the United Nations
United States Mission to the United Nations
140 East 45th Street
New York, N.Y. 10017

Re: United States v. Chalmers, et al., S5 05 Cr. 59 (DC)

Dear Mr. Wolff:

I am writing on behalf of David B. Chalmers, Jr., Bayoil Supply & Trading, Ltd., Bayoil (USA), Inc., and Ludmil Dionissiev (collectively, the "Bayoil Defendants") with respect to the letter dated December 28, 2006 from the Office of Legal Affairs for the United Nations ("UN") and the Independent Inquiry Committee ("IIC") to yourself, which responded to the Bayoil Defendants' Motion to Compel the UN and the IIC to respond to the defendants' subpoena for documents, as supplemented by several letter requests.

In its December 28, 2006 letter, the UN stated that it "is willing to continue, on a strictly voluntary basis, and without prejudice to its privileges and immunities, its cooperation to facilitate the proper administration of justice." The UN further stated that it is "willing to consider the release of any relevant document it may possess" so long as the defendants submit requests for "specific documents ... through official channels, *i.e.*, through the United States Mission to the United Nations...."

To resolve these issues without judicial intervention, the defendants submit this letter reiterating and amplifying our prior requests for documents and requesting specific answers to our questions about those requests. We ask you to submit this letter and the requests enclosed herein to the UN and the IIC, as requested in the December 28th letter.

* * * * *

We request that that the UN and the IIC answer each of the individual questions posed below. In prior communications, counsel for the IIC has made somewhat sweeping statements to the effect that all responsive documents in certain categories had been produced to us. Unfortunately, those broad statements did not permit us to determine the significance of the gaps

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in the productions. For example, if certain documents simply never existed, then of course there is nothing more to be done. If, however, the documents were not collected by the IIC, then we request that they be collected and produced to us as soon as possible. If the documents were destroyed, then we request that the circumstances of any destruction be described to us. Finally, it may be possible that some documents were produced to the US Attorney's Office but somehow did not make their way to the defense. For us to resolve these matters once and for all, we need to understand the answers to these questions.

As set forth in the Motion to Compel that accompanies this letter, the Bayoil Defendants are seeking the following specific documents from the UN and the IIC:

I. Documents Concerning Setting of O.S.P.

We have requested documents concerning how the Iraqi State Oil Marketing Organization ("SOMO") and the UN set the Official Selling Price of Iraqi oil ("O.S.P."), which is crucial to this case for the reasons set forth in the accompanying memorandum of law in support of the motion to compel. The defense plainly has not received a complete production of these documents. Since the O.S.P. was revised at least monthly during the tenure of the Oil-for-Food Program ("OFFP"), we would have expected to receive a set of documents reflecting each such revision. Instead, as set forth more fully below, we have received documents for only limited time periods (July 1998, November and December 2000, February 2001, July and August 2001, and October 2001). Moreover, even those sets of documents are incomplete and omit considerable underlying documentation that must have been prepared at the time.

A. SOMO's Requested Pricing Mechanisms

To date, the UN has produced SOMO's requests for pricing mechanisms dated July 7, 1998, July 21, 1998, November 11, 2000, December 7, 2000, December 21, 2000, February 13, 2001, July 11, 2001, July 18, 2001, July 24, 2001, July 31, 2001, August 13, 2001, and October 24, 2001.

1. Please confirm whether we have received all such documents and, if not, please produce the remainder. If we have received all such documents, please explain why there are not more.

2. We have not received complete information from SOMO concerning how it computed these pricing mechanisms. For example, we have not received internal SOMO documents concerning its computation of the O.S.P. While this information did not originate with the UN, we would expect the IIC to have collected it during its investigation.

3. We have not received SOMO monthly reports to the Overseers as required by paragraph 22 of the Procedures to be Employed by the Security Council Committee Established by Resolution 661. Please produce all such reports.

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B. Overseers' Determinations with Respect to SOMO's Pricing Mechanisms

To date, the UN has produced documents reflecting the Overseers' determinations whether the pricing mechanisms requested by SOMO reflected fair market value dated July 13, 1998, July 21, 1998, November 22, 2000, December 7, 2000, December 21, 2000, February 13, 2001, July 11, 2001, July 18, 2001, July 24, 2001, July 31, 2001, August 8, 2001, and October 24, 2001.

1. Again, we believe we should have received a far greater number of these documents. Please confirm that we have received all such documents and, if not, please produce the remainder. If we have received all such documents, please explain why there are not more.

2. We have not received any notes, emails, work papers, or other documents reflecting *how* the Overseers determined whether SOMO's requested price mechanisms reflected fair market value. Since the IIC collected UN notes and emails on other topics, we have reason to believe that these types of documents exist. Please produce these documents. If for some reason they have not yet been collected, please confirm to us that they will be collected and produced promptly. If they do not exist, please explain why.

C. 661 Committee Endorsements

To date, the UN has produced the 661 Committee's evaluations of the Overseers' determinations dated November 27, 2000, December 8, 2000, December 22, 2000, July 12, 2001, July 20, 2001, July 25, 2001, August 2, 2001, August 10, 2001, August 28, 2001, October 1, 2001, October 23, 2001, and October 25, 2001.

1. Please confirm that we have received all such documents and, if not, produce the remainder. If we have received all such documents, please explain why there are not more.

2. We have not received any notes, emails, work papers, or other documents reflecting *how* the 661 Committee determined whether to accept the Overseers' determination of whether SOMO's requested pricing mechanisms reflected fair market value. Please produce these documents. If for some reason they have not yet been collected, please confirm to us that they will be collected and produced promptly. If they do not exist, please explain why.

II. Documents Reflecting the UN's Knowledge concerning Surcharges

We have also requested documents reflecting the UN's knowledge or information concerning whether surcharges were being paid to the government of Iraq, also as explained in the accompanying memorandum of law. Although we have received some such documents, the UN's production is manifestly incomplete in the same general ways as the production of documents concerning how the O.S.P. was set. In particular:

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A. Information from 661 Committee

1. We have a copy of a press report dated September 24, 2001 reflecting the 661 Committee's decision to have the Overseers keep weekly tabs on oil prices as compared to the O.S.P. (copy attached as Ex. A), but we do not have any UN documents reflecting this crucial decision. Please produce both the "official" documentation reflecting this decision and the underlying documentation reflecting the process of making the decision and the information that went into it.

2. We have received provisional summary records of 661 Committee meetings that reflect the Committee's knowledge that the Iraqi government was generally demanding surcharges and that purchasers were in some instances paying those surcharges. The summary record of the 661 Committee's 209th meeting, held on December 13, 2000, demonstrates that the Committee discussed whether the Iraqi government was imposing surcharges. We do not, however, have any of the information underlying this discussion. For example, on December 5, 2000 Mr. Benon Sevan noted that the UN had received information from one government and two companies that Iraq was then routinely demanding "substantial cash payments," (see Note from B. Sevan to J. Elfverson dated December 5, 2000, attached hereto as Ex. B), but we do not have the underlying documents reflecting the information cited by Mr. Sevan (or any other information about surcharges the UN may have received). Similarly, we do not have e-mails, records of phone conversations, or informal notes of meetings and internal communications even though the report titled Management of the Oil-for-Food Programme, dated September 7, 2005 ("IIC Management Report"), relied on these materials. See, e.g., IIC Management Report, dated September 7, 2005, at Volume II, p.131 n.322, p.137 n.339; Volume III, p.128 n.338, p.132 n.354.

B. Information from Overseers

1. We have received copies of the Overseers' 251st and 252nd weekly reports to the 661 Committee, which include detailed information on the purportedly excessive premiums or commissions paid by indirect purchasers of Iraqi oil. Although this information was apparently compiled routinely after the 661 Committee decision described above at II(A)(1), we have not received any other reports on this topic or any of the underlying information on this topic. Please produce all such reports and any emails, notes, work papers, or other documents underlying such reports. If that information no longer exists, please explain why.

2. We have also received a number of reports reflecting the Overseers' monitoring of Iraqi oil sales, including reports concerning premium levels, retrospective pricing, and other relevant matters. For example, the Overseers issued relevant reports dated February 20, 2001 (IIC-SDNY-427387-90), February 7, 2002 (IIC-SDNY-427460-61), and September 16, 2002 (IIC-SDNY 427472). We do not have any documentation reflecting the information that went into these reports. Please rectify or explain these gaps.

3. On at least two instances, the Overseers solicited advice from the Chair of the 661 Committee (IIC-SDNY 427299) and the Office of Legal Counsel (IIC-SDNY 427403),

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but we do not have the documents concerning these requests or the responses to these requests. We have the same questions about these documents.

III. Contractual Evaluation Documents

Please produce all documents concerning the Overseers' and/or the Committee's review of each individual contract for the purchase and sale of Iraqi oil within the OFFP, including all documents reflecting the Overseers' monitoring of whether the sale contracts "contain[ed] any attempts at fraud or deception," or, if all such documents have been produced, please confirm that fact. Although the Overseers were required to conduct such a review for every oil contract (661 Procedures ¶ 9), we have received virtually no documents on this topic.

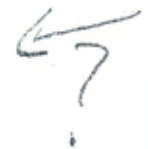
IV. IIC Interview Notes

We have not yet received information about various interviews the IIC took during its investigation. Please produce these documents promptly, or, if you are continuing to refuse to disclose these materials, please explain the basis for that decision. If the basis for your decision is that the IIC promised confidentiality to the witnesses, please confirm that all of the witnesses whose statements are being withheld were promised confidentiality.

We also understand that although the IIC generally conducted interviews separately from governmental authorities, certain interviews may have been conducted in conjunction with such authorities. Please inform us whether any of the following individuals were interviewed jointly by the IIC and any U.S. prosecutors: Augusto Giangrandi, Murtaza Lakhani, Lucio Moriconi, Samir Vincent, Dr. Shakir Al-Khafaji, or any other witness with knowledge concerning any of the defendants in this case.

* * * * *

We understand that as a matter of policy, the UN does not communicate directly with private parties, but insists that all communications be routed through the mission of the applicable member state. While we appreciate the rationale for this policy, we believe it is hindering resolution of the document production issues in this case. This complex case involves a massive volume of documentation. We have many difficult questions about the IIC's collection and production of these documents. And we are operating under a tight deadline in light of the trial date of April 9, 2007. Under these circumstances, we believe that it would be much more effective and efficient if the Office of Legal Affairs would agree to communicate directly with the attorneys for the respective parties. We would agree not to argue that such communications amount to a waiver of any of the UN's ordinarily applicable privileges and immunities (although we reserve our right to press any other waiver argument, including the waiver argument set forth in our previously filed motion to compel).



Finally, we are scheduled to appear before the Court on January 19, 2007 to discuss various pretrial matters. In light of that already scheduled date, we ask that the UN and the IIC

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respond as meaningfully as possible to this letter before that conference. If we are not able to make significant progress on these matters in advance of that date, then we will ask the Court to decide our motion to compel at that time. Moreover, since the UN's December 28th letter did not specifically address, let alone rebut, our claim that the UN has expressly waived its privileges and immunities in this matter, we will argue that the UN has conceded that point.

Thank you in advance for your cooperation.

Very truly yours,



Stephen L. Ascher

cc:	Larry D. Johnson, Esq.	(By facsimile and hand)
	Edward Casey O'Callaghan, Esq.	(By email)
	Stephen Miller, Esq.	(By email)
	Michael Farbiarz, Esq.	(By email)
	Samuel Buffone, Esq.	(By email)
	David Howard, Esq.	(By email)
	Catherine Marie Recker, Esq.	(By email)
	Gerald Shargel, Esq.	(By email)

Enclosure

NEW_YORK\6490

----- Original Message -----

From: "rjgoldstone@iafrica.com" [rjgoldstone@iafrica.com]

Sent: 06/04/2007 23:41 ZE2

To: Nicolas Michel

Subject: Further Memo in the Chalmers case

Dear Mr. Michel,

I have received a further memorandum from Mary Eaton in consequence of the request for documents from counsel appearing for the defendant in the Chalmers case in the SDNY. You will recall that the earlier memorandum of 9 February, 2007, the recommendation was that the UN should make available the documents which had at that time been found by Brian Mich. I understand that that recommendation was acted on by OLA.

It now appears that Mary Eaton has found further documents that were requested. I am attaching her memorandum regarding the three sets of additional documents prepared in response to the Chalmers defense request: this relates to a complete set of Oil Overseer Weekly Reports; set of

Oil Overseer Pricing Mechanism Assessments; and additional relevant Oil Overseer correspondence.

I am also attaching the indices for these document sets, which list the file names of the documents recommended for production. For the most part, the file name is a date of a report or correspondence.

These large sets of documents are on the IIC server, and the OLA has a DVD of the first set (complete set of Oil Overseer Weekly reports). Mary Eaton is finalizing the Bates-numbering and will create DVDs for OLA.

Further details appear from the attached memorandum.

My recommendation is that the UN proceeds in terms of the attached memorandum and I so advise the Secretary-General. In particular, I draw attention to the recommendation that a copy of the documents also be made available to the prosecution.

With kind regards,
Richard Goldstone

MEMORANDUM

Date: 6 April 2007

To: Honorable Richard J. Goldstone

From: Mary Eaton

Subject: Additional Information in Response to Request for Information from Jenner & Block re: Chalmers (Ascher Letter of 11 January 2007)

This memo summarizes the continuation of research into response to the defense request for documents in *U.S. v. Chalmers, et al.* as previously outlined in Brian Mich's memo to you on 9 February 2007. As in Brian's memo, the defense request is taken from the 11 January 2007 letter of Stephen Ascher to the US Mission ("Ascher letter").

Response of 2 March 2007

On 2 March 2007, the UN responded to the US Mission by producing the documents collected by Brian Mich and approved by you as of 9 February 2007. These documents included:

- (a) all UN Treasury Oil Contract Files
- (b) a set of Overseers Weekly Reports located by Brian Mich by 9 February
- (c) all provisional summary records of formal 661 Committee meetings

NOTE: This set of documents was provided to the US Mission without Bates numbers. Subsequent to the production, in order to maintain files in the same manner as previous responses to requests for assistance, a copy of this set was Bates-numbered as IIC-USM-J&B 0000001-0113027.

Follow-up to the 2 March 2007 Production

In the recommendation of 9 February, Brian also stated that all Overseers Weekly Reports (set (b), above) should be produced subsequently if they could be found. In an email to OLA of 20 February 2007, Brian also suggested continued research into finding Oil Overseer correspondence with the 661 Committee as contained in the request.

The additional materials subsequently discovered for production are discussed here in three parts:

- (1) the complete set of Oil Overseer Weekly Reports

- (2) a set of Pricing Mechanism Assessments from the Oil Overseers and 661 Committee
- (3) additional relevant pricing correspondence between the Oil Overseers and the 661 Committee

Complete Set of Oil Overseers Weekly Reports (1 – 330)

Subsequent to the 2 March 2007 production, I was able to locate a complete set of Oil Overseers Weekly Reports as requested in Ascher's letter in point II.B.1. This set was maintained by the UN Office of the Iraq Programme ("OIP") and contained in four binders in the UN archives. These binders were imaged as part of the IIC investigation. There are 330 weekly reports in all, going through 4 April 2003. Brian had previously found most of the reports up to #254.

A quick note on the organization of the files: the original binders, and therefore the images of them, were in reverse chronological order (for example, binder 1 containing reports numbering 76 down to 1, binder 2 containing 188 down to 77, and so forth). I downloaded these files for the most part in groups of 10, so that reports 10-19 are in the same file, 20-29 in the same file, and so forth. When the files were not contiguous, they were downloaded in smaller groups.

I prepared a complete set of these files and sent them to OLA on 9 March 2007, as their production had been previously approved in the response to Brian's recommendation to you of 9 February 2007. I recommend sending the entire set, even if this somewhat duplicates the original set previously produced, as this set came from a different collection and does not represent exact document duplicates in terms of associated cover letters or marginalia.

This set was Bates-numbered as per IIC production protocol. The Bates Range for the set of Weekly Oil Overseer Reports is IIC-USM-J&B 0200001-0201723.

Oil Overseer Pricing Mechanism Assessments

In reviewing the pricing mechanism assessments and Oil Overseer correspondence to the 661 Committee, and comparing this material to the requests in the Ascher letter, I came to the conclusion that the documents requested in three separate parts of the Ascher letter (I.A.1, I.B.1, I.C.1) were actually the component parts of a set of pricing mechanism assessments as maintained by the OIP ("pricing assessment packets").

These pricing assessment packets include the SOMO pricing request, the Oil Overseer assessment, the transmittal of the assessment by the 661 Committee to 661 Members for review, and the approval or rejection of the recommended pricing by the 661 Committee. If objections were lodged, sometimes the packet includes the correspondence among the Missions, 661 Committee, and Oil Overseers concerning the objection, as well as a second round of assessments and approvals. The relationship of these packet elements to the Ascher request is given below.

Common pricing assessment packet elements:

- (1) Fax from SOMO to the 661 Committee with requested pricing. This appears to be what the Ascher letter is requesting in I.A.1, "SOMO's Requested Pricing Mechanism."
- (2) Letter from the Oil Overseers to the Chairman of the 661 Committee, evaluating the SOMO pricing request. This appears to be the type of document requested in the Ascher letter I.B.1, "Overseers' Determinations with Respect to SOMO's Pricing Mechanism."
- (3) A cover letter from the 661 Committee Chairman to the Committee Members, transmitting the Overseers' recommendation and informing that, barring any objections within a two-day time frame, the prices will be accepted.
- (4) A letter from the 661 Committee Chairman to the Oil Overseers, approving or rejecting the pricing. This appears to be the type of document requested in Ascher letter I.C.1, "661 Committee Endorsements."
- (5) In cases of objections, the letters from the Missions objecting to the price are sometimes included, and in several of these cases a second round of documents as in (2)-(4) are included. The documents from the Missions are usually from the US, UK and occasionally the Russian Federation. These documents are responsive to defense request I.C.2, "...documents reflecting *how* the 661 Committee determined whether to accept the Overseers' determination of whether SOMO's requested pricing mechanisms reflected fair market value."

The OIP filed the completed pricing assessment packets together in four volumes labeled Volumes 2 – 5, covering 2 June 1998 through 14 March 2003, 202 assessment packets in all. NOTE: There is no Volume 1 in the UN archive collection. If this volume ever existed, the UN Archives did not receive it during the time of the investigation, and therefore neither the IIC nor the SDNY has seen it.

These four volumes appear to be as complete of a set as the UN has on this topic. Unlike the weekly Oil Overseer reports, these reports did not come out on a regular calendar schedule (either weekly or monthly), and sometimes multiple reports came out on the same date covering different oil markets.

For production, I have named the files by the date of the Oil Overseer assessment, as that date (from the second element, above) appears to be the connecting thread relating the documents together, as well as being the date apparently used by the OIP in its filing. If more than one assessment was transmitted on the same date, I have secondarily added the relevant COMM number after the date (e.g., 2002-03-01_20 and 2002-03-01_21).

Some of these reports, or elements of these reports, have been previously produced in the original requests as responded to in April 2006. I did not try to weed out duplicates to certain pages that may have been produced, as these packets were stored together as meaningful units and the documents are best understood in context of the entire packet.

I recommend that the entire set of 202 pricing mechanism assessment packets be produced to satisfy in part defense requests as referenced in Ascher letter I.A.1, I.B.1, I.C.1, and I.C.2. I wish to point out that letters to the 661

Committee from various UN Member State Missions are included in these packets, and that the UN be made aware of this in case the UN has additional restrictions on providing this type of information.

This set has been Bates numbered as IIC-USM-J&B 0201724-0203532.

It is my understanding that the SDNY does not have a similar set of these documents. As I have been advised by Sue Ringler that the defense may not be required to make copies of these documents to the prosecution, I further recommend that a copy of these be made available to the SDNY if they so desire.

Additional Pricing Correspondence between the Oil Overseers and the 661 Committee

Not all of the files in the Oil Overseer collection were a part of the structured pricing assessment packets as in the section above. Fifty-two additional documents have been prepared for production. Examples of the type of correspondence included in this last set of additional pricing correspondence are: correspondence related to pricing but not part of an assessment packet, including some additional Mission objection letters; copies of presentations made by the Overseers on how pricing was determined; reports created by the Oil Overseers at the request of the 661 Committee addressing specific issues; and so forth.

These correspondences satisfy in part the defense requests referenced in Ascher letter as I.B.2, "...documents reflecting *how* the Overseers determined whether SOMO's requested price mechanism reflected fair market value," and similar request for 661 Committee deliberations in I.C.2.

Some of the correspondence in this set may overlap correspondence previously produced as a result of the keyword search in April 2006. As mentioned previously in this memo, since similar documents come from different UN file collections (such as 661 Committee files vs. OIP files), the apparently same document may have different notations, marginalia or transmittal sheets. Therefore I recommend production of the entire set of fifty-two files of additional correspondences as responsive to the defense request. These documents have been Bates numbered as IIC-USM-J&B 0203533-0203748.