

The United Nations Oil for Food Program

5. On or about August 6, 1990, days after Iraq's invasion of Kuwait, the U.N. adopted Security Council Resolution 661, which prohibited U.N. member-states from transacting business with Iraq, except for the purchase and sale of humanitarian supplies. Resolution 661 prohibited virtually all direct financial transactions with the government of Iraq.

6. On or about April 15, 1995, the U.N. adopted Security Council Resolution 986, which served as a limited exception to the Iraq sanctions regime in that it allowed Iraq to sell its oil. However, Resolution 986 required that the proceeds from oil sales be used by the Iraqi government to purchase humanitarian supplies, including but not limited to food, for the Iraqi people. Hence, this program became known as the Oil for Food Program. Payments made to the Iraqi government that were not approved by the U.N. and that were outside the strict contours of the OFFP were prohibited.

7. The rules of the OFFP required that the proceeds from all sales of Iraqi oil be deposited into a U.N.-controlled escrow account at the New York, New York, branch of Banque Nationale de Paris ("BNP-Paribas"). That escrow account funded the purchase of humanitarian goods by the Iraqi government.

8. Under the rules of the OFFP, a supplier of humanitarian goods contracted with a ministry or other department of the Iraqi government to sell goods to the government. Once that contract was finalized, the contract was submitted to a U.N. Committee ("the 661 Committee") which reviewed the contracts to ensure that their terms complied with all OFFP and Iraqi sanction regulations. The 661 Committee accepted the contracts, rejected them, or asked the supplier to provide additional information upon which the committee could make a decision.

9. If a contract was approved by the 661 Committee, a letter of credit was issued by BNP-Paribas to the supplier's bank stating that the supplier would be paid by the OFFP for the relevant goods once certain conditions were met, including delivery of the goods to Iraq and inspection of the goods by a U.N. contractor based in Geneva, Switzerland, that provided inspection services in Iraq on behalf of the U.N. (the "inspection company"). Once those conditions were deemed by the U.N. to have been met, the U.N. would direct BNP-Paribas to release payment to the supplier.

10. On or about December 10, 1996, the first Iraqi oil exports under the OFFP began. The OFFP continued from in or about December 1996 until the United States' invasion of Iraq on or about March 19, 2003. From in or about December 1996 through March 2003, the United States government prohibited United States companies and individuals from engaging in transactions with the government of Iraq, unless such transactions were authorized by the U.N. pursuant to the OFFP.

11. Beginning in approximately August 2000, the Iraqi government demanded that suppliers of humanitarian goods pay a kickback, usually valued at 10% of the contract price, to the Government of the Republic of Iraq in order to be awarded a contract by the government. These kickbacks violated OFFP regulations and U.N. sanctions, which prohibited payments to the Iraqi government that were not expressly approved by the U.N. and that were not contemplated by the guidelines of the OFFP.

12. Often, these kickbacks were termed "after sales service fees" ("ASSFs"), but did not represent any actual service being performed by the supplier. These ASSFs were usually included in the contract price submitted by the supplier to the U.N. without disclosing to the U.N. that the contract contained an extra 10% which would be returned to the Iraqi government.

Including the 10% in the contract price allowed the supplier to avoid paying the 10% out of its profits; instead, the suppliers caused the U.N., unknowingly, to fund the kickbacks to the Iraqi government.

13. Some suppliers labeled the ASSFs as such, thereby leading the U.N. to believe that actual after-sales services were being provided by the supplier. Other suppliers disguised the ASSFs by inserting fictitious line items into the contracts for goods or services that were not being provided. Still other suppliers simply inflated their contract prices by 10% to account for the payments they would make, or cause to be made, to the Iraqi government.

CNH France's Kickback Scheme

14. From in or about June 2001, through in or about July 2001, CNH France obtained three contracts worth approximately €2.2 million with the Ministry of Oil of the Government of the Republic of Iraq to supply CNH France construction vehicles and spare parts. To obtain these contracts, CNH France caused approximately \$188,000 in kickbacks to be paid to the Government of the Republic of Iraq.

15. In order to generate funds to pay the kickbacks and to conceal those payments, CNH France inflated the price of the contracts by approximately 10% before submitting them to the U.N. for approval.

16. After the U.N. approved the CNH France contracts, BNP-Paribas issued letters of credit, via international wire communications, to the bank used by CNH France. These letters of credit authorized CNH France to be paid the contracted amounts, which included the 10% kickbacks to be paid to the Iraqi government.

COUNT ONE
(Conspiracy)

THE CONSPIRACY AND ITS OBJECT

17. Paragraphs 1 through 16 of this Information are re-alleged and incorporated by reference as if set out in full.

18. From in or about June 2001, through in or about July 2001, within the territory of the United States and elsewhere, CNH France, Company ZZ, Employee D, and others known and unknown, did unlawfully and knowingly combine, conspire, confederate, and agree together to knowingly devise, and intend to devise a scheme and artifice to defraud the U.N. and the OFFP, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, through the use of interstate and foreign wire communications, in violation of Title 18, United States Code, Section 1343.

PURPOSE OF THE CONSPIRACY

19. The primary purpose of the conspiracy was to obtain and retain lucrative business with the Government of the Republic of Iraq through the payment of kickbacks to the government that were concealed from the U.N. and mischaracterized as legitimate charges.

MANNER AND MEANS OF THE CONSPIRACY

20. To achieve the objects of the conspiracy, CNH France and others used the following manner and means, among others:

- a. It was part of the conspiracy that CNH France agreed to cause kickbacks to be paid to the government of Iraq in exchange for being awarded contracts by the government.
- b. It was a further part of the conspiracy that CNH France submitted contracts to the U.N. for approval that failed to disclose, and concealed, the fact that the prices of

the contracts had been inflated by 10% in order to generate money to pay the kickbacks to the Government of the Republic of Iraq.

c. It was a further part of the conspiracy that CNH France engaged Company ZZ to act as its distributor and as a conduit for kickback payments to the Government of the Republic of Iraq in connection with the OFFP contracts.

d. It was a further part of the conspiracy that CNH France caused the transmission of international wire communications, to and from the United States: (i) to provide notice to the U.N. that CNH France goods had been shipped to, and inspected in, Iraq; and (ii) to provide notice to the bank used by CNH France that the U.N. was authorizing payments pursuant to the contracts.

OVERT ACTS

21. In furtherance of the conspiracy and to accomplish its unlawful object, the following acts, among others, were committed within the territory of the United States and elsewhere:

Contract 930323

a. On or about June 27, 2001, CNH France executed a contract, referenced by the U.N. as Contract 930323, with the Iraqi Ministry of Oil to supply five wheel loaders with spare parts and two graders with spare parts for €825,189, which included an extra 10% to be used to pay a kickback to the Iraqi government.

b. On or about June 24, 2001, Employee D executed a side letter agreement on behalf of CNH France with the Ministry of Oil promising to pay a 10% kickback to the Iraqi government “either in cash or through a mechanism,” and noting that the kickback amount was included in the contract amount for Contract 930323.

c. On or about October 17, 2001, upon notification of the U.N.'s approval of Contract 930323, BNP-Paribas in New York, New York, sent a facsimile to its Paris branch issuing a letter of credit in favor of CNH France for €825,189 to be paid upon delivery of the wheel loaders and graders with spare parts to Iraq.

d. In or about 2001, Company ZZ paid the Iraqi government approximately \$74,269 in kickbacks on behalf of CNH France in connection with Contract 930323.

e. On or about June 15, 2002, CNH France caused its products purchased pursuant to Contract 930323 to be delivered to Iraq, prompting the inspection company to send a facsimile from Iraq to the U.N. in New York, New York, notifying the U.N. that the products had been received and inspected upon entry into Iraq. This notification, in turn, triggered payment by the U.N. to CNH France for Contract 930323.

Contract 930302

f. On or about July 9, 2001, CNH France executed a contract, referenced by the U.N. as Contract 930302, with the Iraqi Ministry of Oil to supply ten backhoe loaders with spare parts for €559,574.40, which included an extra 10% to be used to pay a kickback to the Iraqi government.

g. On or about September 25, 2001, Company ZZ sent via facsimile a letter to Employee D of CNH France discussing the modification of Contract 930302 to increase the number of backhoe loaders from ten to 20, noting a new total price of €1,097,430.40, and including a line item for "10% ASS."

h. On or about September 26, 2001, the U.N. approved an amendment to Contract 930302, adding ten backhoe loaders for a new total contract price of €1,097,430.40.

i. In or about 2001, Employee D created a profitability analysis for Contract 930302, which contained line items reflecting a 5% commission payment to Company ZZ and 10% for ASSFs.

j. In or about 2001, Company ZZ paid the Iraqi government approximately \$87,355 in kickbacks on behalf of CNH France in connection with Contract 930302.

k. On or about March 14, 2002, upon notification of the U.N.'s approval of the amendment to Contract 930302, BNP-Paribas in New York, New York, sent a facsimile to its Paris branch containing an amended letter of credit in favor of CNH France for €1,097,430.40 to be paid upon delivery of the backhoe loaders with spare parts to Iraq.

l. On or about August 13, 2002, CNH France caused its products purchased pursuant to Contract 930302 to be delivered to Iraq, prompting the inspection company to send a facsimile from Iraq to the U.N. in New York, New York, notifying the U.N. that the products had been received and inspected upon entry into Iraq. This notification, in turn, triggered payment by the U.N. to CNH France for Contract 930302.

Contract 830614

n. On or about July 10, 2001, CNH France executed a contract, referenced by the U.N. as Contract 830614, with the Iraqi Ministry of Oil to supply two crawler excavators with hydraulic hammers for €327,838.94, which included an extra 10% to be used to pay a kickback to the Iraqi government.

o. In or about 2001, Employee D created a profitability analysis for Contract 830614, which contained line items reflecting a 5% commission payment to Company ZZ and 10% for ASSFs.

p. In or about 2001, Company ZZ paid the Iraqi government approximately \$26,096 in kickbacks on behalf of CNH France in connection with Contract 830614.

q. On or about May 10, 2002, CNH France caused its products purchased pursuant to Contract 830614 to be delivered to Iraq, prompting the inspection company to send a facsimile from Iraq to the U.N. in New York, New York, notifying the U.N. that the products had been received and inspected upon entry into Iraq. This notification, in turn, triggered payment by the U.N. to CNH France for Contract 830614.

(All in violation of Title 18 U.S.C. §371).

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