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Folder Title:
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SENT BY: SPECIAL UNIT FOR IRAQ ; 6- 8-92 ; 18:35 ;

D. H. A. - S. U. I. →

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U R G E N T

6 August 1992

Dear Dick,

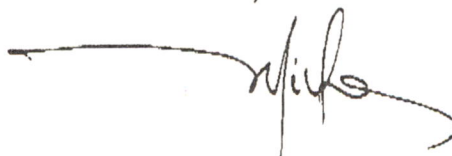
I hope this finds you and your family well.

As it appears that the Security Council will meet tomorrow to review the UN humanitarian programme in Iraq, I sent the attached papers to H.E. Mr. Alexander Watson, Deputy Permanent Representative of the United States to the United Nations in New York (he is in charge of the US Mission during the visit to China of Ambassador Perkins). I felt that the Mission may wish to consider these papers in view of the on-going discussions regarding Iraq's compliance with Security Council resolutions.

The mentioned papers are in line with the discussion we had several days ago and may of interest to you and the Vice President.

Should you wish to contact me, please feel free to do so at 4122 733 6554 (office) or at 4122 781 5045 (home).

Yours,



Milton Moreno

Mr. Richard Porter
Office of the Vice President
United States of America
Telefax No. 001 202 456 6216

NSC
Karl J.

IRAQ
File

2/7

A NEW CHANCE FOR SECURITY COUNCIL RESOLUTION 688

Since the expiration on 30 June 1992 of the Memorandum of Understanding (MOU) signed between the Government of Iraq and the United Nations, the inter-agency humanitarian programme has come to a virtual standstill despite the Secretary-General's announcement on 1 July 1992 that the programme would continue so long as negotiations on the extension of the MOU were pursued. Negotiations could in theory continue for months. From the beginning of July, however, UN personnel have been prevented from implementing the programme (the Government has refused to issue or renew visas and travel permits) and are subject to harassment, vandalism and violence. One UN guard has been killed and several others have been wounded or shot at. In the meantime, the Government has continued its campaign against Shias, Kurds and other vulnerable groups.

Even without an MOU, a legal basis for the humanitarian programme exists in the form of Security Council Resolution (SCR) 688, which was originally intended as the framework for UN humanitarian operations. Iraqi authorities have demonstrated in the past year, and particularly during recent months, that anything less than the determined application of 688 or a similar resolution would allow the present leadership to make a mockery of the UN.

The enforcement of SCR 688 would enable the UN to continue providing assistance to Kurds as well as give it access to the southern marsh area where humanitarian needs are as great as those in the Kurdish region. Furthermore, 688 would enable the UN to maintain a guard contingent of 500 or more men in Iraq.

Sanctions have at best had limited impact. Sanctions are, furthermore, hurting those whom the UN wishes to assist. The sanctions regime should be reviewed and be lifted in areas as the Kurdish region. The lifting of sanctions on a limited basis may enhance stability by reducing the degree of want and deprivation. The Kurdish area currently suffers from both an internal and external blockade.

Recently, an adaption to changed circumstances has been called for, most notably by American and British commentators (Washington Post, International Herald Tribune, The Economist, Financial Times) and by the French Health Minister, Bernard Kouchner. A key problem appears to be defining the area to be exempted from the UN embargo: the term Kurdistan is hardly acceptable. History, recent events and League of Nations documents offer a more suitable name, the Mosul Vilayet. UN sanctions against Iraq could be maintained except for the Kurdish-controlled Mosul Vilayet.

Consideration should also be given to the fact that most Kurds in Iraq live below the 36th parallel. As the UN is denied permanent access to Kirkuk, Allied protection should be extended to cover the area north of the 34th parallel.

The lack of firm action by the international community on humanitarian grounds will affirm the Government's policy of eliminating the Kurds and Shias. The UN is being

SCR 688: A CASE FOR UNRESERVED ENFORCEMENT¹ 4/7

Security Council Resolution 688 was initially hailed as a breakthrough in international humanitarian law. However, unless corrective measures are taken promptly, Resolution 688 risks becoming a mockery of this law and a discouraging example of the inability of the United Nations (UN) to recognise and bring to bear comprehensive powers entrusted to it. In Resolution 688, the Security Council

- "5. Requests further the Secretary-General to use all the resources at his disposal, ...to address urgently the critical needs of the refugees and displaced Iraqi population;"²

Iraq rejected Resolution 688 immediately, citing derogation of its sovereignty. As the Government was anxious to ensure that foreign troops would leave its soil, it agreed to consider a plan under which the UN would provide humanitarian assistance to the Iraqi population.³ This plan was negotiated in the form of a Memorandum of Understanding (MOU) which was signed on 18 April 1991 between the Government of Iraq and the UN. The MOU was created in addition to Resolution 688. In retrospect, the MOU may have undermined the resolution.

The MOU opens with the Iraqi rejection of Resolution 688.⁴ This rejection legally sets the tone in which the UN humanitarian programme was implemented. Moreover, as an agreement between two parties, the MOU required the consent of both; the lack of consent by either party could render the MOU meaningless. Since April 1991, the UN inter-agency humanitarian assistance programme has been based on the MOU and as such, it has functioned with the "agreement[,] cooperation" (MOU, para. 4) and good-will of the Iraqi Government, a situation which is far from the letter and spirit of Resolution 688. The renewal of the MOU on 24 November 1991 further weakened Resolution 688.

The UN humanitarian programme has encountered numerous obstacles resulting from Iraqi non-compliance with terms as agreed in the MOU. In particular, the UN has had difficulty establishing sub-offices and humanitarian centres (UNHUCs) and receiving the Government's promised Iraqi Dinar one million per month in support of the

¹ The views express in this paper are those of the author and do not necessarily represent those of the United Nations.

² In addition, paragraph 4 of Resolution 688 requests the Secretary-General to "pursue his humanitarian efforts in Iraq." Paragraphs 2, 3 and 7 provide for corresponding obligations which are also binding on Iraq.

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humanitarian effort. The circumscribed role of the UN guards,⁵ the UN's inability to effectively prevent, neutralize or obtain a lifting of the internal blockade against the Kurdish region and the UN's inaccessibility to marsh areas in the south, attest to Iraqi disregard of its obligations under 688. They demonstrate the vulnerable position of the UN.

Did the MOU weaken the practical impact of Resolution 688? The conditions created by the non-enforcement of Resolution 688 and the conditional character of the MOU establish the basis for legal contention which could favour Iraq before a tribunal. Although the MOU is not a Security Council document, it provides the modus operandi for the humanitarian programme envisioned in Resolution 688. It could be argued that the application of the MOU, at the expense of Resolution 688, has established a precedent under which the international community has tacitly accepted the Iraqi rejection of the resolution, at least for the duration of the MOU's validity.⁶ Adding to the legal acceptance of the MOU is the inclusion of its terms not only in the Secretary-General's report on the status of compliance by Iraq with obligations placed upon it under Security Council resolutions (S/23687),⁷ but also in Security Council resolutions 706 and 712 in which the MOU is referred to both directly and indirectly. A practice which remains unchallenged can, by establishing a precedent, become legally binding.⁸

The UN inter-agency humanitarian programme has encountered operational difficulties in Iraq. As the programme is the responsibility of the Under-Secretary-General for Humanitarian Affairs, the Office may wish to consider several options.

1. The UN could offer to renew the MOU for a third six-month period with consequences as enumerated;
2. the MOU could be allowed to expire on 30 June 1992, thereby requiring the unreserved application of Resolution 688 as was intended; or
3. an entirely new legal instrument, without the constraints

⁵ The mandate for the guards was negotiated to provide protection only for UN personnel, property and humanitarian supplies.

⁶ The Office may wish to avoid giving the impression of admitting the rejection of Resolution 688 by stressing Iraq's undisputable obligations in international law under 688, and to that effect, use language reflecting the fact that Iraq has yet to comply.

⁷ "... according to the Memorandum of Understanding, the establishment of the United Nations humanitarian centres and the determination of humanitarian needs is to be

of the MOU, could be negotiated.

The third option could be difficult without political will but it would be one means of insisting on the full application of 688 and address the evolving situation with flexibility. The second option is a bold step and would also require considerable commitment on the part of the Security Council and the UN, but it should solve many of the problems the UN has encountered. Through either step 2 or 3, the UN could redress the legal uncertainty which has been created and provide for a more effective humanitarian programme through the transparent application of Resolution 688.

The MOU was conceived as a means of addressing a situation which required immediate action. As such, it broke the impasse created by Iraq's rejection of Resolution 688. The factors and constraints which led to the formulation of the MOU must be appreciated. In light of the experiences of the past twelve months, this Office may wish to re-think not only the limited usefulness of the MOU, but also its links to security concerns.

On 30 June 1992, the MOU will expire. The guarantee of protection provided by the Combined Task Force, based in Incirlik, Turkey, will also end. Should the guarantee not be renewed while the MOU is extended, the burden of the UN to provide humanitarian assistance and provide security assurances for the Kurds and other vulnerable groups would increase considerably. Should the Combined Task Force withdraw, peace-keeping forces, rather than UN guards, might be required to avert a repetition of the events of March 1991. Without the guarantee of protection, the MOU would not suffice to allow the UN to carry out its humanitarian mission in Iraq. The UN cannot assume that the Combined Task Force will necessarily remain in place indefinitely. Even if the Force's mission were extended an additional six months, a renewed MOU would not provide a solution to the longer-term problems facing the UN in Iraq.

The restitution of Resolution 688 may well be the most sound legal basis for the continuation of the UN's operations on the scale currently made possible by the presence of the Combined Task Force in northern Iraq. Resolution 688 would also allow the UN to address the needs of the Shia population in southern Iraq which equal the needs of the Kurds in importance but on account of Realpolitik, are conveniently not discussed.

The Security Council empowered the Secretary-General to use all "resources at his disposal." However, given the plethora of potentially relevant texts (of which a compilation is suggested), it is uncertain whether all applicable resources are really known or fully understood, much less brought to bear.

A renewed or renegotiated MOU may serve to worsen the situation in effect, if not in intention.

On the Legal Status of UN Security Council Resolution 688

7/7

Security Council Resolution 688, some argue, is less binding than other Security Council resolutions. The "Security Council's decisions are binding upon all UN Members," however.¹ Although it is difficult for the international community to enforce Resolution 688, it is not to be taken lightly.

What can be done when a Member neglects or deliberately flouts its Charter obligations as has repeatedly been observed in the case of Iraq? Enforcement measures, such as boycotts or the use of force, may be required. According to the UN Charter (art. 39ss), the Security Council "shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken" based on Chapter VII. (Appropriate measures can also be based on other chapters.)

In examining action to be taken against the Government of Iraq for its behaviour vis-a-vis Iraqi minorities, the Security Council, in passing Resolution 688, did not limit itself to Chapter VII. The Security Council, in invoking "its duties and its responsibilities under the Charter of the United Nations for the maintenance of international peace and security" and making reference to the non-interference principle espoused in art. 2, paragraph 7 of the Charter, called for direct action on humanitarian grounds.

Resolution 706, based explicitly on Chapter VII, reaffirms the importance of Resolution 688. The Security Council states "the need for equitable distribution of humanitarian relief to all segments of the civilian population through effective monitoring and transparency; ... in this regard Resolution 688 (1991) and in particular the importance which the Council attaches to Iraq allowing unhindered access by international humanitarian organizations to all those in need of assistance in all parts of Iraq and making available all necessary facilities for their operation" are essential.

Experience during the Korean War (1950) and the Congo conflict (1961) when the Council authorised the use of force even though Chapter VII was not explicitly cited in the enabling resolutions further substantiates the argument that 688 is binding. Explicit reference was similarly not made in drafting Resolution 751 (SC/5397 of 24 April 1992), an analogous text providing for interference measures on humanitarian grounds in Somalia.

The French co-author of Resolution 688, Professor Mario Bettati, expressed no reservation as to the binding character of Resolution 688². He stated:

"... pas plus que la loi interne n'est moins obligatoire du fait qu'elle est rarement votée par un parlement unanime, la résolution du Conseil de Sécurité (sous réserve de l'accord des cinq membres permanents) n'est pas moins obligatoire du fait de l'opposition de certains Etats. C'est le cas de la résolution 688." (ibidem)

The language of Resolution 688 makes it a mandatory resolution as is, for example, Resolution 687 (the cease-fire resolution).

OFFICE OF THE VICE PRESIDENT
WASHINGTON

DATE: 7/30/91

TO: Karl Jackson

FROM: Richard W. Porter
Counselor to the Vice President

This came to me from a
friend in Geneva who is
working on the Iraq
situation. what do you
think?

7/30 - received NSA

Karl
Comments?

2

Withdrawal/Redaction Sheet

(George Bush Library)

Document No. and Type	Subject/Title of Document	Date	Restriction	Class.
01. Note	From Karl Jackson to Richard Porter, re: Kurdish situation [on back of memo from Richard Porter to Karl Jackson] (1 pp.)	n.d.	(b)(1)	

Collection:

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Date Closed: 4/18/2005	OA/ID Number: 21805-011
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 P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
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 (b)(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
 (b)(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
 (b)(9) Release would disclose geological or geophysical information

TELEFAX TRANSMISSION

To: Mr. Richard Porter
Office of the Vice President

FROM: Milton Moreno

DATE: 29 July 1992

Pages sent: 12

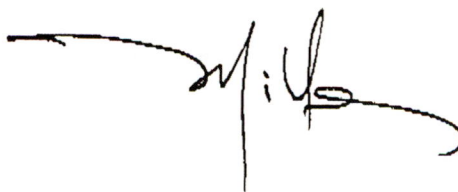
Dear Dick,

Following please find the documents which we discussed over the telephone. These may be of interest to the Vice President as they may provide for policy options in dealing with the present Government of Iraq.

The League of Nations documents are particularly interesting as they provide the legal basis for the establishment of, say, a UN protectorate over the Kurdish areas. This would be more effective in countering Saddam Hussein's defiance of the international community than, for instance, a military strike. As the majority of the Kurdish people live below the 36th parallel it would be necessary to extend allied air cover at least to the 34th parallel. The Mosul Vilayet option would not entail an independent Kurdish state or an autonomous one. Instead, a protectorate since this area of northern Iraq was attached conditionally to Iraq and the latter has obviously failed to live up to the conditions set forth by the League and subsequently passed on to the United Nations when Iraq became a Permanent Member. (President Ozal has expressed interest in the Mosul Vilayet idea as it would help his Government defuse tensions with its own Kurdish population).

I would appreciate it if you would treat the other documents which I have prepared with discretion. Please do not hesitate to contact me if you have any questions.

Yours,



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SUMMARY

LEAGUE OF NATIONS DOCUMENTS WHICH QUESTION IRAQ'S CLAIMS AND OWNERSHIP OF PETROLEUM RESOURCES IN KURDISH AREAS

Following the fall of the Ottoman Empire, the area which is now Iraq was under British mandate until 1932 when it became an independent state with its present, but potentially contested, borders. The issue of the Iraq/Turkey border occupied the League of Nations Council for years.

The attached League of Nations documents reflect Turkey's concerted efforts to obtain international recognition for its legal claims to the Mosul Vilayet, northern (Kurdish) Iraq, which the League of Nations Council conditionally attached to Iraq in 1926. The principal document in the annexed collection is Iraq's Declaration of 30 May 1932. The conditional attachment and the declaration illustrate the meticulous efforts made by the League to protect the inhabitants of the contested area in religious, language and property matters. These inhabitants were mostly of non-Arabic origin, Assyrians, Kurds, Turkomans, etc. The 1932 Declaration appears to have fixed the limits of Iraqi sovereignty in that the detailed minority rights thus prescribed [of particular interest to Mr. M. van der Stoep, Special Rapporteur of the Commission on Human Rights] take precedence over subsequent Iraqi "law, regulation or official action" (art.1) and are even "placed under the guarantee of the League of Nations." (art.10) Moreover, "all rights of whatever nature acquired before the termination of the mandatory regime by individuals, associations or juridical persons shall be respected." (art.14)

In 1945, Iraq joined the United Nations while it was still a member of the League of Nations, i.e., without altering the "obligations of international concern" (art. 10) which Iraq incurred as a condition of its independence. The articles mentioned above, some of which have a direct bearing on the question of oil ownership, could not have been unilaterally abrogated by Iraq and consequently, remain fully in force.

Since the Iraqi invasion of Kuwait, Iraq has been repeatedly condemned for grave breaches of international norms. Yet the Security Council has throughout affirmed the commitment of all Member States to the "independence, sovereignty and territorial integrity of Iraq." (Resolutions 686 and 688) Given the implications of the League of Nations documents, Iraq's "sovereignty and territorial integrity" under international law, are conditioned; use of these terms in official UN documents does not convey rights Iraq has not acquired in due course.

With regard to the oil ownership question, these documents provide for a prima facie ownership case in favor of some Turkish citizens and Kurdish tribes in whose ancestral lands the largest oil field in Kurdistan is situated.

3/12
REBIRTH OF A KINGDOM
AND
BIRTH OF A NATION

DOCUMENTS ON THE GENESIS OF THE KINGDOM OF IRAQ
WITH SPECIAL EMPHASIS ON THE MOSUL VILAYET

The Mosul Vilayet



This map was composed on the basis of those attached to the League of Nations Commission of Inquiry on Iraq (from: Dr.P.E.J.BOMLI, "L'Affaire de Mossoul", H.J.

According to the Report by H.M.'s Government to the League of Nations (year 1929 (p.71), the 1920 census revealed:

vilayets	surface km ²	Sunnites	Shiites	Jews
Baghdad	141227	524414	750421	6256
Basra	138741	42558	721414	1008
Mosul	91009	579713	22180	1483
total	370977	1146685	1494015	8748

* estimated now at some 5 mio

Geneva, August 16th, 1932.

LEAGUE OF NATIONS

RECEIVED IN
REGISTRY
19 SEP 1932

REQUEST OF THE KINGDOM OF IRAQ FOR ADMISSION TO THE LEAGUE OF NATIONS

The Secretary-General has the honour to communicate to the Members of the League of Nations, for consideration :

1. A letter from the United Kingdom Secretary of State for Foreign Affairs, dated London, July 26th, 1932;
2. A letter from the Prime Minister of Iraq, dated Baghdad, July 12th, 1932, relating to the request of Iraq for admission to the League of Nations;
3. A memorandum from the Iraqi Government;
4. A Declaration, made at Baghdad on May 30th, 1932, containing the guarantees given to the Council by the Iraqi Government.

In accordance with the proposal of the Government of the United Kingdom, the request of the Iraqi Government will be placed, in conformity with Rule 4, paragraph 3 of the Rules of Procedure of the Assembly, on the Supplementary List of items to the Agenda of the thirteenth Ordinary Session of the Assembly.

1. LETTER, DATED JULY 28TH, 1932, FROM THE BRITISH UNDER-SECRETARY
OF STATE FOR FOREIGN AFFAIRS.

London, July 26th, 1932.

To the Secretary-General.

By their resolution of January 28th, 1932, the Council of the League of Nations declared their intention to make the termination of the mandatory regime in Iraq subject to two conditions, one of which was the admission of that country to the League of Nations. In a report in connection with this question submitted to the Council on May 19th, the Council's rapporteur drew attention to the above-mentioned resolution, and pointed out that the termination of the mandatory regime in Iraq would not be effected until, *inter alia*, Iraq had been admitted to the League of Nations in accordance with the relevant provisions of the Covenant. M. Fotitch's report was approved by the Council in their resolution of the same day.

2. I am now directed by His Majesty's Principal Secretary of State for Foreign Affairs to transmit to you herewith in original a letter from the Prime Minister of Iraq, requesting that the Kingdom of Iraq may be admitted as a member of the League of Nations, in accordance with the terms of Article 2, paragraph 2, of the Covenant of the League of Nations, together with an explanatory memorandum which forms the enclosure in that letter, and a copy of the Declaration of Guarantees furnished to the Council, which is an enclosure to the memorandum.

The original of the Declaration of Guarantees was sent to you in Foreign Office letter No. B 3102/9/93 of June 27th.

3. Sir John Simon will be grateful to you if the request of the Iraqi Prime Minister may be placed on the Agenda of the next meeting of the Assembly of the League, and if that request may, in the meantime, be brought to the notice of States Members of the League of Nations in accordance with Nury Pasha's desire.

(Signed) G. W. FENDEL.

Series of Lecture of Nations Publications

VIL. POLITICAL
1912. VII. 1.

S. A. N. 1456 (F. 1380) (1) 9/22, Imp. A. Gruchanov

To the Secretary-General

I have the honour to request that the Kingdom of
of the League of Nations, in accordance with the terms
Covenant of the League of Nations, and that this request
the next meeting of the Assembly of the League.

The Government of Iraq is prepared to accept the paragraph 2, of the Covenant, and to carry out all the of the League.

The Government of Iraq will send representative explanations to the Assembly. In the meantime I have to give information on the points which are usually considered with the admission of new Members to the League.

It is requested that this application may be brought before all States Members of the League.

3. MEMORANDUM FROM THE IRA

1. Iraq was one of the territories described in A reached a stage of development where their existence provisionally recognised subject in the rendering of a by a mandatory until such time as they were able to slun

The mandate for Iraq was entrusted to His Britannic Majesty's Government by a Thesaurus of the League of Nations Council in April, 1920; but the normal conception of a mandate in the case of Iraq is implying a form of tutelage instead of independence which the Iraqi State had even then achieved. The United Kingdom and France were accordingly placed upon equal basis as approved by the Council of the League of Nations on September 27th, 1924, as giving effect to the provisions

2. Subject only to the limitations imposed by U was organised as a fully self-governing kingdom, with independent sovereign State. The guiding principle of subsequent treaties between the United Kingdom and Governments have from the first set before themselves, earliest possible date of a fully independent State, and fit to assume not only the privileges but also the to the League of Nations.

3. With this end in view external mandatory control Iraqi Government assumed year by year an increasing position was reached that Iraq was virtually governing United Kingdom were satisfied that the country had no assistance of a mandatory end, in the words of Article 22nd above."

4. Their view that Iraq was fit for emancipation. Government of the United Kingdom to the Council of meeting in September, 1931, the Council, however, regime in Iraq could be terminated that country must conditions of which the first three were :

- (a) It must have a settled Government maintaining the regular operation of essential Government services;

5. The question whether these conditions, among others, were fulfilled in the case of Iraq, was subsequently made by the Permanent Mandates Commission, and in the light of that body, the Council, on January 28th, 1932, does pronounce the termination of the mandatory regime upon Iraq. The Council, in its resolution of January 28th, 1932, of the League of Nations, provided that Iraq should in the meantime be placed under the administration of the British and French before the Council, the nature of which were specified in the resolution.

7. Upon the admission of Iraq to membership of the League of Nations, the Treaty of Alliance between Iraq and the United Kingdom dated June 30th, 1930, will enter into operation. At the request of the League Council, the Permanent Mandates Commission also examined this instrument, and reported that the obligations entered into thereunder by Iraq towards the United Kingdom would not infringe the independence of the new State. The Council duly took note of this opinion at its meeting on January 28th, 1932.

8. It follows from the foregoing information that, upon the admission of Iraq to membership of the League, Article 22 of the Covenant will automatically cease to apply, all external control will be withdrawn and Iraq will be fully self-governing.

9. The kingdom of Iraq has already been formally recognised by the following Governments, who have either diplomatic or consular representatives in Iraq:

Belgium, the United Kingdom, Czechoslovakia, Denmark, Egypt, France, Germany, Greece, Hedjaz-Nejd, Italy, the Netherlands, Norway, Persia, Poland, Sweden, Turkey, and the United States of America.

The kingdom of Iraq has also concluded on its own behalf several treaties of settlement and friendship with foreign States, and acceded to the Pact of Paris for the Renunciation of War.

10. The form of government established in Iraq is a Constitutional Monarchy with Ministers responsible to a bi-cameral Parliament. Parliamentary government, in its present form, has been in existence in Iraq since November, 1925.

11. Iraq possesses well-defined frontiers with all limitrophe States. Certain doubts having arisen, however, regarding the precise definition and application of the frontier between Iraq and Syria, it was agreed to refer the matters in dispute to the Council of the League of Nations, and to accept the decision of that body as final.

12. The Declaration referred to in paragraph 6 above ensures the full observance of all international engagements assumed by the Iraqi Government or by the Government of the United Kingdom on behalf of Iraq.

13. The kingdom of Iraq possesses no naval forces. Its army (including a small air force) has a total strength of approximately 10,500 men. Its strength is not in excess of that required to maintain internal order and the necessary minimum defences. The army does not possess any of the more powerful modern weapons of attack.

The kingdom of Iraq is pledged by its adherence to the Pact of Paris never to resort to war as an instrument of national policy.

It is the intention of the Iraqi Government to accede as soon as possible to the Convention relating to the supervision of the international trade in arms and ammunition and in implements of war signed at Geneva on June 17th, 1925, and at the same time to assume in respect of Iraqi territory the same undertakings as those set forth in the first paragraph of Article 28 of that Convention.

4. DECLARATION OF THE KINGDOM OF IRAQ, MADE AT BAGHDAD ON MAY 30TH, 1932, ON THE OCCASION OF THE TERMINATION OF THE MANDATORY REGIME IN IRAQ, AND CONTAINING THE GUARANTEES GIVEN TO THE COUNCIL BY THE IRAQI GOVERNMENT.

CHAPTER I.

Article 1.

Protection of Minorities. The stipulations contained in the present chapter are recognised as fundamental laws of Iraq, and no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action now or in the future prevail over them.

Article 2.

1. Full and complete protection of life and liberty will be assured to all inhabitants of Iraq without distinction of birth, nationality, language, race or religion.

2. All inhabitants of Iraq will be entitled to the free exercise, whether public or private, of any creed, religion or belief, whose practices are not inconsistent with public order or public morals.

Article 3.

Ottoman subjects habitually resident in the territory are deemed to have acquired on that date Iraqi nationality in accordance with Article 30 of the Law on conditions laid down in the Iraqi Nationality Law of October 1932.

Article 4.

1. All Iraqi nationals shall be equal before the law political rights without distinction as to race, language or religion.

2. The electoral system shall guarantee equitable representation to linguistic minorities in Iraq.

3. Differences of race, language or religion shall not be a ground for discrimination in the enjoyment of civil or political rights, public employments, functions and honours, or the exercise of professions.

4. No restriction will be imposed on the free use by individuals in private intercourse, in commerce, in religion, in the press or at public meetings.

5. Notwithstanding the establishment by the Iraqi Government of a single official language, and notwithstanding the special arrangements made under Article 9 of the present Declaration, regarding the languages, adequate facilities will be given to all Iraqi nationals the official language, for the use of their language, either in private or in public.

Article 5.

Iraqi nationals who belong to racial, religious or linguistic minorities shall enjoy the same rights and freedoms in law and in fact as other Iraqi nationals. They have an equal right to maintain, manage and control at their disposal, in the future, charitable, religious and social institutions, establishments, with the right to use their own language therein.

Article 6.

The Iraqi Government undertakes to take, as regards the family law and personal status, measures in accordance with the customs and usage of the minorities belonging.

The Iraqi Government will communicate to the Council of the League of Nations information regarding the manner in which these measures are carried out.

Article 7.

1. The Iraqi Government undertakes to grant full authorisation to the churches, synagogues, cemeteries and charitable works and pious foundations of minority religious communities.

2. Each of these communities shall have the right of administrative districts, competent to administer pious foundations. These councils shall be competent to deal with the collection and the expenditure thereof in accordance with the wishes in use among the community. These communities shall have the property of orphans, in accordance with law. The Council of the Government.

3. The Iraqi Government will not refuse, for the formation of institutions, any of the necessary facilities which may be of that nature.

Article 8.

1. In the public educational system in towns and considerable proportion of Iraqi nationals whose mother tongue is not Arabic, the Iraqi Government will make provision for adequate primary school instruction shall be given to the children of their own language; it being understood that this provision shall be made from making the teaching of Arabic obligatory for all.

2. In towns and districts where there is a considerable proportion of Iraqi nationals belonging to racial, religious or linguistic minorities, the Iraqi Government will make provision for adequate public funds under the State, municipal or other budgets for the purposes of the minorities.

Article 9.

1. Iraq undertakes that in the liwas of Mosul, Arbil, Kirkuk and Sulaimaniya, the official language, side by side with Arabic, shall be Kurdish in the qadhas in which the population is predominantly of Kurdish race.

In the qadhas of Kifri and Kirkuk, however, in the liwa of Kirkuk, where a considerable part of the population is of Turcoman race, the official language, side by side with Arabic, shall be either Kurdish or Turkish.

2. Iraq undertakes that in the said qadhas the officials shall, subject to justifiable exceptions, have a competent knowledge of Kurdish or Turkish as the case may be.

3. Although in these qadhas the criterion for the choice of officials will be, as in the rest of Iraq, efficiency and knowledge of the language, rather than race, Iraq undertakes that the officials shall, as hitherto, be selected, so far as possible, from among Iraqis from one or other of these qadhas.

Article 10.

The stipulations of the foregoing articles of this Declaration, so far as they affect persons belonging to racial, religious or linguistic minorities, are declared to constitute obligations of international concern and will be placed under the guarantee of the League of Nations. No modification will be made in them without the assent of a majority of the Council of the League of Nations.

Any Member of the League represented on the Council shall have the right to bring to the attention of the Council any infraction or danger of infraction of any of these stipulations, and the Council may thereupon take such measures and give such directions as it may deem proper and effective in the circumstances.

Any difference of opinion as to questions of law or fact arising out of these articles between Iraq and any Member of the League represented on the Council shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. Any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.

CHAPTER II.

Article 11.

Most-favoured-nation Clause.

1. Subject to reciprocity, Iraq undertakes to grant to Members of the League most-favoured-nation treatment for a period of ten years from the date of its admission to membership of the League of Nations.

Nevertheless, should measures taken by any Member of the League of Nations, whether such measures are in force at the above-mentioned date or are taken during the period contemplated in the preceding paragraph, be of such a nature as to disturb to the detriment of Iraq the balance of trade between Iraq and the Member of the League of Nations in question, by seriously affecting the chief exports of Iraq, the latter, in view of its special situation, reserves to itself the right to request the Member of the League of Nations concerned to open negotiations immediately for the purpose of restoring the balance.

Should an agreement not be reached by negotiation within three months from its request, Iraq declares that it will consider itself as freed, vis-à-vis of the Member of the League in question, from the obligation laid down in the first sub-paragraph above.

2. The undertaking contained in paragraph 1 above shall not apply to any advantages which are, or may in the future be, accorded by Iraq to any adjacent country in order to facilitate frontier traffic, or to those resulting from a Customs union concluded by Iraq. Nor shall the undertaking apply to any special advantages in Customs matters which Iraq may grant to goods the produce or manufacture of Turkey or of any country whose territory was in 1914 wholly included in the Ottoman Empire in Asia.

Article 12.

Judicial Organisation.

A uniform system of justice shall be applicable to all, Iraqis and foreigners alike. It shall be such as effectively to ensure the protection and full exercise of their rights both to foreigners and to nationals.

The judicial system at present in force, and based on Articles 2, 3 and 4 of the Agreement between the Mandatory Power and Iraq, signed on March 4th, 1931, shall be maintained for a period of 10 years from the date of the admission of Iraq to membership of the League of Nations.

Appointments to the posts reserved for foreign jurists by Article 2 of the said Agreement shall be made by the Iraqi Government. Their holders shall be foreigners, but selected without distinction of nationality; they must be fully qualified.

Article 13.

International Conventions.

Iraq considers itself bound by all the international agreements and conventions, both general and special, to which it has become a party, whether by its own action or by that of the Mandatory Power acting on its behalf. Subject to any right of denunciation provided for therein, such agreements and conventions shall be respected by Iraq throughout the period for which they were concluded.

Article 14.

Acquired Rights and Financial Obligations.

Iraq, taking note of the resolution of the Council of the League of Nations of September 15th 1925 :

1. Declares that all rights of whatever nature acquired before the termination of the mandatory regime by individuals, associations or juridical persons shall be respected.

2. Undertakes to respect and fulfil all financial obligations of whatever nature assumed on Iraq's behalf by the Mandatory Power during the period of the Mandate.

Article 15.

Freedom of Conscience.

Subject to such measures as may be essential for the maintenance of public order and morality, Iraq undertakes to ensure and guarantee throughout its territory freedom of conscience and worship and the free exercise of the religious, educational and medical activities of religious missions of all denominations, whatever the nationality of those missions or of their members.

Article 16.

Final Clause.

The provisions of the present chapter constitute obligations of international concern. Any Member of the League of Nations may call the attention of the Council to any infraction of these provisions. They may not be modified except by agreement between Iraq and the Council of the League of Nations acting by a majority vote.

Any difference of opinion which may arise between Iraq and any Member of the League of Nations represented on the Council, with regard to the interpretation or the execution of the said provisions, shall, by an application by such Member, be submitted for decision to the Permanent Court of International Justice.

The undersigned, duly authorised, accepts on behalf of Iraq, subject to ratification, the above provisions, being the declaration provided for by the resolution of the Council of the League of Nations of May 19th, 1932.

Done at Baghdad on this thirtieth day of May 1932

in a single copy which shall be deposited in the archives of the Secretariat of the League of Nations.

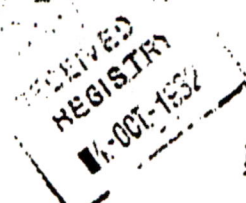
(Signed) NOORY SA'ID,

Prime Minister of Iraq.

the Council and the Members
of the League.]

Geneva, October 1st, 1932.

7/12



LEAGUE OF NATIONS

ADMISSION OF NEW MEMBERS TO THE LEAGUE OF NATIONS KINGDOM OF IRAQ

Report presented by the Sixth Committee of the Assembly.

Rapporteur : H. E. M. YEVITCH (Yugoslavia).

The Sixth Committee has taken note of the report of the Sub-Committee which was instructed to consider the application of the Kingdom of Iraq. The Sixth Committee approves of the report and unanimously recommends that the Assembly should admit the Kingdom of Iraq to the League of Nations.

Iraq, whose application for admission the Sixth Committee has been requested to examine, is the first of the territories referred to in Article 22 of the Covenant that the Council, after having heard the advice of the competent organs of the League, has thought fit to be emancipated from the mandate system in accordance with the general rules applicable in that connection.

The Council made the termination of this system in Iraq subject to two conditions, the first of which has already been fulfilled : Iraq has subscribed to a declaration whereby it enters into the undertakings required by the Council in regard to the protection of minorities, the economic system, judicial organisation, international conventions, acquired rights and financial obligations, and freedom of conscience.

Admission to the League in accordance with the relevant provisions of the Covenant is the second condition demanded by the Council for the termination of the mandate system in Iraq.

In accordance with precedent, the Sub-Committee has based its examination on the questionnaire that has ordinarily been employed for admission of new Members. The questionnaire is as follows :

1. Is the application of the Kingdom of Iraq for admission to the League of Nations in order?
2. Is Iraq recognised *de jure* or *de facto*, and by what States?
3. Does the country possess a stable Government and fixed frontiers?
4. Is the country fully self-governing?
5. What have been the acts and declarations of the Kingdom of Iraq with regard to :
 - (a) Its international obligations;
 - (b) The regulations of the League concerning armaments?

Several of the points in this questionnaire have already been discussed at length in the course of the Council's enquiry with regard to the termination of the mandate system in Iraq.

To the first question the Sub-Committee replies in the affirmative.

In answer to the second question, it states that the Kingdom of Iraq has already been formally recognised by a considerable number of countries. It has acceded to the Paris Pact for the renunciation of war.

To the third question the Sub-Committee replies in the affirmative.

With reference to the precise definition and delimitation on the ground of the frontier between Iraq and Syria, the Committee has noted a declaration by which the Iraqi Government confirms that it will, for its part, accept as final such decisions as the Council of the League of Nations may reach in accordance with the procedure instituted by the Council's decision of December 9th, 1931, at the request of the British and French Governments.

The reply to the fourth question is in the affirmative.

As regards the fifth question, the Sub-Committee has noted the letter from the Prime Minister of Iraq dated July 12th, in which the Iraqi Government states that it is prepared to accept the conditions laid down in Article 1, paragraph 2, of the Covenant and to fulfil all the obligations which membership of the League implies.

With reference to the regulations of the League concerning armaments, the Sub-Committee has noted the report of the Permanent Advisory Commission for Military, Naval and Air Questions, which is appended to the present report.

APPENDIX.

MILITARY, NAVAL AND AIR FORCES OF THE KINGDOM OF IRAQ : OPINION OF THE PERMANENT ADVISORY COMMISSION.

The Permanent Advisory Commission for Military, Naval and Air Questions considers that, from the point of view of military, naval and air armaments, the present state of the military, naval and air forces of the Kingdom of Iraq constitutes no obstacle to its admission to the League of Nations.

8/12

Geneva, October 3rd, 1932.

9

Sir,

By order of the President of the
Assembly of the League of Nations and in
confirmation of my telegram of to-day's date,
I have the honour to inform Your Excellency
that, at its meeting on the 3rd of October,
the Assembly of the League declared the
Kingdom of Iraq a member of the League of
Nations.

I have the honour to be,

Sir,

Your Excellency's obedient Servant:

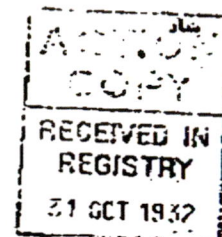
(S) (E) (D).

Secretary-General.

MINISTRY FOR FOREIGN AFFAIRS
BAGHDAD, IRAQ.

العراق
وزارة الخارجية

No. 6785
Date 17th October, 1932.



Sir,

I have the honour to acknowledge receipt
of your letter dated the 3rd October, 1932, in which
you kindly informed me that the Assembly of the
League of Nations, at its meeting on the 3rd of October,
declared the Kingdom of Iraq a member of the League.

I have the honour to be,

Sir,

Your obedient servant,

Jafar al Askeri

Minister for Foreign Affairs.

The Secretary-General,
League of Nations,
Geneva.

His Excellency
Jafar Pasha al Askeri,
Minister of Foreign Affairs,
BAGHDAD, Iraq.

9/12

SCR 688: A CASE FOR UNRESERVED ENFORCEMENT¹

Security Council Resolution 688 was initially hailed as a breakthrough in international humanitarian law. However, unless corrective measures are taken promptly, Resolution 688 risks becoming a mockery of this law and a discouraging example of the inability of the United Nations (UN) to recognise and bring to bear comprehensive powers entrusted to it. In Resolution 688, the Security Council

- "5. Requests further the Secretary-General to use all the resources at his disposal, ...to address urgently the critical needs of the refugees and displaced Iraqi population;"²

Iraq rejected Resolution 688 immediately, citing derogation of its sovereignty. As the Government was anxious to ensure that foreign troops would leave its soil, it agreed to consider a plan under which the UN would provide humanitarian assistance to the Iraqi population.³ This plan was negotiated in the form of a Memorandum of Understanding (MOU) which was signed on 18 April 1991 between the Government of Iraq and the UN. The MOU was created in addition to Resolution 688. In retrospect, the MOU may have undermined the resolution.

The MOU opens with the Iraqi rejection of Resolution 688.⁴ This rejection legally sets the tone in which the UN humanitarian programme was implemented. Moreover, as an agreement between two parties, the MOU required the consent of both; the lack of consent by either party could render the MOU meaningless. Since April 1991, the UN inter-agency humanitarian assistance programme has been based on the MOU and as such, it has functioned with the "agreement[,] cooperation" (MOU, para. 4) and good-will of the Iraqi Government, a situation which is far from the letter and spirit of Resolution 688. The renewal of the MOU on 24 November 1991 further weakened Resolution 688.

The UN humanitarian programme has encountered numerous obstacles resulting from Iraqi non-compliance with terms as agreed in the MOU. In particular, the UN has had difficulty establishing sub-offices and humanitarian centres (UNHUCs) and receiving the Government's promised Iraqi Dinar one million per month in support of the

¹ The views express in this paper are those of the author and do not necessarily represent those of the United Nations.

² In addition, paragraph 4 of Resolution 688 requests the Secretary-General to "pursue his humanitarian efforts in Iraq." Paragraphs 2, 3 and 7 provide for corresponding obligations which are also binding on Iraq.

³ As a compromise for the withdrawal of the Combined Task Force from northern Iraq, the Government of Iraq agreed to the introduction of UN guards.

⁴ "Security Council Resolution 688... has not been accepted by the Government of Iraq..." (MOU, para. 1)

humanitarian effort. The circumscribed role of the UN guards,⁵ the UN's inability to effectively prevent, neutralize or obtain a lifting of the internal blockade against the Kurdish region and the UN's inaccessibility to marsh areas in the south, attest to Iraqi disregard of its obligations under 688. They demonstrate the vulnerable position of the UN.

Did the MOU weaken the practical impact of Resolution 688? The conditions created by the non-enforcement of Resolution 688 and the conditional character of the MOU establish the basis for legal contention which could favour Iraq before a tribunal. Although the MOU is not a Security Council document, it provides the modus operandi for the humanitarian programme envisioned in Resolution 688. It could be argued that the application of the MOU, at the expense of Resolution 688, has established a precedent under which the international community has tacitly accepted the Iraqi rejection of the resolution, at least for the duration of the MOU's validity.⁶ Adding to the legal acceptance of the MOU is the inclusion of its terms not only in the Secretary-General's report on the status of compliance by Iraq with obligations placed upon it under Security Council resolutions (S/23687),⁷ but also in Security Council resolutions 706 and 712 in which the MOU is referred to both directly and indirectly. A practice which remains unchallenged can, by establishing a precedent, become legally binding.⁸

The UN inter-agency humanitarian programme has encountered operational difficulties in Iraq. As the programme is the responsibility of the Under-Secretary-General for Humanitarian Affairs, the Office may wish to consider several options.

1. The UN could offer to renew the MOU for a third six-month period with consequences as enumerated;
2. the MOU could be allowed to expire on 30 June 1992, thereby requiring the unreserved application of Resolution 688 as was intended; or
3. an entirely new legal instrument, without the constraints

⁵ The mandate for the guards was negotiated to provide protection only for UN personnel, property and humanitarian supplies.

⁶ The Office may wish to avoid giving the impression of admitting the rejection of Resolution 688 by stressing Iraq's undisputable obligations in international law under 688, and to that effect, use language reflecting the fact that Iraq has yet to comply.

⁷ "... according to the Memorandum of Understanding, the establishment of the United Nations humanitarian centres and the determination of humanitarian needs is to be undertaken in agreement and cooperation with the Government of Iraq...: given the need for agreement, the Government's refusal is not to be construed as a unilateral act." (Annex III, p. 17. Emphasis added.)

⁸ The MOU was renewed in November 1991 and may be renewed again.

of the MOU, could be negotiated.

The third option could be difficult without political will but it would be one means of insisting on the full application of 688 and address the evolving situation with flexibility. The second option is a bold step and would also require considerable commitment on the part of the Security Council and the UN, but it should solve many of the problems the UN has encountered. Through either step 2 or 3, the UN could redress the legal uncertainty which has been created and provide for a more effective humanitarian programme through the transparent application of Resolution 688.

The MOU was conceived as a means of addressing a situation which required immediate action. As such, it broke the impasse created by Iraq's rejection of Resolution 688. The factors and constraints which led to the formulation of the MOU must be appreciated. In light of the experiences of the past twelve months, this Office may wish to re-think not only the limited usefulness of the MOU, but also its links to security concerns.

On 30 June 1992, the MOU will expire. The guarantee of protection provided by the Combined Task Force, based in Incirlik, Turkey, will also end. Should the guarantee not be renewed while the MOU is extended, the burden of the UN to provide humanitarian assistance and provide security assurances for the Kurds and other vulnerable groups would increase considerably. Should the Combined Task Force withdraw, peace-keeping forces, rather than UN guards, might be required to avert a repetition of the events of March 1991. Without the guarantee of protection, the MOU would not suffice to allow the UN to carry out its humanitarian mission in Iraq. The UN cannot assume that the Combined Task Force will necessarily remain in place indefinitely. Even if the Force's mission were extended an additional six months, a renewed MOU would not provide a solution to the longer-term problems facing the UN in Iraq.

The restitution of Resolution 688 may well be the most sound legal basis for the continuation of the UN's operations on the scale currently made possible by the presence of the Combined Task Force in northern Iraq. Resolution 688 would also allow the UN to address the needs of the Shia population in southern Iraq which equal the needs of the Kurds in importance but on account of Realpolitik, are conveniently not discussed.

The Security Council empowered the Secretary-General to use all "resources at his disposal." However, given the plethora of potentially relevant texts (of which a compilation is suggested), it is uncertain whether all applicable resources are really known or fully understood, much less brought to bear.

A renewed or renegotiated MOU may serve to worsen the position of the UN and in effect, if not in law, further undermine the exercise of its obligations in Iraq.

On the Legal Status of UN Security Council Resolution 688 12/12

Security Council Resolution 688, some argue, is less binding than other Security Council resolutions. The "Security Council's decisions are binding upon all UN Members," however.¹ Although it is difficult for the international community to enforce Resolution 688, it is not to be taken lightly.

What can be done when a Member neglects or deliberately flouts its Charter obligations as has repeatedly been observed in the case of Iraq? Enforcement measures, such as boycotts or the use of force, may be required. According to the UN Charter (art. 39ss), the Security Council "shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken" based on Chapter VII. (Appropriate measures can also be based on other chapters.)

In examining action to be taken against the Government of Iraq for its behaviour vis-a-vis Iraqi minorities, the Security Council, in passing Resolution 688, did not limit itself to Chapter VII. The Security Council, in invoking "its duties and its responsibilities under the Charter of the United Nations for the maintenance of international peace and security" and making reference to the non-interference principle espoused in art. 2, paragraph 7 of the Charter, called for direct action on humanitarian grounds.

Resolution 706, based explicitly on Chapter VII, reaffirms the importance of Resolution 688. The Security Council states "the need for equitable distribution of humanitarian relief to all segments of the civilian population through effective monitoring and transparency; ... in this regard Resolution 688 (1991) and in particular the importance which the Council attaches to Iraq allowing unhindered access by international humanitarian organizations to all those in need of assistance in all parts of Iraq and making available all necessary facilities for their operation" are essential.

Experience during the Korean War (1950) and the Congo conflict (1961) when the Council authorised the use of force even though Chapter VII was not explicitly cited in the enabling resolutions further substantiates the argument that 688 is binding. Explicit reference was similarly not made in drafting Resolution 751 (SC/5397 of 24 April 1992), an analogous text providing for interference measures on humanitarian grounds in Somalia.

The French co-author of Resolution 688, Professor Mario Bettati, expressed no reservation as to the binding character of Resolution 688². He stated:

"... pas plus que la loi interne n'est moins obligatoire du fait qu'elle est rarement votée par un parlement unanime, la résolution du Conseil de Sécurité (sous réserve de l'accord des cinq membres permanents) n'est pas moins obligatoire du fait de l'opposition de certains Etats. C'est le cas de la résolution 688." (Ibidem)

The language of Resolution 688 makes it a mandatory resolution as is, for example, Resolution 687 (the cease-fire resolution).

¹ UN Charter, article 25:

"The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."

² BETTATI Mario, "Un droit d'ingérence?", *Revue Générale de Droit International Public*, 3, 1991, p.639; BETTATI Mario, KLOCHNER Bernard, et al. "Le devoir d'ingérence", Denoel, Paris 1987.

SENT BY:SPECIAL UNIT FOR IRAQ ;29- 7-92 ; 18:09 ;

D. H. A. - S. U. I. -

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*sent to
Karl Jackson*

TELEFAX TRANSMISSION

To: Mr. Richard Porter
Office of the Vice President

FROM: Milton Moreno

DATE: 29 July 1992

Pages sent: 12

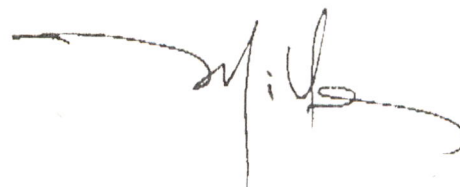
Dear Dick,

Following please find the documents which we discussed over the telephone. These may be of interest to the Vice President as they may provide for policy options in dealing with the present Government of Iraq.

The League of Nations documents are particularly interesting as they provide the legal basis for the establishment of, say, a UN protectorate over the Kurdish areas. This would be more effective in countering Saddam Hussein's defiance of the international community than, for instance, a military strike. As the majority of the Kurdish people live below the 36th parallel it would be necessary to extend allied air cover at least to the 34th parallel. The Mosul Vilayet option would not entail an independent Kurdish state or an autonomous one. Instead, a protectorate since this area of northern Iraq was attached conditionally to Iraq and the latter has obviously failed to live up to the conditions set forth by the League and subsequently passed on to the United Nations when Iraq became a Permanent Member. (President Ozal has expressed interest in the Mosul Vilayet idea as it would help his Government defuse tensions with its own Kurdish population).

I would appreciate it if you would treat the other documents which I have prepared with discretion. Please do not hesitate to contact me if you have any questions.

Yours,



2/12

SUMMARY

LEAGUE OF NATIONS DOCUMENTS WHICH QUESTION IRAQ'S CLAIMS AND OWNERSHIP OF PETROLEUM RESOURCES IN KURDISH AREAS

Following the fall of the Ottoman Empire, the area which is now Iraq was under British mandate until 1932 when it became an independent state with its present, but potentially contested, borders. The issue of the Iraq/Turkey border occupied the League of Nations Council for years.

The attached League of Nations documents reflect Turkey's concerted efforts to obtain international recognition for its legal claims to the Mosul Vilayet, northern (Kurdish) Iraq, which the League of Nations Council conditionally attached to Iraq in 1926. The principal document in the annexed collection is Iraq's Declaration of 30 May 1932. The conditional attachment and the declaration illustrate the meticulous efforts made by the League to protect the inhabitants of the contested area in religious, language and property matters. These inhabitants were mostly of non-Arabic origin, Assyrians, Kurds, Turkomans, etc. The 1932 Declaration appears to have fixed the limits of Iraqi sovereignty in that the detailed minority rights thus prescribed [of particular interest to Mr. M. van der Stoep, Special Rapporteur of the Commission on Human Rights] take precedence over subsequent Iraqi "law, regulation or official action" (art.1) and are even "placed under the guarantee of the League of Nations." (art.10) Moreover, "all rights of whatever nature acquired before the termination of the mandatory regime by individuals, associations or juridical persons shall be respected." (art.14)

In 1945, Iraq joined the United Nations while it was still a member of the League of Nations, i.e., without altering the "obligations of international concern" (art. 10) which Iraq incurred as a condition of its independence. The articles mentioned above, some of which have a direct bearing on the question of oil ownership, could not have been unilaterally abrogated by Iraq and consequently, remain fully in force.

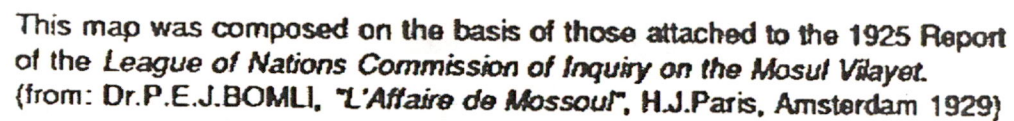
Since the Iraqi invasion of Kuwait, Iraq has been repeatedly condemned for grave breaches of international norms. Yet the Security Council has throughout affirmed the commitment of all Member States to the "independence, sovereignty and territorial integrity of Iraq." (Resolutions 686 and 688) Given the implications of the League of Nations documents, Iraq's "sovereignty and territorial integrity" under international law, are conditioned; use of these terms in official UN documents does not convey rights Iraq has not acquired in due course.

With regard to the oil ownership question, these documents provide for a prima facie ownership case in favor of some Turkish citizens and Kurdish tribes in whose ancestral lands the largest oil field, in Kirkuk, is situated. Accordingly, the seizure protection wording of Resolution 712, paragraph 5, may not stand in a tribunal. It is thus advisable to execute Resolution 706 and 712.

O F A K I N G D O M

O F A N A T I O N

GENESIS OF THE KINGDOM OF IRAQ BASIS ON THE MOSUL VILAYET

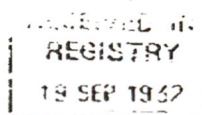


villages	surface km ²	Sunnites	Shiites	Jews	Christians	total
Baghdad	141227	524414	750421	62565	20771	1360304
Basra	138741	42558	721414	10088	2551	785600
Mosul	91009	579713	22180	14835	55470	703378
total	370977	1146685	1494015	87488	78792	2849282

* estimated now at some 5 mio

Geneva, August 16th, 1932.

LEAGUE OF NATIONS



REQUEST OF THE KINGDOM OF IRAQ FOR ADMISSION TO THE LEAGUE OF NATIONS

The Secretary-General has the honour to communicate to the Members of the League of Nations, for consideration:

1. A letter from the United Kingdom Secretary of State for Foreign Affairs, dated London, July 26th, 1932;
2. A letter from the Prime Minister of Iraq, dated Baghdad, July 12th, 1932, relating to the request of Iraq for admission to the League of Nations;
3. A memorandum from the Iraqi Government;
4. A Declaration, made at Baghdad on May 30th, 1932, containing the guarantees given to the Council by the Iraqi Government.

In accordance with the proposal of the Government of the United Kingdom, the request of the Iraqi Government will be placed, in conformity with Rule 4, paragraph 3 of the Rules of Procedure of the Assembly, on the Supplementary List of items to the Agenda of the thirteenth Ordinary Session of the Assembly.

1. LETTER, DATED JULY 26th, 1932, FROM THE BRITISH UNDER-SECRETARY OF STATE FOR FOREIGN AFFAIRS.

London, July 26th, 1932.

To the Secretary-General.

By their resolution of January 28th, 1932, the Council of the League of Nations declared their intention to make the termination of the mandatory regime in Iraq subject to two conditions, one of which was the admission of that country to the League of Nations. In a report in connection with this question submitted to the Council on May 19th, the Council's rapporteur drew attention to the above-mentioned resolution, and pointed out that the termination of the mandatory regime in Iraq would not be effected until, *inter alia*, Iraq had been admitted to the League of Nations in accordance with the relevant provisions of the Covenant. M. Fotitch's report was approved by the Council in their resolution of the same day.

2. I am now directed by His Majesty's Principal Secretary of State for Foreign Affairs to transmit to you herewith in original a letter from the Prime Minister of Iraq, requesting that the Kingdom of Iraq may be admitted as a member of the League of Nations, in accordance with the terms of Article 1, paragraph 2, of the Covenant of the League of Nations, together with an explanatory memorandum which forms the enclosure in that letter, and a copy of the Declaration of Guarantees furnished to the Council, which is an enclosure to the memorandum.

The original of the Declaration of Guarantees was sent to you in Foreign Office letter No. B 3102/933 of June 27th.

3. Sir John Simon will be grateful to you if the request of the Iraqi Prime Minister may be placed on the Agenda of the next meeting of the Assembly of the League, and if that request may, in the meantime, be brought to the notice of States Members of the League of Nations in accordance with Nury Pasha's desire.

(Signed) G. W. RENDEL.

Series of League of Nations Publications

VII. POLITICAL.
1932. VII. 8.

2. LETTER, DATED JULY 12th, 1932, FROM THE PRIME MINISTER OF IRAQ

Baghdad, July 12th, 1932.

To the Secretary-General.

I have the honour to request that the Kingdom of Iraq may be admitted as a Member of the League of Nations, in accordance with the terms of Article 1, paragraph 2, of the Covenant of the League of Nations, and that this request may be placed on the Agenda of the next meeting of the Assembly of the League.

The Government of Iraq is prepared to accept the conditions laid down in Article 1, paragraph 2, of the Covenant, and to carry out all the obligations involved in membership of the League.

The Government of Iraq will send representatives empowered to give all necessary explanations to the Assembly. In the meantime I have the honour to enclose a memorandum giving information on the points which are usually considered by the Assembly in connection with the admission of new Members to the League.

It is requested that this application may be brought without delay to the knowledge of all States Members of the League.

(Signed) NOURY SA'ID,
Prime Minister of Iraq.

3. MEMORANDUM FROM THE IRAQI GOVERNMENT.

Baghdad, July 12th, 1932.

1. Iraq was one of the territories described in Article 22 of the Covenant as having reached a stage of development where their existence as independent nations could be provisionally recognised subject to the rendering of administrative advice and assistance by a mandatory until such time as they were able to stand alone.

The mandate for Iraq was entrusted to His Britannic Majesty by the principal Allied Powers in April, 1920; but the normal conception of a mandate proved to be inappropriate in the case of Iraq as implying a form of tutelage inconsistent with the large measure of independence which the Iraqi State had even then acquired. The relations between the United Kingdom and Iraq were accordingly placed upon a treaty basis in 1922, and the basis was approved by the Council of the League of Nations by their decision of September 27th, 1924, as giving effect to the provisions of Article 22 of the Covenant.

2. Subject only to the limitations imposed by the Anglo-Iraq Treaty of 1922, Iraq was organised as a fully self-governing kingdom, with the powers and attributes of an independent sovereign State. The guiding principle which inspired the Treaty of 1922 and subsequent treaties between the United Kingdom and Iraq, and the aim which the Governments have from the first set before themselves, have been the establishment at the earliest possible date of a fully independent State, animated by the spirit of the Covenant and fit to assume not only the privileges but also the responsibilities involved in admission to the League of Nations.

3. With this end in view external mandatory control was progressively reduced and Iraqi Government assumed year by year an increasing measure of responsibility, until a position was reached that Iraq was virtually governing itself, and the Government of the United Kingdom were satisfied that the country had no further need for the advice or assistance of a mandatory and, in the words of Article 22 of the Covenant, was "able to stand alone".

4. Their view that Iraq was fit for emancipation was duly communicated by the Government of the United Kingdom to the Council of the League of Nations. At the meeting in September, 1931, the Council, however, decided that before the mandatory regime in Iraq could be terminated that country must be shown to satisfy certain definite conditions, of which the first three were:

- (a) It must have a settled Government and an administration capable of maintaining the regular operation of essential Government services;
- (b) It must be capable of maintaining its territorial integrity and political independence;
- (c) It must be able to maintain the public peace throughout the whole territory.

5. The question whether these conditions, among others stipulated by the Council, were fulfilled in the case of Iraq, was subsequently made the subject of a searching examination by the Permanent Mandates Commission, and in the light of the favourable report submitted by that body, the Council, on January 28th, 1932, declared itself prepared in principle to pronounce the termination of the mandatory regime upon the admission of Iraq to the League of Nations, provided that Iraq should in the meantime have entered into undertakings before the Council, the nature of which were specified in the Council's decision.

7. The stipulations contained in the present chapter are recognised as fundamental laws of Iraq, and no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action now or in the future prevail over them.

7. Upon the admission of Iraq to membership of the League of Nations, the Treaty of Alliance between Iraq and the United Kingdom dated June 30th, 1930, will enter into operation. At the request of the League Council, the Permanent Mandates Commission also examined this instrument, and reported that the obligations entered into thereunder by Iraq towards the United Kingdom would not infringe the independence of the new State. The Council duly took note of this opinion at its meeting on January 28th, 1932.

8. It follows from the foregoing information that, upon the admission of Iraq to membership of the League, Article 22 of the Covenant will automatically cease to apply, all external control will be withdrawn and Iraq will be fully self-governing.

9. The kingdom of Iraq has already been formally recognised by the following Governments, who have either diplomatic or consular representatives in Iraq:

Belgium, the United Kingdom, Czechoslovakia, Denmark, Egypt, France, Germany, Greece, Hedjaz-Nejd, Italy, the Netherlands, Norway, Persia, Poland, Sweden, Turkey, and the United States of America.

The kingdom of Iraq has also concluded on its own behalf several treaties of settlement and friendship with foreign States, and acceded to the Pact of Paris for the Renunciation of War.

10. The form of government established in Iraq is a Constitutional Monarchy with Ministers responsible to a bi-cameral Parliament. Parliamentary government, in its present form, has been in existence in Iraq since November, 1925.

11. Iraq possesses well-defined frontiers with all limitrophe States. Certain doubts having arisen, however, regarding the precise definition and application of the frontier between Iraq and Syria, it was agreed to refer the matters in dispute to the Council of the League of Nations, and to accept the decision of that body as final.

12. The Declaration referred to in paragraph 6 above ensures the full observance of all international engagements assumed by the Iraqi Government or by the Government of the United Kingdom on behalf of Iraq.

13. The kingdom of Iraq possesses no naval forces. Its army (including a small air force) has a total strength of approximately 10,500 men. Its strength is not in excess of that required to maintain internal order and the necessary minimum defences. The army does not possess any of the more powerful modern weapons of attack.

The kingdom of Iraq is pledged by its adherence to the Pact of Paris never to resort to war as an instrument of national policy.

It is the intention of the Iraqi Government to accede as soon as possible to the Convention relating to the supervision of the international trade in arms and ammunition and in implements of war signed at Geneva on June 17th, 1925, and at the same time to assume in respect of Iraqi territory the same undertakings as those set forth in the first paragraph of Article 28 of that Convention.

4. DECLARATION OF THE KINGDOM OF IRAQ, MADE AT BAGHDAD ON MAY 30TH, 1932, ON THE OCCASION OF THE TERMINATION OF THE MANDATORY REGIME IN IRAQ, AND CONTAINING THE GUARANTEES GIVEN TO THE COUNCIL BY THE IRAQI GOVERNMENT.

CHAPTER I.

Article 1.

The stipulations contained in the present chapter are recognised as fundamental laws of Iraq, and no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action now or in the future prevail over them.

Article 2.

1. Full and complete protection of life and liberty will be assured to all inhabitants of Iraq without distinction of birth, nationality, language, race or religion.

2. All inhabitants of Iraq will be entitled to the free exercise, whether public or private, of any creed, religion or belief, whose practices are not inconsistent with public order or public morals.

Article 3.

Ottoman subjects habitually resident in the territory of Iraq on August 6th, 1924, are deemed to have acquired on that date Iraqi nationality to the exclusion of Ottoman nationality in accordance with Article 30 of the Lausanne Peace Treaty and under conditions laid down in the Iraqi Nationality Law of October 9th, 1924.

Article 4.

1. All Iraqi nationals shall be equal before the law and shall enjoy the same civil political rights without distinction as to race, language or religion.

2. The electoral system shall guarantee equitable representation to racial, religious, linguistic minorities in Iraq.

3. Differences of race, language or religion shall not prejudice any Iraqi national matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employments, functions and honours, or the exercise of professions or industries.

4. No restriction will be imposed on the free use by any Iraqi national of any language in private intercourse, in commerce, in religion, in the Press or in publications of any kind or at public meetings.

5. Notwithstanding the establishment by the Iraqi Government of Arabic as the official language, and notwithstanding the special arrangements to be made by the Iraqi Government under Article 9 of the present Declaration, regarding the use of the Kurdish and Turkish languages, adequate facilities will be given to all Iraqi nationals whose mother tongue is the official language, for the use of their language, either orally or in writing, before courts.

Article 5.

Iraqi nationals who belong to racial, religious or linguistic minorities will enjoy the same treatment and security in law and in fact as other Iraqi nationals. In particular, they have an equal right to maintain, manage and control at their own expense, or to establish in the future, charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion therein.

Article 6.

The Iraqi Government undertakes to take, as regards non-Muslim minorities, in so far as concerns their family law and personal status, measures permitting the settlement of all questions in accordance with the customs and usage of the communities to which the minorities belong.

The Iraqi Government will communicate to the Council of the League of Nations information regarding the manner in which these measures have been executed.

Article 7.

1. The Iraqi Government undertakes to grant full protection, facilities and authorisation to the churches, synagogues, cemeteries and other religious establishments, charitable works and pious foundations of minority religious communities existing in Iraq.

2. Each of these communities shall have the right of establishing councils, in important administrative districts, competent to administer pious foundations and charitable bequests. These councils shall be competent to deal with the collection of income derived therefrom and the expenditure thereof in accordance with the wishes of the donor or with the custom in use among the community. These communities shall also undertake the supervision of the property of orphans, in accordance with law. The councils referred to above shall be under the supervision of the Government.

3. The Iraqi Government will not refuse, for the formation of new religious or charitable institutions, any of the necessary facilities which may be guaranteed to existing institutions of that nature.

Article 8.

1. In the public educational system in towns and districts in which are resident considerable proportion of Iraqi nationals whose mother tongue is not the official language the Iraqi Government will make provision for adequate facilities for ensuring that in primary school instruction shall be given to the children of such nationals through the medium of their own language; it being understood that this provision does not prevent the Iraqi Government from making the teaching of Arabic obligatory in the said schools.

2. In towns and districts where there is a considerable proportion of Iraqi nationals belonging to racial, religious or linguistic minorities, these minorities will be assured equitable share in the enjoyment and application of sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious or charitable purposes.

1. Iraq undertakes that in the liwas of Mosul, Arbil, Kirkuk and Sulaimaniya, the official language, side by side with Arabic, shall be Kurdish in the qadhas in which the population is predominantly of Kurdish race.

In the qadhas of Kifri and Kirkuk, however, in the liwa of Kirkuk, where a considerable part of the population is of Turcoman race, the official language, side by side with Arabic, shall be either Kurdish or Turkish.

2. Iraq undertakes that in the said qadhas the officials shall, subject to justifiable exceptions, have a competent knowledge of Kurdish or Turkish as the case may be.

3. Although in these qadhas the criterion for the choice of officials will be, as in the rest of Iraq, efficiency and knowledge of the language, rather than race, Iraq undertakes that the officials shall, as hitherto, be selected, so far as possible, from among Iraqis from one or other of these qadhas.

Article 10.

The stipulations of the foregoing articles of this Declaration, so far as they affect persons belonging to racial, religious or linguistic minorities, are declared to constitute obligations of international concern and will be placed under the guarantee of the League of Nations. No modification will be made in them without the assent of a majority of the Council of the League of Nations.

Any Member of the League represented on the Council shall have the right to bring to the attention of the Council any infraction or danger of infraction of any of these stipulations, and the Council may thereupon take such measures and give such directions as it may deem proper and effective in the circumstances.

Any difference of opinion as to questions of law or fact arising out of these articles between Iraq and any Member of the League represented on the Council shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. Any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.

CHAPTER II.

Article 11.

1. Subject to reciprocity, Iraq undertakes to grant to Members of the League most-favoured-nation treatment for a period of ten years from the date of its admission to membership of the League of Nations.

Nevertheless, should measures taken by any Member of the League of Nations, whether such measures are in force at the above-mentioned date or are taken during the period contemplated in the preceding paragraph, be of such a nature as to disturb to the detriment of Iraq the balance of trade between Iraq and the Member of the League of Nations in question, by seriously affecting the chief exports of Iraq, the latter, in view of its special situation, reserves to itself the right to request the Member of the League of Nations concerned to open negotiations immediately for the purpose of restoring the balance.

Should an agreement not be reached by negotiation within three months from its request, Iraq declares that it will consider itself as freed, vis-à-vis of the Member of the League in question, from the obligation laid down in the first sub-paragraph above.

2. The undertaking contained in paragraph 1 above shall not apply to any advantages which are, or may in the future be, accorded by Iraq to any adjacent country in order to facilitate frontier traffic, or to those resulting from a Customs union concluded by Iraq. Nor shall the undertaking apply to any special advantages in Customs matters which Iraq may grant to goods the produce or manufacture of Turkey or of any country whose territory was in 1914 wholly included in the Ottoman Empire in Asia.

Article 12.

A uniform system of justice shall be applicable to all, Iraqis and foreigners alike. It shall be such as effectively to ensure the protection and full exercise of their rights both to foreigners and to nationals.

The judicial system at present in force, and based on Articles 2, 3 and 4 of the Agreement between the Mandatory Power and Iraq, signed on March 4th, 1931, shall be maintained for a period of five years from the date of the admission of Iraq to membership of the League of Nations. Appointments to the posts reserved for foreign jurists by Article 2 of the said Agreement shall be made by the Iraqi Government. Their holders shall be foreigners, but selected without distinction of nationality; they must be fully qualified.

Article 13.

Iraq considers itself bound by all the international conventions, both general and special, and conventions, both general and special, party, whether by its own action or by that of the Mandatory Power. Subject to any right of denunciation provided for therein, such conventions shall be respected by Iraq throughout the period for which they are in force.

Article 14.

Iraq, taking note of the resolution of the Council of Nations of September 15th 1925 :

1. Declares that all rights of whatever nature acquired before the Mandatory regime by individuals, associations or juridical persons shall be respected by Iraq.

2. Undertakes to respect and fulfil all financial obligations of an Iraq's behalf by the Mandatory Power during the period of the Mandate.

Article 15.

Subject to such measures as may be necessary for the maintenance of public order and morality, Iraq undertakes to ensure throughout its territory freedom of conscience and worship and religious, educational and medical activities of religious missions, whatever the nationality of those missions or of their members.

Article 16.

The provisions of the present chapter shall be subject to the provisions of the League of Nations. Any Member of the League of Nations shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations.

Any difference of opinion which may arise between Iraq and any Member of the League of Nations represented on the Council, with regard to the interpretation of the said provisions, shall, by an application by such Member, be submitted to the Permanent Court of International Justice.

The undersigned, duly authorized, accepts on behalf of Iraq, the above provisions, being the declaration provided for by the resolution of the League of Nations of May 19th, 1932.

Done at Baghdad on this thirtieth day of May 1932

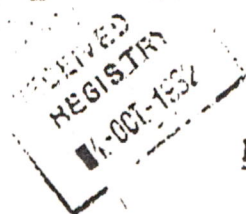
is a single copy which shall be deposited in the archives of the Secretariat of the League of Nations.

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Council and the Members
of the League.]

Geneva, October 1st, 1932.

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LEAGUE OF NATIONS

ADMISSION OF NEW MEMBERS TO THE LEAGUE OF NATIONS KINGDOM OF IRAQ

Report presented by the Sixth Committee of the Assembly.

Rapporteur : H. E. M. YEVITCH (Yugoslavia).

The Sixth Committee has taken note of the report of the Sub-Committee which was instructed to consider the application of the Kingdom of Iraq. The Sixth Committee approves of the report and unanimously recommends that the Assembly should admit the Kingdom of Iraq to the League of Nations.

Iraq, whose application for admission the Sixth Committee has been requested to examine, is the first of the territories referred to in Article 22 of the Covenant that the Council, after having heard the advice of the competent organs of the League, has thought fit to be emancipated from the mandate system in accordance with the general rules applicable in that connection.

The Council made the termination of this system in Iraq subject to two conditions, the first of which has already been fulfilled : Iraq has subscribed to a declaration whereby it enters into the undertakings required by the Council in regard to the protection of minorities, the economic system, judicial organisation, international conventions, acquired rights and financial obligations, and freedom of conscience.

Admission to the League in accordance with the relevant provisions of the Covenant is the second condition demanded by the Council for the termination of the mandate system in Iraq.

In accordance with precedent, the Sub-Committee has based its examination on the questionnaire that has ordinarily been employed for admission of new Members. The questionnaire is as follows :

1. Is the application of the Kingdom of Iraq for admission to the League of Nations in order?
2. Is Iraq recognised *de jure* or *de facto*, and by what States?
3. Does the country possess a stable Government and fixed frontiers?
4. Is the country fully self-governing?
5. What have been the acts and declarations of the Kingdom of Iraq with regard to :
 - (a) Its international obligations;
 - (b) The regulations of the League concerning armaments?

Several of the points in this questionnaire have already been discussed at length in the course of the Council's enquiry with regard to the termination of the mandate system in Iraq.

To the first question the Sub-Committee replies in the affirmative.

In answer to the second question, it states that the Kingdom of Iraq has already been formally recognised by a considerable number of countries. It has acceded to the Paris Pact for the renunciation of war.

To the third question the Sub-Committee replies in the affirmative.

With reference to the precise definition and delimitation on the ground of the frontier between Iraq and Syria, the Committee has noted a declaration by which the Iraqi Government confirms that it will, for its part, accept as final such decisions as the Council of the League of Nations may reach in accordance with the procedure instituted by the Council's decision of December 9th, 1931, at the request of the British and French Governments.

The reply to the fourth question is in the affirmative.

As regards the fifth question, the Sub-Committee has noted the letter from the Prime Minister of Iraq dated July 12th, in which the Iraqi Government states that it is prepared to accept the conditions laid down in Article 1, paragraph 2, of the Covenant and to fulfil all the obligations which membership of the League implies.

With reference to the regulations of the League concerning armaments, the Sub-Committee has noted the report of the Permanent Advisory Commission for Military, Naval and Air Questions, which is appended to the present report.

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FOR IRAQ : 29- 7-92 ; 18:14 ;

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Geneva, October 3rd, 1932.

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Sir,

By order of the President of the
Assembly of the League of Nations and in
confirmation of my telegram of to-day's date,
I have the honour to inform Your Excellency
that, at its meeting on the 3rd of October,
the Assembly of the League declared the
Kingdom of Iraq a member of the League of
Nations.

I have the honour to be,

Sir,

Your Excellency's obedient Servant:

(S) (E) (D).

Secretary-General.

His Excellency
Jafar Pasha al Askeri,
Minister of Foreign Affairs,
BAGHDAD, Iraq.

MINISTRY FOR FOREIGN AFFAIRS
BAGHDAD, IRAQ.

No. 6785
Date 17th October, 1932.

Sir,

I have the honour to acknowledge
of your letter dated the 3rd October, 1932,
you kindly informed me that the Assembly
League of Nations, at its meeting on the
declared the Kingdom of Iraq a member of

I have the honour to be,

Sir,

Your obedient servant

Jafar al Askeri
Minister for Foreign

The Secretary-General,
League of Nations,
Geneva.

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SCR 688: A CASE FOR UNRESERVED ENFORCEMENT¹

Security Council Resolution 688 was initially hailed as a breakthrough in international humanitarian law. However, unless corrective measures are taken promptly, Resolution 688 risks becoming a mockery of this law and a discouraging example of the inability of the United Nations (UN) to recognise and bring to bear comprehensive powers entrusted to it. In Resolution 688, the Security Council

- "5. Requests further the Secretary-General to use all the resources at his disposal, ...to address urgently the critical needs of the refugees and displaced Iraqi population;"²

Iraq rejected Resolution 688 immediately, citing derogation of its sovereignty. As the Government was anxious to ensure that foreign troops would leave its soil, it agreed to consider a plan under which the UN would provide humanitarian assistance to the Iraqi population.³ This plan was negotiated in the form of a Memorandum of Understanding (MOU) which was signed on 18 April 1991 between the Government of Iraq and the UN. The MOU was created in addition to Resolution 688. In retrospect, the MOU may have undermined the resolution.

The MOU opens with the Iraqi rejection of Resolution 688.⁴ This rejection legally sets the tone in which the UN humanitarian programme was implemented. Moreover, as an agreement between two parties, the MOU required the consent of both; the lack of consent by either party could render the MOU meaningless. Since April 1991, the UN inter-agency humanitarian assistance programme has been based on the MOU and as such, it has functioned with the "agreement[,] cooperation" (MOU, para. 4) and good-will of the Iraqi Government, a situation which is far from the letter and spirit of Resolution 688. The renewal of the MOU on 24 November 1991 further weakened Resolution 688.

The UN humanitarian programme has encountered numerous obstacles resulting from Iraqi non-compliance with terms as agreed in the MOU. In particular, the UN has had difficulty establishing sub-offices and humanitarian centres (UNHUCs) and receiving the Government's promised Iraqi Dinar one million per month in support of the

¹ The views express in this paper are those of the author and do not necessarily represent those of the United Nations.

² In addition, paragraph 4 of Resolution 688 requests the Secretary-General to "pursue his humanitarian efforts in Iraq." Paragraphs 2, 3 and 7 provide for corresponding obligations which are also binding on Iraq.

³ As a compromise for the withdrawal of the UN troops from Iraq.

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humanitarian effort. The circumscribed role of the UN guards,⁵ the UN's inability to effectively prevent, neutralize or obtain a lifting of the internal blockade against the Kurdish region and the UN's inaccessibility to marsh areas in the south, attest to Iraqi disregard of its obligations under 688. They demonstrate the vulnerable position of the UN.

Did the MOU weaken the practical impact of Resolution 688? The conditions created by the non-enforcement of Resolution 688 and the conditional character of the MOU establish the basis for legal contention which could favour Iraq before a tribunal. Although the MOU is not a Security Council document, it provides the modus operandi for the humanitarian programme envisioned in Resolution 688. It could be argued that the application of the MOU, at the expense of Resolution 688, has established a precedent under which the international community has tacitly accepted the Iraqi rejection of the resolution, at least for the duration of the MOU's validity.⁶ Adding to the legal acceptance of the MOU is the inclusion of its terms not only in the Secretary-General's report on the status of compliance by Iraq with obligations placed upon it under Security Council resolutions (S/23687),⁷ but also in Security Council resolutions 706 and 712 in which the MOU is referred to both directly and indirectly. A practice which remains unchallenged can, by establishing a precedent, become legally binding.⁸

The UN inter-agency humanitarian programme has encountered operational difficulties in Iraq. As the programme is the responsibility of the Under-Secretary-General for Humanitarian Affairs, the Office may wish to consider several options.

1. The UN could offer to renew the MOU for a third six-month period with consequences as enumerated;
2. the MOU could be allowed to expire on 30 June 1992, thereby requiring the unreserved application of Resolution 688 as was intended; or
3. an entirely new legal instrument, without the constraints

⁵ The mandate for the guards was negotiated to provide protection only for UN personnel, property and humanitarian supplies.

⁶ The Office may wish to avoid giving the impression of admitting the rejection of Resolution 688 by stressing Iraq's undisputable obligations in international law under 688, and to that effect, use language reflecting the fact that Iraq has yet to comply.

⁷ "... according to the Memorandum of Understanding, the establishment of the United Nations humanitarian programme..."

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of the MOU, could be negotiated.

The third option could be difficult without political will but it would be one means of insisting on the full application of 688 and address the evolving situation with flexibility. The second option is a bold step and would also require considerable commitment on the part of the Security Council and the UN, but it should solve many of the problems the UN has encountered. Through either step 2 or 3, the UN could redress the legal uncertainty which has been created and provide for a more effective humanitarian programme through the transparent application of Resolution 688.

The MOU was conceived as a means of addressing a situation which required immediate action. As such, it broke the impasse created by Iraq's rejection of Resolution 688. The factors and constraints which led to the formulation of the MOU must be appreciated. In light of the experiences of the past twelve months, this Office may wish to re-think not only the limited usefulness of the MOU, but also its links to security concerns.

On 30 June 1992, the MOU will expire. The guarantee of protection provided by the Combined Task Force, based in Incirlik, Turkey, will also end. Should the guarantee not be renewed while the MOU is extended, the burden of the UN to provide humanitarian assistance and provide security assurances for the Kurds and other vulnerable groups would increase considerably. Should the Combined Task Force withdraw, peace-keeping forces, rather than UN guards, might be required to avert a repetition of the events of March 1991. Without the guarantee of protection, the MOU would not suffice to allow the UN to carry out its humanitarian mission in Iraq. The UN cannot assume that the Combined Task Force will necessarily remain in place indefinitely. Even if the Force's mission were extended an additional six months, a renewed MOU would not provide a solution to the longer-term problems facing the UN in Iraq.

The restitution of Resolution 688 may well be the most sound legal basis for the continuation of the UN's operations on the scale currently made possible by the presence of the Combined Task Force in northern Iraq. Resolution 688 would also allow the UN to address the needs of the Shia population in southern Iraq which equal the needs of the Kurds in importance but on account of Realpolitik, are conveniently not discussed.

The Security Council empowered the Secretary-General to use all "resources at his disposal." However, given the plethora of potentially relevant texts (of which a compilation is suggested), it is uncertain whether all applicable resources are really known or fully understood, much less brought to bear.

A renewed or renegotiated MOU may serve to worsen the position of the UN and in effect, if not in law, further undermine the exercise of its obligations in Iraq.

On the Legal Status of UN Security Council Resolution 688

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Security Council Resolution 688, some argue, is less binding than other Security Council resolutions. The "Security Council's decisions are binding upon all UN Members," however.¹ Although it is difficult for the international community to enforce Resolution 688, it is not to be taken lightly.

What can be done when a Member neglects or deliberately flouts its Charter obligations as has repeatedly been observed in the case of Iraq? Enforcement measures, such as boycotts or the use of force, may be required. According to the UN Charter (art. 39ss), the Security Council "shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken" based on Chapter VII. (Appropriate measures can also be based on other chapters.)

In examining action to be taken against the Government of Iraq for its behaviour vis-a-vis Iraqi minorities, the Security Council, in passing Resolution 688, did not limit itself to Chapter VII. The Security Council, in invoking "its duties and its responsibilities under the Charter of the United Nations for the maintenance of international peace and security" and making reference to the non-interference principle espoused in art. 2, paragraph 7 of the Charter, called for direct action on humanitarian grounds.

Resolution 706, based explicitly on Chapter VII, reaffirms the importance of Resolution 688. The Security Council states "the need for equitable distribution of humanitarian relief to all segments of the civilian population through effective monitoring and transparency; ... in this regard Resolution 688 (1991) and in particular the importance which the Council attaches to Iraq allowing unhindered access by international humanitarian organizations to all those in need of assistance in all parts of Iraq and making available all necessary facilities for their operation" are essential.

Experience during the Korean War (1950) and the Congo conflict (1961) when the Council authorised the use of force even though Chapter VII was not explicitly cited in the enabling resolutions further substantiates the argument that 688 is binding. Explicit reference was similarly not made in drafting Resolution 751 (SC/5397 of 24 April 1992), an analogous text providing for interference measures on humanitarian grounds in Somalia.

The French co-author of Resolution 688, Professor Mario Bettati, expressed no reservation as to the binding character of Resolution 688². He stated:

"... pas plus que la loi interne n'est moins obligatoire du fait qu'elle est rarement votée par un parlement unanime, la résolution du Conseil de Sécurité (sous réserve de l'accord des cinq membres permanents) n'est pas moins obligatoire du fait de l'opposition de certains Etats. C'est le cas de la résolution 688." (Ibidem)

The language of Resolution 688 makes it a mandatory resolution as is, for example, Resolution 687 (the cease-fire resolution).

Iraq

DISPATCH

US Policy Toward Iraq and the Role of the CCC Program, 1989-90

Lawrence S. Eagleburger

Statement by the Deputy Secretary of State before the House Committee on Banking, Finance, and Urban Affairs, Washington, DC, May 21, 1992.

Mr. Chairman and members of the committee, I plan this morning to do my best to set the record straight on the US Government's policy toward Iraq during the latter half of the 1980s and in 1990 and to place in context the role of the Commodity Credit Corporation (CCC) program. I intend to make clear that the Administration followed a prudent policy toward Iraq at the time—including the management of the CCC program—even though we, and other governments, were ultimately unable to restrain Saddam Hussein.

In explaining US policy, I also plan to address many of the factual and legal misstatements currently being put forth by members of this committee. Quite frankly, the selective disclosure, out of context, of classified documents has led—knowingly or otherwise—to distortions of the record, half truths, and outright falsehoods, all combined into spurious conspiracy theories and charges of a "coverup." For those interested in the truth, let me make the following 10 points:

First, neither the Agriculture Department's investigation of the Commodity Credit Corporation

program, nor the US Attorney's investigation of BNL (Banca Nazionale del Lavoro)-Atlanta has, to date, established diversion to third countries of commodities sold to Iraq or Iraqi misuse of the CCC program to purchase military weapons.

Second, we have found no indication that the State Department had, in November 1989, or has, today, specific evidence that such diversions occurred.

Third, neither the criminal indictment handed down in Atlanta in February 1991 nor the May 1992 plea agreement of a US exporter to Iraq contain evidence of or allegations that CCC-guaranteed commodities for Iraq were diverted to other countries or used for military purposes.

Fourth, approximately 90% of the \$5 billion in credit guarantees extended to Iraq between 1983 and 1990 for the purchase of US agricultural exports was provided prior to FY 1990 and received broad support among Members of Congress and by American farmers and commodity groups.

Fifth, CCC extended only one tranche of \$500 million in credit guarantees to Iraq in FY 1990. Of this \$500 million, over 20% of it did not become effective because of the Gulf war. Moreover, the remaining \$392 million represents an official liability of the Government of Iraq. UN Security Council Resolution 687 provides that Iraq's repudiation of its foreign debts is null and void and demands that Iraq

adhere to all of its obligations. The Administration intends to assert claims against Iraq for any amounts that the US Government is required to pay on CCC guarantees.

Sixth, shortly after the US Attorney's office in Atlanta initiated its investigation of Banca Nazionale del Lavoro, Agriculture reached an agreement with BNL that BNL would not participate in the CCC program for FY 1990. Accordingly, BNL was not assigned any of the \$392 million in CCC credit guarantees extended for agricultural exports to Iraq in FY 1990 and will not receive 1 cent in US taxpayer money for the payment of claims against those guarantees.

Seventh, during the period that the CCC extended the \$392 million in credit guarantees, Iraq actually made hard currency payments of approximately \$847 million. Thus, despite concerns about Iraq's creditworthiness there was a net reduction in CCC's exposure with regard to Iraq of about \$455 million.

Eighth, the October 13, 1989, memorandum, to which members of this committee have repeatedly referred in making certain charges, merely speculates about allegations on Iraq's use of CCC guarantees. Most of the allegations in that memorandum have not, to date, been established.

Ninth, the suggestion that the Administration has sought to "cover



up" its policy toward Iraq is simply not true. Few US Government policies have been so carefully and so extensively examined by the Congress and by the media as this one. To this committee alone, the State Department has provided over 4,000 pages of documents at a cost of over \$100,000 in employee hours. Other agencies have provided large quantities of documents as well.

Finally, the State Department has been prepared to turn over additional documents. However, in light of the knowing and unauthorized disclosure of classified materials by members of this committee, the Administration determined last week, in accordance with its obligations under Executive Order 12356, not to permit further release of documents until it receives appropriate assurances from this committee regarding the storage and protection of such materials. Failing such assurances from the chairman, the Administration is prepared to make available appropriate documents to the Speaker of the House or to members or committees that he might designate.

I will now turn to a discussion of US policy toward Iraq, the role of the CCC program, and the specific questions posed by this committee.

US Policy Toward Iraq

During Iraq's 8-year conflict with Iran, there was broad bipartisan consensus in this country that an Iraqi defeat at the hands of an extremist Iran would be disastrous for our interests in the region. Many of our allies, as well as the Gulf states themselves, shared this view. Although US policy on the war was neutral, there was a subtle leaning toward Iraq in public statements as well as in selected other actions but without any provision of weapons or weapons systems to the Iraqi Government.

With the end of the Iran-Iraq war in the summer of 1988 and by the time President Bush took office, Iraq had emerged as the preeminent military

power in the Persian Gulf. The Administration promptly undertook an extensive review of US policy in that region, including US policy toward Iraq. The key issue was whether US interests in the Persian Gulf remained vital in view of the changed strategic environment there and, if so, whether the existing investment of American power and diplomatic influence in the region reflected that importance. We concluded that access to Persian Gulf oil and the security of key friendly states in the area were, in fact, vital to US national security and that we were committed to defending those interests, hopefully with the support and participation of our friends in the region, Western allies, and Japan.

With regard to Iraq, the Administration recognized the difficulty of developing a clearcut policy. On the one hand, it appeared that Iraq had made a conscious decision to moderate its behavior since we had normalized relations in 1984. Iraq had, for example, reduced its support for terrorist groups and had, in fact, expelled the Abu Nidal Organization from its soil. Moreover, Iraq possessed significant oil reserves, was a major oil producer, and was increasing its supply of oil to this country. Post-war Iraq also appeared seriously interested in economic reconstruction and in expanding commercial ties with the West.

On the other hand, we fully recognized that there were still important issues that stood in the way of close relations. These included Iraq's human rights abuses, its chemical weapons program, our suspicions that Iraq might be developing biological and nuclear weapons, Iraq's efforts to build long-range missiles, and its involvement in Lebanon. Still, Iraqi membership in the Arab Cooperation Council, alongside close American friends such as Egypt and Jordan, appeared to offer the prospect of moderating Iraqi behavior. We also hoped that Iraq

could play a helpful role—or at least not play an unhelpful role—in the Middle East peace process.

Recognizing these competing concerns, the Administration considered three major options in dealing with a post-war Iraq.

First, we could expand our relations and try to embrace the Iraqis;

Second, we could maintain our slow and steady course, seeking to probe, test, and encourage the Iraqis while being wary of their intentions;

Or, third, we could seek to isolate the Iraqis by punishing them for behavior we did not condone.

Given the unpredictability of Saddam's behavior and the uncertainty about his regional aspirations, we rejected the first option of expanding relations rapidly. We also recognized that we could not effectively isolate Iraq by acting unilaterally and that there would be no support from either our European allies or our friends in the Arab world for confrontation with Iraq. The third option, therefore, offered us little leverage over Iraqi behavior while potentially undercutting our broader interests in the Persian Gulf. We thus determined that these broader interests—including continued access to the region's oil, stability of friendly area states, and deterrence of Soviet intervention and influence—required a policy that sought, if possible, to engage Iraq and to offer the Iraqis a mix of incentives and disincentives but without any illusions.

In adopting this policy, we decided to make clear to the Iraqi leadership that any use of chemical or biological weapons or violations of IAEA (International Atomic Energy Agency) nuclear safeguards would lead to economic and political sanctions for which we would seek the broadest possible support from our allies and friends. We also agreed that Iraq's human rights record and its meddling in internal affairs of others would

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continue to weigh heavily on our policy. At the same time, we would encourage Iraq to play a constructive role in the peace process, and we agreed to support the efforts of American companies to participate in Iraq's economic reconstruction and in the development of its energy sector.

In short, the Administration concluded that the evolution of normal relations with Iraq—something that would require more constructive Iraqi behavior in a number of areas—was in the US national interest. Toward this end, we determined that it was worth trying to build on our successful diplomatic cooperation with Iraq during its war with Iran and attempting to develop a modest economic relationship. However, our policy also included maintaining a capable military presence nearby, providing arms and other support to friendly states in the region, and expanding our dialogue with the Soviet Union.

For a period of time, we saw some movement by Iraq in the right direction on several matters. For example, Kurds were allowed to farm again, and they received compensation for seized property; Iraq agreed to pay personal injury claims relating to the crew of the *USS Stark*; FAA [Federal Aviation Administration] advice on airport security was welcomed by Baghdad airport; a first-ever DEA [Drug Enforcement Administration] visit to Iraq led to agreement to cooperate against narcotics trafficking; and we had opened a new cultural center in Baghdad that was successfully reaching out to ordinary Iraqis. Moreover, at a time when Iraq was forcing other Western creditors to accept bilateral debt rescheduling, it continued to repay US-guaranteed loans.

Soon, however, a number of Iraqi statements and actions demonstrated that Iraq was not prepared to adopt a more responsible approach to relations with its neighbors or ourselves. As a result, we began to adjust even our modest efforts downward. We heavily

criticized Iraq's human rights record before the UN Human Rights Commission and in the State Department's human rights country report. We also expelled an Iraqi UN diplomat for involvement in a murder plot. In March 1990, US Customs, working with the British, successfully interdicted an attempt to smuggle capacitors with possible missile and nuclear applications into Iraq. We also consulted with the British about the confiscation of materials for Iraq's development of the so-called "super gun." And we continued against Iraq a strict policy of denial for sales of weapons and weapons systems and intensified our efforts with other countries to tighten existing export controls, focusing on proliferation concerns.

What little remained of the US-Iraqi relationship came to an abrupt end with Iraq's brutal invasion and occupation of Kuwait in August 1990. As it turned out, the fact that the United States had followed a measured policy toward Iraq rather than having sought unilaterally to isolate the Iraqis proved to be a critical factor in our ability to assemble a coalition—which included Arab countries—to expel Saddam from Kuwait and, ultimately, to devastate his military capabilities.

The CCC Program for Iraq

The Commodity Credit Corporation (CCC) of the Department of Agriculture had first made available credit guarantees in connection with export sales to Iraq in 1983, shortly before we resumed diplomatic relations with the Iraqis in 1984. As Under Secretary [of Agriculture] Crowder will explain in greater detail, the CCC program is designed to assist US agricultural exporters and producers by developing foreign markets for US commodities. It is, in the first instance, an export promotion and market development program. The CCC guarantee covers the risk of non-payment by a foreign bank under a letter of credit opened to finance the purchase of US agricultural exports. Iraq was one of more than 40 countries participating in this program, which served to provide benefits for

over 80 different types of US agricultural commodities.

In many respects, our trade balance with Iraq during the latter half of the 1980s was governed by the level of US-guaranteed financing available to Iraq. As US imports of Iraqi oil rapidly expanded toward an estimated \$2.5 billion by 1990, the CCC program helped lessen a growing trade deficit with Iraq. Throughout the period in question and despite its economic difficulties, Iraq maintained a record of consistently and fully meeting financial obligations incurred under the CCC program.

Iraq requested \$1 billion in CCC credit guarantees for FY 1990. As the Administration began to consider this request, it learned that the US Attorney in Atlanta was investigating the Atlanta branch of Banca Nazionale del Lavoro for allegedly conducting a clandestine "greybook" loan operation to Iraq. While much of the money involved in BNL's loan operation was not directly related to the CCC program, approximately \$720 million of BNL-Atlanta's loan portfolio consisted of assigned obligations that were backed by CCC export credit guarantees. Accordingly, as Under Secretary Crowder will explain, investigators with Agriculture's Office of the Inspector General began assisting the US Attorney's investigation in early September 1989.

The Administration took the BNL allegations seriously, even though at the time no wrongdoing on the part of Iraq had been established. Because of the allegations, the Administration initially postponed any decision on Iraq's request for CCC guarantees for FY 1990. Moreover, in Secretary Baker's October 6 meeting with then Iraqi Foreign Minister Tariq Aziz, the Secretary raised the BNL issue, emphasizing the importance of Iraqi cooperation with this investigation, and seeking assurances from the Government of Iraq that it would assist in the investigation. Aziz gave these assur-

ances, and Iraq did cooperate when a team from the Department of Agriculture traveled to Baghdad several months later.

In November 1989, the National Advisory Council on International Monetary and Financial Policies (NAC) met at a senior level to consider Iraq's CCC request. As Deputy Secretary [of the Treasury] Robson will describe further, there was a full exchange on all relevant points regarding the CCC program for Iraq. The Deputy Secretary of Agriculture specifically reported that the BNL investigation had only resulted, to date, in allegations of violations. He further reported that Agriculture's Office of the Inspector General had stated in writing that there was no evidentiary basis for withholding approval of new CCC guarantees for Iraq.

In addition to discussion of the BNL investigation, representatives at the NAC meeting also discussed Iraq's creditworthiness, the importance of Iraq as an agricultural export market, and the Administration's efforts to improve the bilateral relationship. I might note as well that at this time Members of Congress, along with various agricultural trade interests, were urging the Administration to provide the full amount of credit guarantees requested by Iraq.

After a careful balancing of the risks and benefits, the NAC supported the Agriculture Department's recommendation to establish a tiered approach to the CCC program rather than to grant Iraq's request outright. Under this approach, Agriculture decided to extend a first tranche of \$500 million in credit guarantees, with additional guarantees for the year to depend on the results of Agriculture's own administrative review as well as the investigations by its Office of the

Inspector General and the US Attorney in Atlanta. The Administration indicated to the Iraqis that the CCC program would be terminated if abuses were discovered.

The Agriculture Department continued to monitor the BNL investigation and consistently received word from its Office of the Inspector General that there was no reason to recommend that the CCC program not go forward. At the same time, however, Agriculture's own administrative review of Iraq's CCC program indicated a pattern of unexpectedly high prices for certain commodities. Accordingly, by February 1990, without investigations yet completed, the Administration deferred a decision on the second tranche of \$500 million of credit guarantees for Iraq.

During this time, the State Department cooperated with the Justice Department in the Atlanta investigation. This is reflected in correspondence between the two departments in March 1990, in which the State Department offered to work with Justice attorneys to develop a plan to interview Iraqi officials in connection with the BNL investigation.

The State Department also facilitated Agriculture's administrative review of the CCC program for Iraq. In mid-April 1990, a delegation from Agriculture, with a representative from the State Department's Office of the Legal Adviser, traveled to Baghdad for approximately 4 days to meet with the Iraqis and to review their records regarding CCC-guaranteed purchases. The officials were granted access to Iraqi records relating to these purchases. Agriculture issued a report in May on the results of this visit. The report did, in fact, find violations by Iraq of CCC program requirements but did not find diversions of commodities purchased under the program.

After the Agriculture Department had released its report, the Administration chose not to proceed with the second tranche of CCC credit guarantees for Iraq. Indeed, the Administration never granted any further credit guarantees to Iraq beyond those announced in November 1989.

When the United States imposed sanctions against Iraq in August 1990, there were approximately \$1.9 billion in outstanding credit guarantees. Of course, the major portion of those obligations had accumulated during the 1980s. In that regard, it is worth noting that all sanctions legislation against Iraq that the Congress had proposed in the first half of 1990, except for the Inouye-Kasten bill, exempted the CCC program from whatever sanctions might be imposed.

It should also be noted that, of the \$500 million in CCC credit guarantees authorized for FY 1990, only about \$392 million actually became effective prior to the imposition of sanctions. Moreover, during the same period, Iraq actually made hard currency payments under the CCC program of approximately \$947 million. Thus, despite concerns about Iraq's creditworthiness, there was a net reduction in CCC's exposure of about \$455 million. In light of the affirmation in UN Security Council Resolution 687 of Iraq's continued liability for outstanding debts, as well as our own freezing of Iraqi assets, the Administration intends to assert claims against Iraq for debts owed to the United States.

The Committee's Questions

Within this context, let me turn to the committee's questions on the FY 1990 CCC program. As noted above, the State Department, acting in accordance

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with Administration policy, viewed the CCC program as one of the positive elements in our effort to develop a constructive bilateral relationship with Iraq. The State Department believed, in November 1989, that continuation of CCC-supported trade offered the possibility of expanding and improving that bilateral relationship. This would, hopefully, have had the additional benefit of moderating Iraq's conduct in areas of concern to us, such as human rights. By April 1990, however, the State Department no longer supported additional CCC credit guarantees for Iraq.

On the issue of creditworthiness, the State Department viewed Iraq's record of repayment of CCC obligations as excellent, even though there were minor delays from time to time. Indeed, during the period in question, Iraq actually made payments to CCC of more than twice the amount it received in new guarantees.

As for the BNL scandal, that issue, of course, had considerable influence on the course of events. It contributed to the initial delay in considering Iraq's request for \$1 billion in CCC credit guarantees. It led Secretary Baker to request of [Iraqi] Foreign Minister Aziz that Iraq cooperate in the investigation. And it contributed to the decision to apply a tiered approach to Iraq's CCC request, granting only a first tranche of \$500 million while the investigation proceeded.

Finally, the Administration remained highly critical of Iraq's human rights record, even though consideration of that record did not specifically affect the State Department's views on the CCC program.

Mr. Chairman, that is the end of my remarks in response to the questions that you posed. However, I feel compelled in conclusion to comment on the nature of this inquiry. As I prepared for this hearing, I could not but reflect on how the conduct of our government has changed since I began my career with the State Department

more than 30 years ago. We now seem to work in an environment of distrust rather than trust, of confrontation rather than cooperation, of accusation rather than fair inquiry. What has been done by the selective disclosure—out of context—of classified documents, by the distortions of truth, and by the raising of innuendoes where no facts exist to support them is to make exceedingly difficult our ability to engage in the deliberative process necessary to formulate policy. No longer can responsible officials voice differences of opinion, provide candid advice to their superiors, or engage in open discussion and debate on an issue without the constant worry that at some point in the future someone will seek to condemn and vilify them for having done no more than perform their duties honestly and to the best of their abilities. I submit that such a situation is in no one's interest and is a disservice to the good governance of this nation. ■