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Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051
TTY (202) 225-6852

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July 9, 2004

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The Honorable Tom Davis
Chairman
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I understand that you intend to issue a subpoena to investigate potential mismanagement of the Oil for Food program by the United Nations. As we discussed on the floor yesterday, I request that you also issue a subpoena to investigate potential mismanagement of the Development Fund for Iraq (DFI) by the United States.

The Oil for Food program and the DFI are closely related. The Oil for Food program was established by the United Nations to use the proceeds of the sale of Iraqi oil to purchase food, medicines, and other humanitarian goods for Iraqis. When the U.S. occupation of Iraq began in May 2003, the proceeds of the Oil for Food program were transferred to the DFI. The United Nations mandate creating the DFI gave the Coalition Provisional Authority (CPA) control over the fund and directed that the fund be used by the CPA for the benefit of the Iraqi people. The U.N. mandate creating the DFI also established an International Advisory and Monitoring Board (IAMB) to oversee U.S. administration of the DFI.

Serious questions have been raised by independent auditors about how the CPA has managed and accounted for the funds in the DFI. I recently obtained a copy of a preliminary audit by KPMG, the certified public accounting firm hired by the IAMB to conduct audits of the DFI. This audit concludes that the CPA's accounting framework for the DFI was "open to fraudulent acts," that the system's spreadsheets were "maintained by a single accountant" and "prone to error," and that the Administration's failure to examine costs in detail "greatly diminishes the transparency of the expenditures made."

Moreover, it appears that the CPA has obstructed attempts to audit the DFI. The KPMG audit reports that "KPMG has encountered resistance from CPA staff (including the contracting unit) regarding the submission of information required to complete our procedures." Minutes of the meetings of the IAMB reveal that its requests for documents have also been rebuffed. In

particular, the Administration has failed to comply with numerous IAMB requests for U.S. government reports about the payment of approximately \$1.5 billion in DFI funds to Halliburton.

Over the past year, the United States, as the occupying authority in Iraq, has spent a monumental sum of Iraqi funds — approximately \$20 billion — from the DFI. Yet there has been virtually no oversight of how these funds have been spent. For this reason, I ask that any Committee investigation into the Oil for Food program also examine the Development Fund for Iraq with equal diligence.

Background

The Development Fund for Iraq is the successor to the U.N.'s humanitarian Oil for Food Program, which was intended to provide for the basic needs of Iraqis while U.N. sanctions were in effect. On May 22, 2003, U.N. Security Council Resolution 1483 formally transferred control of the Oil for Food assets to the DFI and placed them under the authority of the CPA. In addition to funds from the Oil for Food Program, the DFI also receives the proceeds from the sale of Iraqi oil, as well as repatriated funds and foreign donations.

The Security Council resolution creating the DFI directed the United States to spend the funds in the DFI on behalf of the Iraqi people. The Security Council also imposed other restrictions on U.S. actions. For instance:

- The Security Council required the United States to deposit all oil sale proceeds into the DFI, which is held by the Central Bank of Iraq at the Federal Reserve Bank of New York;
- The Security Council required that all deposits to and spending from the DFI by the United States be done “in a transparent manner;” and
- The Security Council required that the United States ensure that DFI funds were used “to meet the humanitarian needs of the Iraqi people . . . and for other purposes benefiting the people of Iraq.”¹

To ensure that the United States administered the DFI in compliance with these requirements, the Security Council created the International Advisory and Monitoring Board to oversee U.S. stewardship of the DFI. The IAMB is comprised of members representing the United Nations, the International Monetary Fund, the World Bank, and the Arab Fund for Social and Economic Development.² The IAMB was envisioned as the primary vehicle for

¹ United Nations Security Council Resolution 1483 (May 22, 2003). *See also* International Advisory and Monitoring Board, *Terms of Reference* (undated).

² *Id.*

guaranteeing the transparency of the DFI and for ensuring that DFI funds were used properly. According to U.N. Secretary General Kofi Annan, the IAMB was intended to act as the “eyes and ears of the international community.”³

When the United States assumed responsibility for these funds, it explicitly agreed to these terms. As CPA Memorandum Number 4 stated:

As steward for the Iraqi people, the CPA will manage and spend Iraqi Funds, which belong to the Iraqi people, for their benefit [T]hey shall be managed in a transparent manner that fully comports with the CPA’s obligations under international law, including Resolution 1483.⁴

According to a Financial Reporting Matrix on the CPA webpage, the United States has taken into the DFI a total of \$20.2 billion as of June 17, 2004.⁵ Of this amount, \$8.1 billion came from the former U.N. Oil for Food program, and another \$10.8 billion came from the sale of Iraqi oil. The remainder came from repatriated funds, vested assets, and foreign donations. Of the \$20.2 billion collected to date, the United States has committed approximately \$19.1 billion. The single largest private recipient of Iraqi oil proceeds has been Halliburton, which was awarded a sole-source oil infrastructure contract through the U.S. Army Corps of Engineers. To date, the Army Corps reports that Halliburton has been awarded \$1.5 billion from the DFI.⁶

Preliminary KPMG Report

Pursuant to Security Council Resolution 1483, the IAMB announced on April 5, 2004, that it had selected KPMG, an international certified public accounting firm, to audit the Administration’s stewardship of DFI funds.⁷ Although KPMG was supposed to issue its first report on June 30, it missed that deadline because the Administration reportedly obstructed

³ International Advisory and Monitoring Board, *Minutes of the Organizational Meeting* (Dec. 5, 2003).

⁴ Coalition Provisional Authority, *Memorandum No. 4: Contract and Grant Procedures Applicable to Vested and Seized Iraqi Property and the Development Fund for Iraq* (Aug. 19, 2003).

⁵ Coalition Provisional Authority, *Development Fund for Iraq: Financial Reporting Matrix* (June 19, 2004).

⁶ U.S. Army Corps of Engineers, *Frequently Asked Questions: Engineer Support to Operation Iraqi Freedom* (May 11, 2004) (<http://www.hq.usace.army.mil/CEPA/Iraq/March03-table.htm>).

⁷ International Advisory and Monitoring Board, *Press Release: Statement by the International Advisory and Monitoring Board* (Apr. 5, 2004).

KPMG's work. Despite these setbacks, KPMG was able to issue a preliminary report to the IAMB last month. This preliminary report, which I am attaching for your review, raises serious concerns about U.S. compliance with its obligations under Security Council Resolution 1483.

KPMG's audit discloses that the Administration obstructed its work. According to the report, "KPMG has encountered resistance from CPA staff (including the contracting unit) regarding the submission of information required to complete our procedures." KPMG went on to state: "Staff have indicated to KPMG that their workload is already excessive, and that cooperation with KPMG's undertakings is given a low priority."

KPMG officials expressed particular concern that they were being denied information about Halliburton and other companies that received sole-source contracts from the Administration that were funded with Iraqi oil proceeds. According to the report, "KPMG has not been given access to special audit reports" relating to "sole source contracts during the period from inception to 31 December 2003." KPMG predicted correctly that the Administration's lack of compliance "may prevent us from reporting on the June 30 reporting deadline."

In addition to this failure to cooperate, KPMG found serious problems with the CPA's framework for accounting for Iraqi oil proceeds. According to the report, "The accounting system consists of spreadsheets and pivot tables maintained by a single accountant." KPMG concluded that "[t]his lack of a double entry system makes the accounting records much more prone to error."

The KPMG report also expresses concern about cash advances from the DFI that were used for the Commander's Emergency Response Program and the Rapid Regional Response Program. According to KPMG, when receipts for these programs were returned, they were "not recorded on an individual basis." In other words, "While these payments are supported by boxes of receipts, this record keeping greatly diminishes the transparency of the expenditures made, and leaves the DFI open to fraudulent acts."

A Pattern of Obstruction

KPMG's description of Administration obstruction appears to be one example of a wider pattern. Although the Security Council directed the IAMB to begin auditing the DFI in May 2003, the IAMB did not hold its first organizational meeting until December. This delay was reportedly due to CPA's attempts to "limit the Board's auditing powers, while the U.N. and other IAMB member organizations sought comprehensive oversight authority."⁸ Ultimately, CPA

⁸ Open Society Institute, *Open Society Institute Supports the Establishment of New Monitoring Board in Iraq* (Dec. 5, 2003).

officials announced “on the eve of a donor’s conference in October that the IAMB would finally be created with full auditing authority.”⁹

After the IAMB was established, CPA officials repeatedly promised, but failed, to comply with numerous inquiries from the IAMB. According to minutes from the IAMB’s meeting on March 17, 2004, for example, the IAMB learned that “some contracts using DFI funds were awarded to Halliburton without competitive bidding.”¹⁰ Although the IAMB recognized that “special circumstances” potentially could have justified such awards, it “decided to consider further steps, such as the conduct of a special audit of some of the sole-sourced contracts.” The IAMB directed KPMG “to pay special attention” to this issue.¹¹

Mr. Jean-Pierre Halbwachs, the Chairman of the IAMB and the Assistant Secretary General and Controller of the United Nations, sent a written request to Ambassador Bremer on April 5, 2004, asking for “further information on all sole-sourced contracts paid for using DFI funds,” including “contracts amounting to \$1.4 billion [that] were awarded to Halliburton.”¹² The IAMB Chairman also specifically requested copies of “a number of audits relating to these contracts” conducted by the U.S. government. I have attached a copy of this request.

Nearly three weeks later, at its April 23, 2004, meeting, the IAMB “followed up with the CPA on its earlier request to access audits of sole-sourced contracts funded by the DFI, including those by the Defense Contract Audit Agency.”¹³ In response, the CPA claimed that it was “liaising with U.S. government agencies to obtain copies of the audit reports.” The IAMB again asked the CPA “to provide the audit reports expeditiously.”

Another month later, on May 24, 2004, the IAMB reiterated “earlier requests by the Board to obtain audit reports regarding sole source contracts, including those by the Defense

⁹ *Id.*

¹⁰ International Advisory and Monitoring Board, *Minutes of Meeting* (Mar. 17–18, 2004).

¹¹ International Advisory and Monitoring Board, *Press Release: Statement by the International Advisory and Monitoring Board* (Mar. 24, 2004). Press accounts had been appearing at this time reporting that U.S. government auditors, including the Defense Contract Audit Agency and the General Accounting Office, were finding significant problems both with the way the Administration awarded this work and with the manner in which Halliburton carried it out. See, e.g., *U.S. Auditors Criticize Halliburton Subsidiary; KBR Couldn’t Back up Costs, Report Finds*, Washington Post (Mar. 12, 2004).

¹² Letter from Jean-Pierre Halbwachs, Chairman, International Advisory and Monitoring Board, to Ambassador L. Paul Bremer, III, Administrator, Coalition Provisional Authority (Apr. 5, 2004).

¹³ International Advisory and Monitoring Board, *Minutes of Meeting* (Apr. 22–23, 2004).

Contract Audit Agency.”¹⁴ In a briefing to the IAMB on the first stages of its work, KPMG acknowledged that it experienced “difficulties” with CPA officials. The IAMB issued a press release after the meeting, stating that it “looks forward to the imminent receipt of the audits on sole-sourced contracts being conducted by U.S. government agencies.”¹⁵ CPA responded that it would provide the DCAA reports “as soon as clearance from the concerned parties with regards to proprietary information is finalized.”¹⁶

To date, the Administration has not provided any of the requested information on Halliburton. As a result, the IAMB issued a statement on June 22, 2004, criticizing the CPA’s lack of cooperation. According to the statement: “The IAMB regrets, despite its repeated requests, the delay in receiving reports on audits undertaken by various agencies on sole-sourced contracts funded by the DFI.”¹⁷

No Internal CPA Audit

In addition to failing to cooperate with international auditors conducting work mandated by the Security Council, the CPA also failed to follow its own regulations providing for internal audits of expenditures from Iraqi oil proceeds. On June 10, 2003, Ambassador Bremer issued Regulation Number 2, governing the DFI. In section 5(4) of that regulation, Ambassador Bremer directed as follows:

The CPA shall obtain the services of an independent, certified public accounting firm to support the objective of ensuring that the Fund is administered and used in a transparent manner for the benefit of the people of Iraq, and is operated consistent with Resolution 1483.¹⁸

On April 20, 2004, however, CPA officials reported that “CPA did not obtain the services of a certified public accounting firm as it was determined that these services were not those required.”¹⁹ Instead, CPA hired a consulting firm called North Star Consultants, Inc.,

¹⁴ International Advisory and Monitoring Board, *Minutes of Meeting* (May 24–25, 2004).

¹⁵ International Advisory and Monitoring Board, *Press Release: Statement by the International Advisory and Monitoring Board* (May 25, 2004).

¹⁶ International Advisory and Monitoring Board, *supra* note 14.

¹⁷ International Advisory and Monitoring Board, *Press Release: Statement by the International Advisory and Monitoring Board* (June 22, 2004).

¹⁸ Coalition Provisional Authority, *Regulation Number 2: Development Fund for Iraq* (June 10, 2003).

¹⁹ E-mail from Greg McCarthy, Coalition Provisional Authority, to Minority Staff, House Government Reform Committee (Apr. 20, 2004).

purportedly to “support the Administrator in ensuring transparency and accountability in the administration of the Fund.”²⁰ The CPA conceded, however, that North Star was not required to issue even a single audit report or produce any other “deliverable.”

Additional Issues

In addition to the issues raised above, there are a number of other questions about the Administration’s stewardship of Iraqi oil proceeds and other funds in the DFI.

Draw-Down of Funds for Unspecified Purposes. Questions have been raised about the Administration’s last-minute “draw-down” of billions of dollars from the DFI for unspecified expenses. For example, \$1 billion was withdrawn from the DFI during the last month of the CPA’s existence for unspecified “security” purposes. The Administration provided no information about how these funds were going to be spent, which companies would receive contracts, or what products or services would be procured.²¹ Indeed, on the date CPA approved these expenditures, it stated that the actual uses were still “to be determined.”²²

Obligated, but Unspent Funds. Although the CPA ceased to exist on June 28, the Administration entered into billions of dollars worth of additional commitments using funds from the DFI. The CPA website indicates that the Administration committed \$4.6 billion of Iraqi oil proceeds toward work that would be performed after June 30.²³ At the same time, the Administration has reportedly spent only 2% of the \$18.4 billion aid package that Congress approved last October.²⁴ There has been no explanation of the Administration’s decision to commit DFI funds after the June 28 handover of authority to the Iraqis.

Potential Shortfall on Oil Proceeds. Others have raised questions about major discrepancies in the accountability of funds from the sale of Iraqi oil. According to *BBC News*,

²⁰ Letter from L. Paul Bremer, III, Administrator, Coalition Provisional Authority, to Rep. Christopher Shays, Chairman, House Subcommittee on National Security, Emerging Threats, and International Relations (June 22, 2004).

²¹ See, e.g., *U.S. Is Quietly Spending \$2.5 Billion from Iraqi Oil Revenues to Pay for Iraqi Projects*, New York Times (June 21, 2004); *\$500 Million of Iraqi Oil Funds Assigned to Security*, Washington Post (June 12, 2004); Open Society Institute, Iraq Revenue Watch, *Iraqi Fire Sale: CPA Giving away Oil Revenue Billions before Transition* (June 2004).

²² E-mail from Jeff Green, Coalition Provisional Authority, to Minority Staff, House Government Reform Committee (June 14, 2004) (providing table summarizing decisions of May 15 Program Review Board meeting).

²³ Coalition Provisional Authority, *supra* note 5.

²⁴ *U.S. Funds for Iraq Are Largely Unspent*, Washington Post (July 4, 2004).

members of the British Parliament report that “there is a shortfall of up to \$3.7 [billion] between the amount of oil revenue earned and the money paid into the DFI by the CPA.”²⁵ Part of this discrepancy may be due to the fact that the Administration did not install meters to gauge the amount of oil being exported, but nongovernmental organizations report that even CPA’s own figures include discrepancies of up to \$1.5 billion.²⁶

All of these questions require investigation, but the Administration to date has not provided the requisite transparency to do so.

Subpoena Request

The full Committee has held no hearings on the Oil for Food program or the DFI, but the National Security Subcommittee has held one, on April 21, 2004. At that hearing, Claude Hanks-Drielsma, a consultant to the Iraq Governing Council, was the first to raise allegations related to the Oil for Food program with the Subcommittee. At that same hearing, he also urged the Subcommittee to investigate similar, significant problems with the Administration’s stewardship of the DFI:

Your point is an extremely valid one [T]he lack of transparency, accountability, is happening right now with the Iraq Development Fund. The Iraq Ministry of Finance cannot obtain any information when they ask for it.²⁷

After the hearing, the Subcommittee sent questions for the record regarding both the Oil for Food program and the DFI.²⁸ The Administration’s responses to questions regarding both topics were insufficient.²⁹ In a statement released on June 23, 2004, Chairman Shays stated:

²⁵ “*Failure to Account*” for Iraq Cash, BBC News (June 28, 2004).

²⁶ Christian Aid, *Fuelling Suspicion: The Coalition and Iraq’s Oil Billions* (June 2004).

²⁷ Subcommittee on National Security, Emerging Threats, and International Relations, *Hearings on the Iraq Oil for Food Program* (Apr. 21, 2004).

²⁸ See, e.g., Letter from the Honorable Christopher Shays, Chairman, Subcommittee on National Security, Emerging Threats, and International Relations, to Ambassador L. Paul Bremer III, Administrator, Coalition Provisional Authority (May 21, 2004). See also Letter from the Honorable Christopher Shays, Chairman, Subcommittee on National Security, Emerging Threats, and International Relations, to the Honorable Colin L. Powell, Secretary of State (Apr. 30, 2004).

²⁹ See Letter from Ambassador L. Paul Bremer III, Administrator, Coalition Provisional Authority, to the Honorable Christopher Shays, Chairman, Subcommittee on National Security, Emerging Threats, and International Relations (June 22, 2004).

The Honorable Tom Davis
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The response is incomplete. There is still an insufficient accounting of relevant documents in custody. Several questions and requests are simply unanswered. . . . [including] about the Development Fund for Iraq.³⁰

Given this history, and the facts described in this letter, the Committee should not now exclude from its subpoena requests information relating to the DFI. Indeed, since the United States controlled DFI funds, the Committee may have an even greater obligation to investigate reports of mismanagement and obstruction involving the DFI than those involving the Oil for Food program.

I understand that the subpoena you are considering issuing for Oil for Food documents would be issued to the BNP-Paribas, the bank that handles many of the Oil for Food transactions. The proposed subpoena is a broad one, encompassing a very wide range of documents relating to Oil for Food revenues and expenditures.

I urge you to issue a similar subpoena to the Federal Reserve Bank of New York, the bank holding the funds in the DFI. As in the case of the subpoena to BNP-Paribas, the subpoena to the Federal Reserve Bank should request the full range of documents held by the Federal Reserve Bank relating to the Development Fund for Iraq.

Sincerely,



Henry A. Waxman
Ranking Minority Member

Enclosure

cc: Member of the House Committee on Government Reform

³⁰ *Statement of Christopher Shays Concerning June 22, 2004 CPA Response* (June 23, 2004).