

OPENING STATEMENT OF SENATOR CARL LEVIN (D-MICH)
BEFORE
U.S. PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
ON
IRAQI OIL ALLOCATIONS TO FOREIGN LEADERS

May 17, 2005

This is the Subcommittee's third hearing examining issues related to the U.N. Oil for Food program and sanctions on Iraq.

Because this hearing will focus on the problems associated with the program, it is easy to forget that U.N. sanctions on Iraq achieved their primary objective of preventing Iraq from rearming. Former Secretary of State Colin Powell characterized the sanctions as "successful," because Saddam Hussein was not able to "rebuild his army [and] has fewer tanks in his inventory today than he had 10 years ago. ...[W]e have not seen that capacity [for weapons of mass destruction] emerge to present a full-fledged threat to us." He concluded: "credit has to be given ... for putting in place a [sanctions] regime that has kept him pretty much in check."

The U.N. Oil for Food was intended to alleviate the humanitarian calamity resulting from the U.N. trade embargo against Iraq. It was essential to find a way to get Iraq to agree to sell its oil and deposit the proceeds in a U.N.-controlled account from which humanitarian supplies like food and medicine could be purchased. In fact, over \$65 billion was eventually deposited into the U.N. account for that purpose. Saddam would agree to the Oil for Food program only if he could determine to whom the oil was sold and from whom the supplies would be purchased. U.N. member countries, including the United States, reluctantly agreed to give Saddam Hussein that control. It is unsurprising that Saddam Hussein later devised multiple ways to abuse this authority, including awarding of oil allocations to political figures and others to reward their support or curry their favor for efforts to undermine or eliminate U.N. sanctions against Iraq.

It is also unsurprising that when a corrupt Saddam Hussein saw how profitable the oil allocations were, he schemed again to take a cut of the profits. From September 2000 to September 2002, Iraq demanded that oil allocation holders awarded an Oil for Food contract pay a secret, per-barrel surcharge that ranged from 10 to 30 cents per barrel. In two short years, through these surcharge payments, Iraq amassed \$228 million.

U.S. import statistics show that about half of the oil on which those surcharges were paid ended up in the United States. Using Iraqi internal records reviewed by our staffs, we estimate that more than half of all of the surcharges paid to Iraq, about \$118 million, was paid on oil sold to U.S. companies. The remaining \$110 million in surcharges was paid on oil sent to other countries, including in Europe, Asia and Africa. [See chart.]

A U.S. company called Bayoil (USA), headquartered in Houston, Texas, was smack in the middle of it all. When other oil companies around the world were cutting back on business with Iraq due to Saddam's surcharge demands, Bayoil increased its business. During the 2-year

period in which surcharges were mandatory to get Iraqi oil, Bayoil became the largest single buyer of Iraqi oil for the U.S. market. Altogether, Bayoil brought in over 200 million barrels to the United States. My staff was able to trace 102 of the U.S. cargoes Bayoil brought here, and found that the surcharges paid on those cargoes, according to internal Iraqi records, totaled \$37 million.

Bayoil sold the oil to U.S. oil companies and refineries which, in turn, sold refined petroleum products, like gasoline and heating oil, to American consumers.

Last month Bayoil was indicted for violating U.S. sanctions on Iraq and for committing fraud, including by paying or arranging the payment of “millions of dollars in secret illegal surcharges to the Government of Iraq.” That indictment comes two years after the end of the Oil for Food program. But, while the program was going on, no one in the U.S. government appears to have paid much attention to Bayoil.

As soon as Iraq began demanding surcharges, oil companies around the world began complaining. Debate erupted at the United Nations about how to stop the surcharges. Opinion split, with the United States and United Kingdom on one side, trying to increase Iraqi oil prices to make surcharges uneconomical, and Russia and China on the other side, supporting lower oil prices. It took two years for U.S. and U.K. representatives to find a way, using retroactive pricing, to prevent Iraq from imposing surcharges. By the end of 2002, Iraq had given up imposing surcharges, because the resulting price was so high, no one could buy the oil, pay a surcharge, and still make a profit.

But at the same time the U.S. joined in efforts to find a way to end such surcharges at the United Nations, there was little or no U.S. effort here at home to enforce our own laws against U.S. companies paying illegal surcharges or to help the U.N. investigate a U.S. company, Bayoil, that was suspected of contributing to the surcharge problem. A few general warnings against paying illegal surcharges were sent out, but the government’s primary sanctions enforcer, the Office of Foreign Assets Control (OFAC), never took on the issue, never researched U.S. company involvement in the payment of surcharges, and never took a hard look at Bayoil, despite evidence inviting closer scrutiny. While OFAC did investigate other issues, such as preventing the sale to Iraq of prohibited military equipment or dual use items, the surcharge issue that commanded such attention in the U.N. received virtually no attention here at home. Bayoil slipped right by, for two years.

When asked why OFAC failed to do more, OFAC told the Subcommittee that it considered the Oil for Food program to be a U.N. responsibility, and that it was up to the U.N., not the U.S., to police compliance with sanctions. The problem with this position, however, is that the United Nations has no law enforcement authority. It can’t police the nationals of any country. It can’t even force a company to answer questions. The U.N. is dependent upon its member states for enforcement, and it didn’t get much help from the United States on this matter.

Bayoil illustrates the point. This chart summarizes what happened with Bayoil. In 2001, the U.N. became suspicious that Bayoil and a few other companies were using various tactics to make room for surcharge payments. The U.N.'s oil experts asked Bayoil for specific cargo information, but Bayoil refused to provide it. In August 2001, the U.N. appealed to the U.S. State Department for help, and the State Department asked OFAC to obtain the information. After hearing nothing for four months, the U.N. sent another request for help in January 2002. Eight months after the initial inquiry, in April 2002, OFAC finally wrote a letter to Bayoil asking for information about its licensed activity in Iraq, without requesting the information wanted by the U.N. and without directing Bayoil to answer U.N. questions. Despite its booming Iraqi oil import business, Bayoil told OFAC that it no longer conducted licensed activity in Iraq. OFAC made no followup inquiry and never even bothered to send Bayoil's response to the State Department or the United Nations.

In the end, the U.N. never obtained the information it needed from the U.S. State Department, OFAC, or Bayoil. Worse, the U.N.'s inquiries about Bayoil never triggered any OFAC review into whether Bayoil was paying illegal surcharges. This lack of interest persisted even though, during the surcharge period, Bayoil suddenly expanded its imports to become one of the largest U.S. importers of Iraqi oil. It performed precisely the intermediary role that experts flagged as likely to pay surcharges. And all the while, Bayoil was constantly bombarding U.S., U.N., and Iraqi officials with letters and faxes urging them to set lower prices for Iraqi oil – prices which would allow more room for the payment of surcharges.

OFAC's failure to investigate Bayoil reflects a major oversight failure and a fundamental misconception on the part of OFAC about its responsibility to police U.S. nationals to ensure compliance with sanctions on Iraq. OFAC's actions represented an abdication of its responsibility to monitor Bayoil's behavior and an inappropriate attempt to shift OFAC's own obligation to enforce U.S. sanctions on Iraq to the United Nations.

Saddam Hussein's corrupt control of oil allocations and illegal surcharges is a serious concern, even though the Hussein regime obtained far greater illicit income through other schemes, some with the knowledge and tacit approval of the United States and other members of the U.N. Security Council. The illegal surcharges from Saddam Hussein's control of oil allocations netted Iraq about \$228 million; Iraq's direct oil sales to its neighboring countries, Jordan, Turkey and Syria, generated 40 times as much illicit income – over \$8 billion. [See bar chart.] These direct oil sales were in violation of U.N. sanctions and the Oil for Food program we helped draft at the United Nations, yet the United States and others looked the other way, simply taking note of them.

On occasion, the United States was not only aware of illegal Iraqi oil sales to its neighbors, the United State actually facilitated them as happened in the Khor al-Amaya incident of 2003. This incident involves the largest single illicit sale of oil transported by ship out of Iraq during the sanctions period.

Over several weeks in February and March 2003, Iraq loaded 7.7 million barrels of oil onto 7 seagoing oil tankers at the port of Khor al-Amaya in southern Iraq. Khor al-Amaya was not authorized as a place for ships to load oil under the Oil for Food program. The oil loaded onto the 7 ships was sold to the Government of Jordan, which paid Iraq \$53 million, wired to bank accounts under the control of the Hussein regime.

The 7 massive oil tankers that carried this oil docked at Khor al-Amaya in plain view of the Maritime Interdiction Force (MIF), which was then under U.S. command. Internal ship communications show that the 7 ship captains were directed to contact the U.S. naval officer at MIF before loading any oil and give him this message: "We are loading crude oil from the terminal at Khawr Amaya for Millenium [the Jordanian company acting for Jordan], do you have any objection?" After obtaining a response of "no objection," the ships were directed to go to the port, fill up with oil, and leave with their cargo. They then traveled the length of the Persian Gulf, with the MIF's full knowledge and acquiescence.

When word of the first of the Khor al-Amaya oil shipment hit the press and an outcry arose about this apparent blatant violation of U.N. sanctions, a U.S. company involved with chartering the ships for the Jordanian government called U.S. authorities to make sure it was not violating U.S. or U.N. sanctions or hurting U.S. foreign policy. The company even offered to turn over the oil in the ships' possession to the MIF, if asked. A State Department official responded that the United States "was aware of the shipments and has determined not to take action." The U.S. company was reassured.

The Khor al-Amaya shipments sent \$53 million dollars into the pockets of Saddam Hussein on the eve of the U.S. invasion. DOD knew about the shipments, the State Department knew, and we looked the other way.

There is a pattern here of erratic and inconsistent U.S. enforcement of sanctions on Iraq. On the one hand, the United States was at the U.N. trying to stop Iraq from imposing illegal surcharges on Oil for Food contracts. On the other hand, the U.S. ignored red flags that some U.S. companies might be paying those same illegal surcharges. The U.S. also looked the other way while Iraq sold 40 times as much oil to its neighbors, Jordan, Turkey and Syria, totaling \$8 billion. As part of that \$8 billion, we even permitted Jordanian-chartered ships to load oil illegally and gave them safe passage through the Persian Gulf past the Maritime Interdiction Force we were commanding to stop illegal oil shipments.

While imperfect, sanctions can be a useful tool. They can stop a country from acquiring armaments as sanctions did in Iraq. But sanctions can also be undermined by schemes that attempt to corrupt or end-run the program. They can spawn illicit income, and damage public confidence in international cooperation and in the United Nations itself.

To safeguard against such schemes in the future, sanctions programs need to build-in stronger anti-corruption measures, including assigning clear responsibilities for detecting and preventing corruption, and for putting greater public pressure on member countries to take appropriate enforcement actions. U.N. member countries – including the United States – will have to stop turning a blind eye to violations. Here at home, OFAC must carry out its enforcement responsibilities under our own laws, which include ensuring compliance with U.N. sanctions, with stronger anti-corruption oversight and active enforcement.

I commend our staffs for their hard work which went into their reports, and I look forward to the testimony today.