Chapter 5
Reflections on the Security Council and Its Mandate to Maintain International Peace and Security

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1. Introduction

During my tenure as Under-Secretary-General of the Legal Affairs and the Legal Counsel the United Nations from March 1994 to March 2004, the question of Iraq was a constant companion. There were, however, three instances where I was more deeply involved than ‘normal’: the negotiations of the Memorandum of Understanding between the United Nations and Iraq in 1996 to implement Security Council Resolution 986 (1995) – the Oil-for-Food Programme (OFFP); the Secretary-General’s negotiations with President Saddam Hussein in February 1998 for the purpose of getting access for the UN weapons inspectors to the President’s palaces; and the aftermath of the attack on Iraq by the United States and the United Kingdom in March 2003.

The aim of this paper is, first, to share some of my personal experiences relating mainly to one of these events, the 1996 negotiations. The foremost objective is to reflect, based on those and other UN experiences, on the way in which the Security Council fulfils its mandate to maintain international peace and security.

2. The Memorandum of Understanding for the Implementation of the Oil-for-Food Programme

Already at an early stage, the Security Council realised that the effects of the sanctions regime that it had introduced might negatively affect the population of Iraq. In Resolutions 706 (1991) and 712 (1991), the Council had therefore decided to establish a programme which would allow Iraq to sell oil under UN supervision for the purpose of among other things purchasing humanitarian goods for the Iraqi population.

The decisions by the Security Council needed ‘arrangements and agreements’ for its implementation. The Secretary-General had requested Kofi Annan, who was then

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the UN Controller, and later my predecessor Carl August Fleischhauer to negotiate with the government of Iraq for this purpose. However, these rounds of negotiations, the latest held during the summer of 1993, were unsuccessful.

The Council then decided to change the concept somewhat and eventually, on 14 April 1995, adopted Resolution 986 (1995). But it was not until January 1996 that the Iraqis were prepared to enter into negotiations on how to implement this Resolution.

I was then contacted by Secretary-General Boutros Boutros-Ghali, who explained that he had had several contacts with the Iraqis and that they were now prepared to engage in negotiations. I was to lead the UN delegation. The government of Iraq had appointed their former UN Ambassador Abdul Amir Al-Anbari, now their Ambassador to UNESCO, to lead their delegation.

Then started an intense period that was to end by the signing of a Memorandum of Understanding (MOU) on 20 May 1996. The negotiations were held in four distinct phases in February, March, April and May 1996. In all, the delegations met for some 50 sessions.

I was assisted by a delegation of UN colleagues and by an interdepartmental working group. On my delegation were also experts in oil trading and banking. These experts were necessary because of the complex oil trading and banking arrangements that were necessary to implement the Programme and which to a large extent deviated from ordinary practice. The UN monitoring meant that the parties to the contracts for oil sales and purchase of goods would not be allowed the normal freedom of contract.

On his part, Ambassador Al-Anbari was assisted by a similar delegation.

The negotiations immediately attracted tremendous interest from the media. Both sides were concerned not to create speculations about the progress of the talks that could have an impact on the oil market. Furthermore, because of the considerable material we had to go through it was also obvious that the results of a day’s negotiations in many instances would be fairly technical and maybe not so significant for the final outcome of the negotiations. We therefore decided to issue very formal press statements after every day’s negotiations.

The press nevertheless waited in the foyer, and Al-Anbari complained that he always had to fight his way through the gathering of journalists because they were able to anticipate when he was to depart from the building, whilst I could choose to leave later and avoid meaningless encounters with the press; there was really not much to tell.

Resolution 986 was obviously the point of departure in the negotiations. We soon found that some of the work that had been done in the negotiations on the basis of earlier resolutions could be used. But our main concern soon focused on something else. In reading Resolution 986, my collaborators and I wondered whether the Security Council had realised the complexity of the operation that they had entrusted to the Secretariat.

One obvious conclusion was that normal practice with respect to conclusion of contracts on oil sales or purchase of humanitarian goods could not be applied. Complex systems for monitoring of the contracting, overseeing of the loading of the oil at Mina el-Bakr or Ceyan, and inspecting the delivery of, and distribution of, humanitarian goods would have to be necessary elements of the arrangements.

What concerned us most was that the UN had no means of investigating violations of the arrangements by actors at the national level. In particular, we were concerned that the pricing arrangements might allow for kickbacks that could not be