

DOCUMENT OF INTERNATIONAL MONETARY FUND
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ATTENTION**

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EBS/90/198

CONFIDENTIAL

November 21, 1990

To: Members of the Executive Board

From: The Secretary

Subject: Restrictions and Arrears on Payments and Transfers to the
Government of Iraq and Persons Within the Territories of
Iraq and Kuwait: Temporary Exemption from Performance
Clauses Under Arrangements from the Fund

In accordance with the understanding reached at this morning's meeting (EBM/90/163, 11/21/90), there is attached, for lapse of time consideration, the staff paper on the temporary exemption from performance clauses under arrangements from the Fund on restrictions and arrears on payments and transfers to the Government of Iraq and persons within the territories of Iraq and Kuwait.

In the absence of objection by the close of business on Monday, November 26, 1990, the draft decision that appears on page 2 will be deemed approved by the Executive Board, and it will be so recorded in the minutes of the next meeting thereafter.

Att: (1)

INTERNATIONAL MONETARY FUND

Restrictions and Arrears on Payments and Transfers to
the Government of Iraq and Persons Within the Territories
of Iraq and Kuwait: Temporary Exemption from Performance
Clauses Under Arrangements From the Fund

Prepared by the Exchange and Trade Relations
Department and the Legal Department

November 21, 1990

The Board needs to address the implications for members arising from certain measures that the United Nations Security Council has called on U.N. members to impose as a consequence of the invasion by Iraq of Kuwait on August 2, 1990. These measures include the suspension of payments and transfers to the Government of Iraq and persons within the territories of Iraq and Kuwait. The Fund has been receiving notifications on various measures which have been taken by members within the purview of U.N. Security Council Resolution No. 661 (1990) under Executive Board Decision No. 144, and these notifications have been issued to the Board for information. 1/

Moreover, a temporary exemption of performance criteria in Fund arrangements for a member engaging in such exchange sanctions is desirable. Otherwise, in view of the performance clause in arrangements on the avoidance of exchange restrictions and quantitative performance criteria on the avoidance of arrears, disbursements would be suspended for countries whose performance has otherwise been in conformity with performance criteria. 2/ Disbursements have already been made to a number of countries prior to the receipt of notification that such exchange sanctions have been imposed.

By exempting the restrictions and arrears in question, members can be assured that their actions to impose exchange sanctions would not be inconsistent with programs supported by the Fund. This clarity is

1/ Some background information on the relevant U.N. Security Council Resolutions No. 661 and No. 670 is given in the Annex.

2/ Similar clauses on the avoidance of exchange restrictions and payments arrears are contained in other decisions of the Fund pertaining to programs, such as (i) first credit tranche arrangements and structural adjustment arrangements; (ii) decisions on purchases in the credit tranches outside stand-by or extended arrangements; and (iii) decisions on Fund-monitored programs. The nonobservance of such benchmark understandings or consultation clauses that are not performance clauses does not, however, prejudice impending or future disbursements from the Fund until the next review of the arrangement or the Fund-monitored program.

important both for country authorities and the Fund. Already, a number of decisions before you, e.g., Argentina and Hungary, have been submitted for your approval on the assumption that the temporary exemption would be approved prior to Board consideration of those purchases from the Fund.

The proposed draft decision below, which sets forth a temporary exemption, has been designed so as to rely primarily on notifications to the Fund under existing procedures, such as Decision No. 144-(52/51), which was adopted by the Executive Board on August 14, 1952. Only in cases where the notification received by the Fund does not already contain information on the amounts and duration of arrears on payments and transfers to the Government of Iraq and persons within the territories of Iraq and Kuwait, would a member be requested to report them to the Fund under the standard clauses on the provision of information contained in stand-by, extended and enhanced structural adjustment arrangements.

Accordingly, the following draft decision is proposed for adoption by the Executive Board:

1. Notwithstanding performance clauses pertaining to the imposition or intensification of restrictions on the making of payments and transfers for current international transactions, and to external payments arrears, in stand-by, extended, or enhanced structural adjustment arrangements, and until further notice by the Fund, disbursements under such arrangements shall not be suspended because of restrictions and arrears on payments and transfers to the Government of Iraq or persons within the territories of Iraq and Kuwait.
2. This decision shall apply to disbursements made on or after August 2, 1990.

As a consequence of the invasion by Iraq of Kuwait on August 2, 1990, the U.N. Security Council has called on U.N. members to impose certain measures. These measures include the suspension of payments and transfers to Iraq and persons within the territories of Iraq and Kuwait (see Resolution 661 (1990)). 1/ Pursuant to Article 48 of the U.N. Charter, this Resolution is binding on the members of the United Nations. 2/ The Fund, in its Agreement with the U.N., has taken note of this obligation of U.N. members. The Agreement, which came into effect on November 15, 1947, defines the relationship between the United Nations and the Fund. Article VI of the Agreement with the U.N., entitled "Security Council," provides:

"1. The Fund takes note of the obligation assumed, under paragraph 2 of Article 48 of the United Nations Charter, by such of its members as are also Members of the United Nations, to carry out the decisions of the Security Council through their action in the appropriate specialized agencies of which they are members, and will, in the conduct of its activities, have due regard for decisions of the Security Council under Articles 41 and 42 of the United Nations Charter.

2. The Fund agrees to assist the Security Council by furnishing to it information in accordance with the provisions of Article V of this agreement."

1/ S. Res. 661, U.N. Doc. S/RES/661 (1990). See Attachment I. Later, in Resolution 670 (1990), the U.N. Security Council reminded "all states of their obligations under resolution 661 (1990) with regard to the freezing of Iraqi assets, and the protection of the assets of the legitimate government of Kuwait and its agencies, located within their territory." (See Attachment II, S. Res. 670, U.N. Doc. S/RES/670 (1990).

2/ U.N. Charter art. 48. Article 48 reads in full:

"1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members."
(Emphasis added)



Security Council

Distr.
GENERAL

S/RES/661 (1990)
6 August 1990

RESOLUTION 661 (1990)

Adopted by the Security Council at its 2933rd meeting on
6 August 1990

The Security Council,

Reaffirming its resolution 660 (1990) of 2 August 1990,

Deeply concerned that that resolution has not been implemented and that the invasion by Iraq of Kuwait continues with further loss of human life and material destruction,

Determined to bring the invasion and occupation of Kuwait by Iraq to an end and to restore the sovereignty, independence and territorial integrity of Kuwait,

Noting that the legitimate Government of Kuwait has expressed its readiness to comply with resolution 660 (1990),

Mindful of its responsibilities under the Charter of the United Nations for the maintenance of international peace and security,

Affirming the inherent right of individual or collective self-defence, in response to the armed attack by Iraq against Kuwait, in accordance with Article 51 of the Charter,

Acting under Chapter VII of the Charter of the United Nations,

1. Determines that Iraq so far has failed to comply with paragraph 2 of resolution 660 (1990) and has usurped the authority of the legitimate Government of Kuwait;

2. Decides, as a consequence, to take the following measures to secure compliance of Iraq with paragraph 2 of resolution 660 (1990) and to restore the authority of the legitimate Government of Kuwait;

3. Decides that all States shall prevent:

S/RES/661 (1990)

Page 2

(a) The import into their territories of all commodities and products originating in Iraq or Kuwait exported therefrom after the date of the present resolution;

(b) Any activities by their nationals or in their territories which would promote or are calculated to promote the export or trans-shipment of any commodities or products from Iraq or Kuwait; and any dealings by their nationals or their flag vessels or in their territories in any commodities or products originating in Iraq or Kuwait and exported therefrom after the date of the present resolution, including in particular any transfer of funds to Iraq or Kuwait for the purposes of such activities or dealings;

(c) The sale or supply by their nationals or from their territories or using their flag vessels of any commodities or products, including weapons or any other military equipment, whether or not originating in their territories but not including supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs, to any person or body in Iraq or Kuwait or to any person or body for the purposes of any business carried on in or operated from Iraq or Kuwait, and any activities by their nationals or in their territories which promote or are calculated to promote such sale or supply of such commodities or products;

4. Decides that all States shall not make available to the Government of Iraq or to any commercial, industrial or public utility undertaking in Iraq or Kuwait, any funds or any other financial or economic resources and shall prevent their nationals and any persons within their territories from removing from their territories or otherwise making available to that Government or to any such undertaking any such funds or resources and from remitting any other funds to persons or bodies within Iraq or Kuwait, except payments exclusively for strictly medical or humanitarian purposes and, in humanitarian circumstances, foodstuffs;

5. Calls upon all States, including States non-members of the United Nations, to act strictly in accordance with the provisions of the present resolution notwithstanding any contract entered into or licence granted before the date of the present resolution;

6. Decides to establish, in accordance with rule 28 of the provisional rules of procedure of the Security Council, a Committee of the Security Council consisting of all the members of the Council, to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

(a) To examine the reports on the progress of the implementation of the present resolution which will be submitted by the Secretary-General;

(b) To seek from all States further information regarding the action taken by them concerning the effective implementation of the provisions laid down in the present resolution;

7. Calls upon all States to co-operate fully with the Committee in the fulfilment of its task, including supplying such information as may be sought by the Committee in pursuance of the present resolution;

8. Requests the Secretary-General to provide all necessary assistance to the Committee and to make the necessary arrangements in the Secretariat for the purpose;

9. Decides that, notwithstanding paragraphs 4 through 8 above, nothing in the present resolution shall prohibit assistance to the legitimate Government of Kuwait, and calls upon all States:

(a) To take appropriate measures to protect assets of the legitimate Government of Kuwait and its agencies;

(b) Not to recognize any régime set up by the occupying Power;

10. Requests the Secretary-General to report to the Council on the progress of the implementation of the present resolution, the first report to be submitted within thirty days;

11. Decides to keep this item on its agenda and to continue its efforts to put an early end to the invasion by Iraq.

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Security Council

Distr.
GENERAL

S/RES/670 (1990)
25 September 1990

RESOLUTION 670 (1990)

Adopted by the Security Council at its 2943rd meeting,
on 25 September 1990

The Security Council,

Reaffirming its resolutions 660 (1990), 661 (1990), 662 (1990), 664 (1990), 665 (1990), 666 (1990), and 667 (1990),

Condemning Iraq's continued occupation of Kuwait, its failure to rescind its actions and end its purported annexation and its holding of third State nationals against their will, in flagrant violation of resolutions 660 (1990), 662 (1990), 664 (1990) and 667 (1990) and of international humanitarian law,

Condemning further the treatment by Iraqi forces of Kuwaiti nationals, including measures to force them to leave their own country and mistreatment of persons and property in Kuwait in violation of international law,

Noting with grave concern the persistent attempts to evade the measures laid down in resolution 661 (1990),

Further noting that a number of States have limited the number of Iraqi diplomatic and consular officials in their countries and that others are planning to do so,

Determined to ensure by all necessary means the strict and complete application of the measures laid down in resolution 661 (1990),

Determined to ensure respect for its decisions and the provisions of Articles 25 and 48 of the Charter of the United Nations,

Affirming that any acts of the Government of Iraq which are contrary to the above-mentioned resolutions or to Articles 25 or 48 of the Charter of the United Nations, such as Decree No. 377 of the Revolution Command Council of Iraq of 16 September 1990, are null and void,

Reaffirming its determination to ensure compliance with Security Council resolutions by maximum use of political and diplomatic means,

Welcoming the Secretary-General's use of his good offices to advance a peaceful solution based on the relevant Security Council resolutions and noting with appreciation his continuing efforts to this end,

Underlining to the Government of Iraq that its continued failure to comply with the terms of resolutions 660 (1990), 661 (1990), 662 (1990), 664 (1990), 666 (1990) and 667 (1990) could lead to further serious action by the Council under the Charter of the United Nations, including under Chapter VII,

Recalling the provisions of Article 103 of the Charter of the United Nations,

Acting under Chapter VII of the Charter of the United Nations,

1. Calls upon all States to carry out their obligations to ensure strict and complete compliance with resolution 661 (1990) and in particular paragraphs 3, 4 and 5 thereof;

2. Confirms that resolution 661 (1990) applies to all means of transport, including aircraft;

3. Decides that all States, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted before the date of the present resolution, shall deny permission to any aircraft to take off from their territory if the aircraft would carry any cargo to or from Iraq or Kuwait other than food in humanitarian circumstances, subject to authorization by the Council or the Committee established by resolution 661 (1990) and in accordance with resolution 666 (1990), or supplies intended strictly for medical purposes or solely for UNIIMOG;

4. Decides further that all States shall deny permission to any aircraft destined to land in Iraq or Kuwait, whatever its State of registration, to overfly its territory unless:

(a) The aircraft lands at an airfield designated by that State outside Iraq or Kuwait in order to permit its inspection to ensure that there is no cargo on board in violation of resolution 661 (1990) or the present resolution, and for this purpose the aircraft may be detained for as long as necessary; or

(b) The particular flight has been approved by the Committee established by resolution 661 (1990); or

(c) The flight is certified by the United Nations as solely for the purposes of UNIIMOG;

5. Decides that each State shall take all necessary measures to ensure that any aircraft registered in its territory or operated by an operator who has his

principal place of business or permanent residence in its territory complies with the provisions of resolution 661 (1990) and the present resolution;

6. Decides further that all States shall notify in a timely fashion the Committee established by resolution 661 (1990) of any flight between its territory and Iraq or Kuwait to which the requirement to land in paragraph 4 above does not apply, and the purpose for such a flight;

7. Calls upon all States to co-operate in taking such measures as may be necessary, consistent with international law, including the Chicago Convention, to ensure the effective implementation of the provisions of resolution 661 (1990) or the present resolution;

8. Calls upon all States to detain any ships of Iraqi registry which enter their ports and which are being or have been used in violation of resolution 661 (1990), or to deny such ships entrance to their ports except in circumstances recognized under international law as necessary to safeguard human life;

9. Reminds all States of their obligations under resolution 661 (1990) with regard to the freezing of Iraqi assets, and the protection of the assets of the legitimate Government of Kuwait and its agencies, located within their territory and to report to the Committee established under resolution 661 (1990) regarding those assets;

10. Calls upon all States to provide to the Committee established by resolution 661 (1990) information regarding the action taken by them to implement the provisions laid down in the present resolution;

11. Affirms that the United Nations Organization, the specialized agencies and other international organizations in the United Nations system are required to take such measures as may be necessary to give effect to the terms of resolution 661 (1990) and this resolution;

12. Decides to consider, in the event of evasion of the provisions of resolution 661 (1990) or of the present resolution by a State or its nationals or through its territory, measures directed at the State in question to prevent such evasion;

13. Reaffirms that the Fourth Geneva Convention applies to Kuwait and that as a High Contracting Party to the Convention Iraq is bound to comply fully with all its terms and in particular is liable under the Convention in respect of the grave breaches committed by it, as are individuals who commit or order the commission of grave breaches.