IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MIRIAM BEN-YISHAI individually and as co-representative of the ESTATE OF SHOSHANA BEN-YISHAI, YITZHAK BEN-YISHAI individually and as co-representative of the ESTATE OF SHOSHANA BEN-YISHAI, AVIEL BEN-YISHAI, HANNAH BEN-YISHAI, ISRAEL BEN-YISHAI, JACOB BEN-YISHAI, YAEL BEN-YISHAI, STEVEN BRAUN, CHANA EDRI, BELLA FRIEDMAN, ILAN FRIEDMAN, MIRIAM FRIEDMAN, YEHIEL FRIEDMAN, ZVI FRIEDMAN, SHABTAI SHATSKY individually and as co-representative of the ESTATE OF KEREN SHATSKY, JO SHATSKY individually and as co-representative of the ESTATE OF KEREN SHATSKY, DAVID SHATSKY, MIRIAM SHATSKY, SARA SHATSKY, TZIPPORA SHATSKY, YOSEF SHATSKY, GINETTE THALER individually and as co-representative of the ESTATE OF RACHEL THALER, MICHAEL THALER individually and as co-representative of the ESTATE OF RACHEL THALER, LEOR THALER, ISAAC THALER, ZVI THALER, HILLEL TRATTNER, SHELLEY TRATTNER, and ARON TRATTNER, Plaintiffs, v. AGRIUM ASIA PACIFIC LIMITED (ACN 081 890 459) (f/k/a AWB Limited), and AGRIUM ASIA PACIFIC (INTERNATIONAL) LIMITED (ACN 081 890 413) (f/k/a AWB (International) Limited), Defendants.	Civil Action No.: 26-cv-______ JURY TRIAL DEMANDED

<u>COMPLAINT FOR VIOLATIONS OF THE ANTI-TERRORISM ACT</u>

INTRODUCTION

1. Plaintiffs are United States nationals, and the family members and estates of United States nationals, who were killed or injured in terrorist attacks carried out in Israel in November 2001 and February 2002 by Palestinian terrorist groups. They bring this action under the Anti-Terrorism Act, 18 U.S.C. § 2333, against Agrium Asia Pacific Limited and Agrium Asia Pacific (International) Limited (then known as AWB Limited and AWB (International) Limited) (together, "AWB" or "Defendants") whose systematic program of bribes and kickbacks to Iraq's United Nations-sponsored "Oil-for-Food" program ("OFF") funded the martyr and bounty payments that sustained the Palestinian terrorist attacks that injured Plaintiffs.

2. AWB was a multi-billion-dollar participant in OFF, supplying Iraq with more than US$2.3 billion of wheat and receiving payment through the U.N.'s carefully monitored escrow account system, which was designed to ensure that Iraq's oil money was used to purchase food and humanitarian supplies and not further the regime's malign agenda in the Middle East. Between 1999 and 2003, however, AWB also funneled the regime more than US$224 million in illicit kickback payments outside the U.N. escrow system and without U.N. approval—many through Bank of New York accounts of AWB Limited and its subsidiary—thereby providing massive sums of hard currency the regime could deploy without oversight.

3. There was no doubt where much of that illicit hard currency would go. The U.S. government had long recognized the Iraqi regime's support for Palestinian terrorist groups, noting publicly in 2000 that Iraq provided such groups with "safehaven, training, logistic assistance, and financial aid." After the Second Intifada began in late September 2000, the regime issued a "fiery call for the Arab world to launch a holy war against Israel," and "promise[d] to devote itself to supporting the Palestinians." It immediately backed the promise with cash, publicly positioning itself as a paymaster of Palestinian violence. Beginning in September, it paid cash bounties of

US$10,000 to the families of Palestinian "martyrs"; it later raised the bounty for the families of suicide bombers to US$25,000, an additional payment its own distributors said was meant "to encourage more volunteers for suicide missions."

4. AWB knew all of this, because it was all public. The martyr payments were distributed by Iraqi-controlled organizations at public, celebrated ceremonies. In December 2000, the regime even asked the United Nations to allow it to "allocate a billion euros over a one-year period from the proceeds" of the OFF program, of which "300 million euros will be allocated to the families of martyrs" and others injured during the intifada. Under U.S. pressure, the U.N. rejected that request in January 2001, but it did not matter: Iraq simply continued funding the program through off-books channels, even escalating the premium reserved for the families of suicide bombers from US$10,000 to US$15,000 in August 2001, and to US$25,000 in March 2002.

5. In 2002 and 2003, as the intifada's violence increased, captured documents released by the Israeli government revealed the critical role of senior Iraqi government officials in funding and supporting it—establishing that Iraq's Vice-President, Taha Yassin Ramadan, "direct[ed] the Iraqi aid to the Palestinian terror in the PA," personally signed checks written out to "martyrs'" families, and was "involved in military activity" in the occupied territories. Nevertheless, AWB kept making larger and larger illicit payments to that government and taking ever more elaborate measures to conceal them. There is no question that AWB knew it was acting unlawfully. The official Australian government inquiry into these events found that AWB "went to extraordinary lengths to hide the payment of the fee to Alia" because it "knew that the fees were not approved by the United Nations," that AWB's concealment "was intentional and dishonest," and, simply, that "AWB did mislead the United Nations."

6. Nor is there any question that AWB's payments funded the martyr-payment program. Vice-President Ramadan—the head of Iraq's Palestine Office who "direct[ed] the Iraqi aid to the Palestinian terror in the PA" and signed martyr-payment checks—also headed the regime's Supreme Command Council, which oversaw Iraq's purchases of humanitarian goods, including its wheat purchases; headed the subsidiary Leading Committee that oversaw the allocation of Programme funds to Iraqi ministries, including those that could not purchase goods under the Programme; and *was responsible for the creation of the very kickback fees of which AWB was the largest single payor*. Given that Ramadan sat at both ends of the payment cycle—collecting the fees at the front end and disbursing monies to the martyr program at the other—it is unsurprising that multiple credible sources have traced those "martyr" payments directly to the OFF kickbacks. The House Committee on International Relations reported that "[a]ccording to information provided to this Committee, Saddam paid $25,000 rewards to the families of Palestinian suicide bombers through the Iraqi Ambassador to Jordan out of accounts in the Rafidain Bank in Amman, which held kickback money Saddam demanded from suppliers to his regime." Australian media then reported that kickbacks paid by AWB to the Saddam Hussein regime were put into a bank account used to finance a US$10 million slush fund for the families of Palestinian suicide bombers, and that U.S. Government and CIA documents revealed a trail of money flowing from the kickback program into bank accounts in Jordan, which the Iraqi Government then used for deadly bombings or to buy weapons.

7. In short, Plaintiffs allege what the record establishes: that the regime announced, publicized, escalated, and reliably paid an after-the-fact cash reward for suicide bombings and other terrorist attacks—a bounty its own distributors said was meant "to encourage more volunteers for suicide missions"—and that AWB supplied the means of paying it while its own

home-market press reported what the regime was paying for. AWB kept paying—through the August 2001 escalation, through the March 2002 escalation, and on until the invasion.

8. Plaintiffs paid a blood price for AWB's misconduct and the martyrdom incentives it funded. U.S.-born Shoshana Ben-Yishai, 16, was murdered in an attack on a school bus in Jerusalem that also killed another teenager and wounded 45. Her murderer was shot dead at the scene, and his act declared a "heroic martyrdom" by the military arm of Palestine Islamic Jihad. Keren Shatsky, 14, died in a suicide bombing at a busy pizzeria in the West Bank. Her friend Rachel Thaler, 16, suffered severe injuries and died days later; her brother Leor was severely injured, together with dozens of others. Their attacker too died in the course of his crime. The victims, their estates, and their loved ones bring claims under the Anti-Terrorism Act, 18 U.S.C. § 2333(a), for secondary liability under 18 U.S.C. § 2333(d)(2) as amended by the Justice Against Sponsors of Terrorism Act (JASTA): for aiding and abetting the acts of international terrorism that injured them (Count I), and for conspiring with the persons who committed those acts (Count II) (*see infra* Claims for Relief). Plaintiffs seek compensatory damages, trebled as the Act provides, together with the further relief set out in the Prayer for Relief below.

9. In enacting JASTA, Congress sought "to provide civil litigants with the broadest possible basis ... to seek relief against persons, entities, and foreign countries ... that have provided material support, directly or indirectly, to foreign organizations or persons that engage in terrorist activities against the United States." JASTA § 2(b), Pub. L. No. 114-222, 130 Stat. 852, 852 (2016). Plaintiffs are among the U.S. nationals Congress empowered to sue, and AWB, which for years provided hundreds of millions of dollars to the Iraqi apparatus that sponsored and incentivized the attacks on them, is among the persons Congress made answerable in U.S. courts for that support.

THE PARTIES

A. Plaintiffs Are U.S. Nationals Killed or Injured by Palestinian Terrorist Attacks.

10. Plaintiffs are United States nationals—and the estates, survivors, and heirs of United States nationals—who were killed or injured in terrorist attacks carried out in Israel by the Palestine Islamic Jihad ("PIJ") and the Popular Front for the Liberation of Palestine ("PFLP"), each a designated Foreign Terrorist Organization ("FTO"), on November 4, 2001, and February 16, 2002. Each Plaintiff was injured by an act of international terrorism within the meaning of 18 U.S.C. § 2331(1), as pleaded in the per-family attack narratives below. *See infra* Part V.E.

B. The Defendants Were The Largest Contributors To An Iraqi Kickback Scheme That Funded The Attacks On Plaintiffs.

11. This action names two Defendants: the Australian companies that supplied wheat to Iraq under the Oil-for-Food Programme and paid the concealed hard-currency fees at the center of this Complaint. Each was renamed in May 2011, after Agrium Inc. acquired AWB Limited in December 2010.[1] The renames changed the entities' names; they did not create new legal persons.

12. **Defined term—"AWB."** As used throughout this Complaint, "AWB" refers collectively to Defendant Agrium Asia Pacific Limited and Defendant Agrium Asia Pacific (International) Limited, as those two entities were named and as they operated during the relevant period—that is, under their former names AWB Limited and AWB (International) Limited, respectively. Where a quoted primary source (the Cole Inquiry, the United Nations' Volcker

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[1] Agrium Inc., Management's Discussion & Analysis (Aug. 3, 2011) (Form 6-K Ex. 99.2), Ex-99.2, "BUSINESS ACQUISITIONS"; Australian Business Register, *Historical Details for ABN 99 081 890 459 (AWB Limited)*, at 1; Australian Business Register, *Historical Details for ABN 14 081 890 413 (AWB (International) Limited)*, at 1.

Committee, or Agrium's securities filings) itself uses "AWB" to refer specifically to AWB Limited alone, that narrower usage is preserved within the quotation and identified where it matters.[2]

13. Defendant Agrium Asia Pacific Limited is an Australian public company, Australian Company Number (ACN) 081 890 459, registered under Australian Business Number (ABN) 99 081 890 459, which bore the name "AWB LIMITED" from March 31, 2000 to May 11, 2011 and has been registered "Active" continuously since March 31, 2000, with no cancellation or re-registration break across the change.[3] It was incorporated under the Corporations Law of Victoria in March 1998, initially as a subsidiary of the Australian Wheat Board.[4] Under its former name it "was the single largest provider of humanitarian goods to Iraq under the Programme,"[5] and was correspondingly its largest payer of illicit fees: "[b]etween November 1999 and March

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[2] The reader should not confuse the Defendants with the "AWB" grain-marketing business and brand operated today by Cargill, Incorporated. Neither that business nor any of the AWB-named legal entities transferred to Cargill in that sale is a Defendant. On December 15, 2010, Agrium Inc. announced a definitive agreement under which "Cargill has agreed to acquire a majority of the commodity management businesses of AWB Limited ('AWB')," Agrium Inc., Press Release, Agrium Sells AWB Commodity Management Business (Dec. 15, 2010) (Form 6-K Ex. 99.1), at 1, and on May 11, 2011, Agrium "successfully completed the divestiture of the majority of the commodity management businesses of AWB Limited ('AWB') to Cargill, Incorporated ('Cargill')." Agrium Inc., Press Release (May 11, 2011) (Form 6-K Ex. 99.1), at 1. The Defendants are the legal entities that paid the kickbacks and were acquired by Agrium—now renamed—not the commodity-management business, brand, or subsidiary companies that Agrium sold to Cargill.

[3] ABR, *Historical Details for ABN 99 081 890 459*, supra note 1, at 1.

[4] *Report of the Inquiry into Certain Australian Companies in Relation to the UN Oil-for-Food Programme* vol. 2 (Terence R.H. Cole, Comm'r, Nov. 2006), ¶ 9.9.

[5] Independent Inquiry Comm. into the U.N. Oil-for-Food Programme, *Report on Programme Manipulation* (Oct. 27, 2005), at 311.

2003 AWB paid to Alia by way of transportation fees US$224,128,189.98" (*see infra* Part II).[6] Defendant Agrium Asia Pacific Limited is that same AWB Limited, renamed.[7]

14. Defendant Agrium Asia Pacific (International) Limited is an Australian public company, ACN 081 890 413, registered under ABN 14 081 890 413, first registered on November 1, 1999 as "AWB (INTERNATIONAL) LTD," renamed "AWB (INTERNATIONAL) LIMITED" on May 29, 2000, and renamed "AGRIUM ASIA PACIFIC (INTERNATIONAL) LIMITED" on May 11, 2011, registered "Active" continuously throughout.[8] Under its former name it was the statutory single-desk export entity for Australian wheat: the Wheat Marketing Act 1989 requires that all Australian wheat exported in bulk be "pooled, marketed, sold and exported by a single entity," and that entity—"nominated company B" under the Act—was AWB (International) Limited ("AWB International" or "AWBI"), "a wholly owned subsidiary of AWB."[9] The wheat pooled under that system was known as the AWB National Pool (the "National Pool"), and it was operated for AWB International's account on behalf of the growers who supplied it. The Oil-for-Food contracts were concluded for its account: "[u]nder the terms of the contracts for sale concluded with the IGB in the period from 1999 until December 2002, the seller of the

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[6] *Report of the Inquiry into Certain Australian Companies in Relation to the UN Oil-for-Food Programme* vol. 1 (Terence R.H. Cole, Comm'r, Nov. 2006), at lxiii.

[7] ABR, *Historical Details for ABN 99 081 890 459*, supra note 1, at 1.

[8] ABR, *Historical Details for ABN 14 081 890 413*, supra note 1, at 1.

[9] Cole Inquiry vol. 2, supra note 4, ¶¶ 9.12–9.13.

wheat was AWB, which sold the wheat as agent for AWB (International) Limited."[10] Defendant Agrium Asia Pacific (International) Limited is that same AWB (International) Limited, renamed.[11]

15. The Oil-for-Food exposure now sued upon was expressly contemplated in the transactions by which the Defendants came under their present names. In Forms 6-K filed December 15, 2010 and May 11, 2011, Agrium Inc. cautioned that "AWB is subject to dispute and litigation risk (including as a result of being named in litigation commenced by the Iraqi Government relating to the United Nations Oil-For-Food Programme)."[12] Its August 3, 2011 interim financial statements described that suit—filed in this District in 2008 against AWB and 92 other Programme participants—and warned that an adverse decision "could have a material adverse effect on AWB and on Agrium's consolidated financial position and results."[13] Among the undertakings Agrium gave on the May 11, 2011 sale of the AWB commodity-management business was "an indemnity by AWB for litigation related to the OFFP."[14] The parties to those transactions treated the liability as a continuing exposure of the AWB entities themselves.

JURISDICTION AND VENUE

A. This Court Has Subject-Matter Jurisdiction Over Plaintiffs' Claims.

16. This action arises under the Anti-Terrorism Act, 18 U.S.C. § 2331 et seq., as amended by the Justice Against Sponsors of Terrorism Act ("JASTA"). Plaintiffs, nationals of the

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[10] Id. ¶ 11.42.

[11] ABR, *Historical Details for ABN 14 081 890 413*, supra note 1, at 1.

[12] Agrium Inc., Press Release, *Agrium Sells AWB Commodity Management Business* (Dec. 15, 2010) (Form 6-K Ex. 99.1), at 1; Agrium Inc., Press Release (May 11, 2011) (Form 6-K Ex. 99.1), at 1.

[13] Agrium MD&A (Aug. 3, 2011), supra note 1, Ex-99.3, note 2 (Business Acquisitions).

[14] Id. Ex-99.3, note 3 (Discontinued Operations).

United States, assert claims under 18 U.S.C. § 2333(a) for secondary liability under 18 U.S.C. § 2333(d)(2), for aiding and abetting and for conspiracy. *See infra* Counts I–II. This Court has subject-matter jurisdiction under 18 U.S.C. § 2338, which vests the district courts of the United States with exclusive jurisdiction over civil actions brought under the Anti-Terrorism Act, and under 28 U.S.C. § 1331, because Plaintiffs' claims arise under the laws of the United States.

B. This Court Has Personal Jurisdiction Over Defendants.

17. Defendants are subject to specific personal jurisdiction under New York's long-arm statute, N.Y. C.P.L.R. § 302(a)(1), made applicable in this Court by Federal Rule of Civil Procedure 4(k)(1)(A), because Plaintiffs' claims arise from Defendants' transaction of business within New York. AWB Limited transacted business in New York directly: it maintained its own United States-dollar account at the Bank of New York in New York, New York, into which the proceeds of the Oil-for-Food wheat contracts were paid; until May 2001 the illicit fees at the center of this action were paid from that account and from a second Bank of New York account held in the name of AWB Limited's wholly owned subsidiary AWB (Australia) Limited, both operated by AWB's treasury in Melbourne, and were cleared through New York correspondent banks; and until August 2000 AWB Limited maintained an office in New York from which it conducted Oil-for-Food business. In paying those fees from its account, AWB (Australia) Limited acted as AWB Limited's agent: it was AWB Limited's wholly owned subsidiary, its account was operated by the same AWB treasury, and the fees it paid were the fees on AWB's own wheat shipments to Iraq. AWB Limited maintained its New York office through its wholly owned subsidiary AWB (U.S.A.) Limited, which acted as AWB Limited's agent: the subsidiary's manager represented AWB and its related companies in North and South America, and AWB Limited conducted its Oil-for-Food correspondence with the Australian Mission to the United Nations through that office. AWB International transacted that same business in New York through AWB Limited, which acted as

its agent: under the contracts of sale concluded with the Iraqi Grain Board from 1999 until December 2002, AWB Limited sold the wheat as agent for AWB International; AWB International was paid for that wheat through the same letters of credit and the same New York account; and the illicit fees, advanced in the first instance by AWB's chartering division, were charged back to and borne by the wheat pool operated for AWB International's account. AWB Limited's New York conduct was therefore undertaken in AWB International's business, with its knowledge and consent, for its benefit, and subject to its control as the principal on whose account that business was transacted. Plaintiffs' claims arise directly from those transactions. *See infra* Part VI.

18. Upon service of process, Defendants will also be subject to jurisdiction under Rule 4(k)(1)(C) and 18 U.S.C. § 2334(a), which provides for nationwide service of process in civil actions under 18 U.S.C. § 2333.

19. In the alternative, should either Defendant be found not subject to jurisdiction in the courts of general jurisdiction of New York, that Defendant is subject to personal jurisdiction under Federal Rule of Civil Procedure 4(k)(2), because Plaintiffs' claims arise under federal law and arise out of and relate to that Defendant's contacts with the United States as a whole. In that event, Plaintiffs certify that, based on the information readily available to Plaintiffs and their counsel, that Defendant is not subject to suit in the courts of general jurisdiction of any State. *See infra* Part VI.

C. Venue Is Proper in This District and This Forum Is Appropriate.

20. Venue is proper in this District under 28 U.S.C. § 1391(c)(3), because each Defendant is a defendant not resident in the United States and may be sued in any judicial district.

21. Plaintiffs' claims are timely because they did not accrue until the operative causes of action were created and made retroactive on September 28, 2016. *See* 18 U.S.C. § 2335(a); JASTA §§ 4(a), 7. Plaintiffs' claims are also timely because each Defendant is a foreign

corporation which has been absent from the United States, and from any other jurisdiction in which the same or a similar action arising from the same facts could have been maintained by Plaintiffs, since the dates on which Plaintiffs suffered their injuries. 18 U.S.C. § 2335(b).

FACTUAL ALLEGATIONS

I. Throughout Defendants' Dealings With Iraq, the Regime Openly Sponsored Palestinian Terrorism

A. At All Relevant Times, Iraq Was a Designated State Sponsor With a Documented Record of Terrorism Against Americans.

22. Long before AWB began selling wheat to Iraq under the United Nations Oil-for-Food Program, the Government of Iraq was a designated state sponsor of terrorism—initially in 1979, and redesignated in 1990.

23. That designation reflected a documented record of sponsoring and harboring international terrorism, including terrorism directed at the United States and its nationals. The Iraqi Intelligence Service directed and pursued a 1993 attempt to assassinate former U.S. President George Bush and the Emir of Kuwait with a car bomb.[15] Iraq sheltered the Abu Nidal Organization, which carried out terrorist attacks in 20 countries, killing or injuring almost 900 people, and whose targets included the United States and other Western nations.[16] Iraq also sheltered the Mujahedin-e-Khalq Organization, which used terrorist violence and, in the 1970s, killed several U.S. military personnel and U.S. civilians.[17] U.N. Security Council Resolution 687 in turn "prohibits Saddam Hussein from committing or supporting terrorism, or allowing terrorist organizations to operate in

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[15] The White House, *Saddam Hussein's Support for International Terrorism* (archived), at 1.

[16] Id. at 1.

[17] Id. at 1.

Iraq." Nevertheless, as the executive branch found, "Saddam continues to violate these UNSCR provisions."[18]

24. Indeed, Iraq harbored Palestinian terrorist organizations in its capital. The Government of Iraq sheltered the Palestine Liberation Front ("PLF") in Baghdad, an organization known for attacks against Israel and headed by Abu Abbas.[19] Abu Abbas carried out the 1985 hijacking of the cruise ship Achille Lauro and the murder of U.S. citizen Leon Klinghoffer[20]—a 69-year-old American who was disabled and used a wheelchair.[21] These groups were not merely tolerated; as an executive-branch statement explained in 2002, the Abu Nidal Organization, the PLF, and the Mujahedin-e-Khalq each "have offices in Baghdad and receive training, logistical assistance, and financial aid from the government of Iraq."[22]

25. After the regime fell, the President of the United States confirmed that Iraq had been a source of terrorist financing, stating that "[b]ecause of our military, Iraq will no longer be a source of funding for suicide bombers in the Middle East."[23]

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[18] Id. at 1.

[19] Id. at 1.

[20] Id. at 1.

[21] Isr. Def. Forces/Military Intelligence, *The Palestine Liberation Front, Headed by Abu al-Abbas, as a Tool of the Iraqi Regime* (Sept. 2002), Ch.1 ¶5.

[22] White House, *Saddam Hussein's Support for International Terrorism*, supra note 15, at 1.

[23] 39 Weekly Comp. Pres. Doc. (Sept. 1, 2003), at 376.

B. Iraq Funded, Trained, and Armed Palestinian Terrorists—An Effort Directed by Vice President Ramadan.

26. Iraq's support for the Palestinian organizations that carried out the attacks pleaded here was a directed program of money, training and weapons, run from the top of the Iraqi state. The payment program's tiers and its escalation are pleaded below (*see infra* Part I.C); its notoriety across AWB's payment window is pleaded at Part IV.

27. The regime declared that alignment publicly, at the highest level, within weeks of the intifada's outbreak. At the emergency Arab League summit convened in Cairo on October 21 and 22, 2000 to address what United Press International described as "the bloody three-week Palestinian-Israeli confrontations," Iraq participated for the first time since 1990. That agency reported that Iraq came to the summit "despite its fiery call for the Arab world to launch a holy war against Israel," and that, at a summit "focused on the Palestinian issue," "Iraq made good on its promise to devote itself to supporting the Palestinians during the meeting."[24] Saddam Hussein's own address to the summit, delivered by Iraq's second-in-command Izzat Ibrahim, "slammed the Arab leaders in their presence as being 'backward' for choosing a peaceful solution with Israel, 'which can only be confronted with jihad (holy war).'"[25]

28. Israeli security authorities described what the regime's sponsorship produced on the ground while AWB was still paying. On November 25, 2001—three weeks after the first attack pleaded in this Complaint—the Israel Security Agency announced that it had uncovered an Iraqi-supported Palestinian terrorist infrastructure in the Ramallah and Jenin areas operating through the Palestine Liberation Front, the organization headed by Abu Abbas (*see supra* ¶ 24). The Agency

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[24] Iraq begins return to Arab fold, United Press International, Oct. 22, 2000.

[25] Iraq begins return to Arab fold, United Press International, Oct. 22, 2000.

stated that "[t]he Iraqis provided financing through their intelligence services, as well as various military supplies," that it had detained more than 15 people, "several of whom had undergone military training in Iraq in which they were trained in the use of small arms, RPGs, machine guns and hand grenades, as well as in the use and production of explosives and detonation systems including electrical, chemical and cellular detonators," and that "[f]unds for the group were sent from Iraq via couriers, and via Jordanian banks that used bank-to-bank transfers to send the money to banks in the PA."[26]

29. Israeli military intelligence and the Israel Security Agency identified the individuals trained. In a September 2002 report, the Israel Defense Forces' Military Intelligence directorate concluded that "the Iraqi regime employs the Palestinian Liberation Front, an organization with a rich terrorist attack record, as an arm for carrying out terrorist attacks in Israel," and recorded that Front operatives arrested in 2001 and 2002 "revealed in their interrogation that they trained in military camps in Iraq, including in the Republican Guard base in Tikrit," where "Iraqi intelligence personnel were directly responsible for their instruction and briefing."[27] A January 2003 report of the Israel Ministry of Foreign Affairs set out interrogation accounts of two such groups. Members of the first stated that in December 2000 they traveled via Jordan to a training camp in Iraq, where the Front's Deputy General Secretary met them and they trained for approximately two weeks "in firing Kalashnikovs asasault [sic] rifles," learning "to prepare ambushes and to fire at moving vehicles" and, in the second part of the camp, "to manufacture

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[26] Isr. Sec. Agency, *ISA Uncovers Iraqi Supported Palestinian Terrorist Cell* (Nov. 25, 2001).

[27] IDF/MI, *The Palestine Liberation Front*, supra note 21, Exec. Summ. ¶¶ 1–2.

explosive charges and Molotov cocktails."[28] One of the three is identified in that report as "Muhammad Farouq Abu Roub, 28 (Islamic Jihad)," and again as "an Islamic Jihad operative"; he stated that Abu Abbas instructed him "to identify targets, recruit additional operatives and await a shipment of weapons from the organization," that he was afterwards "summoned to Iraq for additional weapons training," that Abu Abbas and the Deputy General Secretary "inquired as to why he had not carried out attacks, and promised to send him weapons and money," and that he thereafter "manufactured a cellular phone explosive charge."[29] Members of the second group stated that their camp "was called 'Al-Quds' and was located outside Baghdad," and that their training covered the use of "Kalashnikovs, Nato, M16, and G3" rifles, the manufacture of "improvised explosive charges," and detonating "an explosive charge using a car remote control."[30]

30. The regime's own internal records document the same support from the Iraqi side. The Iraqi Intelligence Service's M8 Division annual report for 2002—an internal Iraqi government record captured in June 2003 and later published in redacted translation by the Institute for Defense Analyses, in its Iraqi Perspectives Project, Primary Source Materials for Saddam and Terrorism, Volume 2 (Redacted)[31]—sets out, under the heading "Third. Information sent to the Palestine Office official, Mr. Taha Yassin Ramadan," the matters routed to him in that year. They include

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[28] Isr. Ministry of Foreign Affairs, *Iraq's Involvement in the Palestinian Terrorist Activity against Israel* (Jan. 2003), at screen p. 5/13.

[29] Id. at screen p. p.5–6/13.

[30] Id. at screen p. p.7–8/13.

[31] Kevin M. Woods et al., Inst. for Def. Analyses, *Iraqi Perspectives Project, Primary Source Materials for Saddam and Terrorism: Emerging Insights from Captured Iraqi Documents* vol. 2 (Redacted), at 475.

"[a] message from families of Palestinians wounded and martyred in the Gaza Strip, asking for help from the great Arab leader, Saddam Hussein"; "Information about volunteer fighters for martyrdom [suicide] operations"; and "Information on Palestinian groups and support to deliver an amount of assistance."[32] The same report records that, of the 65 items the Division sent for higher review that year, six went "to the official in charge of the Palestine Office, Mr. Taha Yassin Ramadan."[33]

31. Those same records show the regime training and equipping the organization through which it distributed the payments, and training fighters from the occupied territories in the use of weapons. Among the Division's 27 "exemplary activities" for 2002 the report lists: "A course to train a group of fighters from the Arab Liberation Front on martyrdom [suicide] operations," and, three items later, the reestablishing and equipping of the Front's military base on Ramadan's own approval (*see infra* ¶ 50).[34] The report separately sets out financial allocations for the year, the first of which is "[f]inancial allocations for Palestinian groups 40,000,000 forty million Iraqi dinars," together with "sixty five million Iraqi dinars" allocated "to equip the Al-Quds Special Military Base"—the base at which, the same report records, the Division ran training courses for Arab volunteers.[35] The same list records "[t]raining a group from the occupied territories on light weapons and tanks for the period of thirty days in one of the secret courses."[36]

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[32] Id.

[33] Id. at 471

[34] Id. at 490.

[35] Id. at 507-08.

[36] Id. at 488.

32. The same annual report records that this training was authorized at the highest level of the Iraqi state and expanded during the year of Plaintiffs' attacks. Among the Division's activities for 2002 the report lists the "[r]e-equipping and training of Palestinian fighters at the Al-Quds Special Military Base according to approval from the Presidency of the Republic-the Secretary," and the "[o]rganizing courses for Palestinian fighters present in the country at the Al-Quds Special Military Base," including "a specialized explosives course."[37] The report further records the Division's "[p]articipation with M14 in implementing a special security plan to train Palestinians coming from the occupied territory."[38]

33. The official who directed that program was Iraq's Vice President, Taha Yassin Ramadan. Ramadan was one of Saddam Hussein's most senior lieutenants—a surviving plotter of the 1968 Baathist coup, a member of the Revolutionary Command Council, and a figure Reuters later described as Saddam's "enforcer."[39]

34. Ramadan's authority over the regime's Palestinian file and his authority over the Oil-for-Food Programme were the same authority. The Independent Inquiry Committee found that "[t]o coordinate its participation in the Programme, the Government of Iraq established a variety of committees, including the Supreme Command Council, Leading Committee, Import Committee, Technical Committee, and Economic Affairs Committee," and that "[a]mong other Programme responsibilities, the Supreme Command Council oversaw Iraq's purchases of humanitarian goods and oil spare parts."[40] "Vice President Taha Yassin Ramadan headed this high-

[37] Id. at 509.

[38] Id. at 509.

[39] *Some Key Facts on Taha Yassin Ramadan*, Reuters (Aug. 9, 2007), at 1.

[40] IIC, *Report on Programme Manipulation*, supra note 5, at 258.

level body," a body that "included key government officials: President Saddam Hussein, Deputy Prime Minister Tariq Aziz, Finance Minister and Deputy Prime Minister Hikmat Al-Azzawi, and Minister of Oil Amer Rashid," and "[t]hrough memoranda circulated by Vice President Ramadan, the Supreme Command Council broadly instructed other supervisory bodies and the various ministries participating in the Programme."[41] The memorandum the Committee cites for that finding is the "Taha Yassin Ramadan memorandum to Iraqi Ministries (Aug. 3, 2000)"—the same instrument by which Ramadan imposed on all Programme contracts the after-sales-service charge AWB paid (*see infra* ¶ 72).[42] Ramadan also headed a subsidiary body, "sometimes referred to as the Leading Committee," which "oversaw the allocation of Programme funds to the Iraqi ministries, including those (such as the Ministry of Defense) that could not purchase goods under the Programme."[43] AWB's wheat sales were made to the Iraqi Grain Board, one of the State Owned Enterprises that, within that same structure, "purchased goods for their respective ministries."[44]

35. Ramadan's sponsorship of the Palestinian organizations was avowed in public. The State Department's Patterns of Global Terrorism 2001—which identified Iraq as a state sponsor providing bases and training to the Palestine Liberation Front, the Abu Nidal Organization and the Arab Liberation Front (*see infra* ¶ 120)—recorded that, in January 2001, the Iraqi Vice President met the PFLP Secretary General, George Habash, and "expressed continued Iraqi support for the intifadah."[45] Reporting contemporaneous to the meeting identified the Vice President as Taha

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[41] Id. at 258.

[42] Id. at 258 n.406.

[43] Id. at 259.

[44] Id. at 260.

[45] U.S. Dep't of State, *Patterns of Global Terrorism 2001* (2002), at 65.

Yasin Ramadan, and that Ramadan emphasized that Iraq should support the Palestinian uprising "using all means available."[46]

36. Ramadan championed suicide attacks publicly in the months after the attacks pleaded in this Complaint. On May 21, 2002, in talks in Baghdad with Tayssir Qubaa, vice president of the Palestine National Council, Ramadan hailed Palestinian suicide bombings as "heroic operations of martyrdom" and "a glorious form of Palestinian resistance against the vile occupation forces."[47] In the same remarks he stated that Iraq "lends its support by all means to the continuation of the intifada to achieve the aspirations of the Palestinian people to expel the Zionists and establish their independent state," and stressed the need to "mobilise all Arab potential to ensure the intifada lasts."[48]

37. Contemporaneous press reports of Israeli disclosures in October 2002 placed Ramadan in control of the Iraqi regime's martyr payment program. On October 11, 2002, the Los Angeles Times reported that documents "released this week by Israeli intelligence sources showed hundreds of payments that Israel says total $15 million to Palestinians whose relatives were injured or killed, including some suicide bombers," and that "Iraqi Vice President Taha Yassin Ramadan personally directed the transfer of funds through an Iraqi bank in Jordan, according to the documents" (*see infra* Part III.B).[49] The Associated Press had reported the day before that "Iraq's

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[46] *Ramadan Meets Habash*, Republic of Iraq Radio (Jan. 31, 2001) (BBC Monitoring), at 1.

[47] *Iraq Hails Palestinian Suicide Bombers, Vows Support for Intifada*, Agence France Presse (May 21, 2002).

[48] Id.

[49] Barbara Demick, *Israel Targets Pro-Iraq Palestinians Over Money Gifts*, L.A. Times, Oct. 11, 2002, at 3.

vice president has signed checks for the families of Palestinian suicide bombers and others killed in fighting against Israel and advised Palestinian militants about how to achieve secure communications, a senior Israeli official said Thursday"; that account ran in print the following day.[50] The same report described the letter's provenance: "Israeli security forces seized documents, including a handwritten letter from Iraqi Vice President Taha Yassin Ramadan, during a six-week springtime offensive in the West Bank, the official said."[51]

38. The regime began paying the families of Palestinians killed in the intifada as soon as the intifada began. From the outbreak of the violence in late September 2000, Iraq paid $10,000 to the family of each Palestinian killed, and by January 2001 the United States Congress's own research service had reported to Congress that Iraq "has even used some of its scarce currency reserves to donate up to $10,000 to the family of each Palestinian killed in the violence."[52] The Arab Liberation Front, through which the regime distributed the money, publicly put the aggregate at $20 million in aid to Palestinians since the clashes began in September 2000 (*see infra* ¶ 45), and the head of the Front's Ramallah office stated the program's premise in the Front's own words: "We as Palestinians and Arabs consider martyrdom an honor. It is the ultimate sacrifice of one's life for the good of the community."[53] By the time of the first attack pleaded in this Complaint, on

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[50] Steve Weizman, *Israel Says Iraqi Vice President Paid and Advised Palestinian Militants*, Associated Press (Oct. 10, 2002); Steve Weizman, *Iraq Official Supporting Palestinian Militants*, Ventura Cnty. Star, Oct. 11, 2002, at A13.

[51] Weizman, *Israel Says Iraqi Vice President Paid and Advised Palestinian Militants*, supra note 50.

[52] Cong. Research Serv., RL30713, The Current Palestinian Uprising: Al-Aqsa Intifadah (updated Jan. 5, 2001), at CRS-19.

[53] Molly Moore, With Money for 'Martyrs,' Iraq Invests in Image, Wash. Post, Jan. 29, 2001.

November 4, 2001, the program had been running for more than a year and had been reported in a leading United States newspaper (*see infra* ¶ 121).

39. The regime said as much to the United Nations, in writing and on the public record of the Security Council. In identical letters dated November 26, 2000, Iraq's Permanent Representative asked the Secretary-General and the President of the Security Council to "allocate to the Palestinian people part of the revenue from the memorandum of understanding signed by Iraq and the United Nations on 20 May 1996, in order to support that people in its defence of its land, in accordance with the Charter of the United Nations."[54] On December 10, 2000, the Foreign Minister notified the Secretary-General "formally that the Revolution Command Council and the National Command of the Arab Baath Socialist Party, the two supreme constitutional and political organs in the Republic of Iraq, decided at a joint meeting on 9 December 2000 to allocate a billion euros over a one-year period from the proceeds of oil exports under the memorandum of understanding." Of that sum, he wrote, "300 million euros will be allocated to the families of martyrs, to those injured during the intifada and to those whose property was damaged by the Zionist aggressors."[55] On December 19, 2000, Iraq's Foreign Minister wrote to the Secretary-General to request that the U.N. authorize the use of OFF funds for that purpose.[56] The Security Council denied the request. *See infra* ¶¶ 97-98.

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[54] S/2000/1119 p. 1.

[55] S/2000/1174 p. 2 (annex).

[56] S/2000/1217 p. 2 (annex).

C. The Regime Paid Escalating Cash Bounties to "Martyrs'" Families and Distributed Them Through the Arab and Palestine Liberation Fronts.

40. The regime's payments to the families of "martyrs" were public and overt. According to a January 2003 information report published by the Israel Ministry of Foreign Affairs, Iraq's aid was "transferred from Iraq to terrorist groups in the territories, and to families of suicide bombers as well as to injured terrorists and those whose homes were destroyed," and the funds were "given to the families in public and in highly publicized ceremonies, which take place throughout the Gaza Strip and Judea and Samaria," where they were "distributed on behalf of Saddam Hussein, the President of Iraq."[57]

41. Contemporaneous, independent reporting corroborated the program's structure. Human Rights Watch, in its 2002 report on the Second Intifada, found that "[t]he government of Iraq…has expressly endorsed and encouraged suicide bombing attacks against civilians," and that Iraq, "in its provision of funds to families of 'martyrs' and others, has established a differential in which families of suicide bombing operatives are said to receive a considerably larger sum of $25,000, while other families that have suffered a death receive $10,000."[58]

42. The regime escalated the suicide-bomber premium twice, and both escalations are dated. The payment to the family of a Palestinian killed in the conflict was $10,000, and it remained $10,000 throughout. In August 2001 Saddam Hussein raised the grant paid to the family of a suicide bomber from $10,000 to $15,000—a decision recorded in a captured Iraqi document and published in the Palestinian press. The grant for an "ordinary" killed terrorist "remained $10,000,"

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[57] Isr. MFA, *Iraq's Involvement*, supra note 28, at screen p. 2/13.

[58] Human Rights Watch, *Erased in a Moment: Suicide Bombing Attacks Against Israeli Civilians* (Oct. 2002), at 3.

so that the decision "created a gap of $5,000."[59] On March 11, 2002, following a visit to Iraq by Faruk Qaddumi, the head of the Palestine Liberation Organization's political department, Saddam Hussein raised the payment to the family of a suicide bomber to $25,000, accompanied by an appreciation certificate "phrased differently"; the grant for the families of "ordinary" killed terrorists again "remained $10,000," and the gap between them "grew, to a considerable sum of $15,000."[60] Multiple contemporaneous sources confirm the increase.[61] The escalations were therefore not a single adjustment but a deliberate and widening differential: the premium for a suicide bombing rose from nothing, to $5,000, to $15,000 above the payment for any other death.

43. The regime's officials made no secret of the program's purpose. In June 2002, Reuters reported that a Gaza-based ALF official, Ibrahim al-Za'anin, told Reuters journalists that "President Saddam made clear that [suicide] attacks must be considered the utmost act of martyrdom."[62] The White House quoted the regime's West Bank distributor, Mahmoud Besharat, as saying of Saddam's payments: "You would have to ask President Saddam why he is being so generous. But he is a revolutionary and he wants this distinguished struggle, the intifada, to continue."[63] And the $25,000 suicide-bomber tier was openly demonstrated at ALF distribution

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[59] IDF/MI, Iraqi Support for and Encouragement of Palestinian Terrorism (Sept. 2002), Rpt. ¶ 20(b).

[60] Isr. Def. Forces/Military Intelligence, *Iraqi Support for and Encouragement of Palestinian Terrorism* (Sept. 2002), Rpt. ¶ 20(c).

[61] HRW, *Erased in a Moment*, supra note 58, at 7 (fn.33); White House, *Saddam Hussein's Support for International Terrorism*, supra note 15, at 1.

[62] HRW, *Erased in a Moment*, supra note 58, at 4.

[63] White House, *Saddam Hussein's Support for International Terrorism*, supra note 15, at 1.

events. Human Rights Watch reported that at an ALF gathering in the Gaza Strip on May 20, 2002, "forty-six families of 'martyrs' received $10,000 apiece and the families of two suicide bombers received $25,000 apiece," and that a Sky TV broadcast of a similar ALF event in Gaza on July 17, 2002 showed that "members of families of 'martyrs' killed in the violence received certificates and $10,000 checks, while families of suicide bombers received $25,000."[64] The United States government confirmed the program, noting in Patterns of Global Terrorism 2002 that "[p]ublic testimonials by Palestinian civilians and officials and cancelled checks captured by Israel in the West Bank verify the transfer of a considerable amount of Iraqi money."[65]

44. The cancelled checks captured by Israel "certif[ied] to the transfer of financial aid of $10,000 to each of the 12 Arab Israeli families, whose members were killed during the riots of October 2000," with the checks "paid in cash to the families or their representatives in Ramallah via the Palestinian Investment Bank."[66] The public character of the distributions was likewise documented in the press. CBS News reported that at a March 12, 2003 event in a "packed banquet hall," Palestinian families "came one-by-one to receive their $10,000 checks" beneath a banner reading, "The Arab Baath Party Welcomes the Families of the Martyrs for the Distribution of Blessings of Saddam Hussein," with the money "handed out by the Arab Liberation Front, which is affiliated with Saddam's Baath Party."[67] An Associated Press report published in The Intelligencer recorded that as allied forces began the assault on Iraq in March 2003, "families of

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[64] HRW, *Erased in a Moment*, supra note 58, at 4.

[65] U.S. Dep't of State, *Patterns of Global Terrorism 2002*, Dep't of State Pub. 11038 (Apr. 2003), at 79.

[66] Isr. MFA, *Iraq's Involvement*, supra note 28, at screen p. 3/13.

[67] Jarrett Murphy, *Palestinians Get Saddam Charity Checks*, CBS News (Mar. 14, 2003), at 1.

Palestinians killed in fighting with Israel got $210,000 from Saddam Hussein"—$10,000 checks to the families of 21 Palestinians, "including a member of Hamas," distributed at a Khan Younis rally where, in the AP's words, "several men from the group"—the Arab Liberation Front—"fired submachine guns into the air each time Saddam's name was mentioned."[68] The released documents included the checks themselves, and the schedule by which they were graded. The Los Angeles Times reported that "[t]he documents that Israel released included copies of checks to families of some of the deadliest bombers, such as Fuad Hurani, who killed 11 people March 9 in a Jerusalem cafe," and that "[h]is mother received $25,000 in June, according to the papers."[69] The same report described the administrative form the program took: "Detailed lists classify the recipients into families of successful suicide bombers, families of suicide bombers who managed only to kill themselves, and families of those who were killed in other sorts of incidents."[70]

45. The regime's primary instrument in the Palestinian Authority areas was the Arab Liberation Front, which Israeli Military Intelligence described as a paid agency of the Iraqi state. The September 2002 report found that the captured documents "demonstrate that the 'Palestine Office,' headed by Ramadan, 'specializes' in encouraging the terror in the PA areas by judicious use of the financial lever," and that "[t]hus the 'Arab Liberation Front' (which is under Iraqi patronage) became the main 'payment contractor' of the Iraqi regime in the PA areas."[71] The report named three entities "through which the Iraqi regime operates in the PA"—the Arab Liberation

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[68] Ibrahim Barzak, *Saddam Gives $210K to Palestinian Families*, Associated Press (Mar. 19, 2003), at 2–3.

[69] L.A. Times, Oct. 11, 2002, at 3.

[70] L.A. Times, Oct. 11, 2002, at 3.

[71] IDF/MI, *Iraqi Support for and Encouragement*, supra note 60, Exec. Summ. ¶ 3.

Front, the Palestine Liberation Front, and the Palestinian branch of the Iraqi Ba'ath party—and described them as the regime's "'agents of influence'…operating according to its instructions and enjoying generous Iraqi financing."[72] The Front's own secretary-general, Rakad Salem, told the Sydney Morning Herald's Paul McGeough in Ramallah that, as of late March 2002, more than 800 families of Palestinians killed in the unrest had received $10,000 "martyr" payments, and that the funds had been, in Salem's words, "transferred by the banks—from the Iraqi banks to the banks in Palestine."[73] The Front publicly quantified the aggregate, telling reporters "that Iraq has provided $20 million in aid to Palestinians since clashes began in September 2000."[74] And the Front acknowledged that it exercised no discretion of its own. In March 2003 an official of the Front in Ramallah told Inter Press Service: "We don't decide who gets money and how much. Those decisions are taken directly in Iraq, including the difference in the payments to the families of martyrs who died in attacks."[75]

46. The Front answered to Iraq's Vice President personally. Israeli Military Intelligence reported that, "[a]ccording to the captured documents, the central figure in the Iraqi leadership, who directs the Iraqi aid to the Palestinian terror in the PA is Taha Yassin Ramadan, President Saddam Hussein's deputy."[76] Iraqi policy in the Palestinian Authority areas ran through a single office: "[a]ccording to captured documents, the Iraqi policy in the PA is implemented

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[72] Id. Rpt. ¶ 14.

[73] HRW, *Erased in a Moment*, supra note 58, at 4.

[74] Id. at 3-4.

[75] Inter Press Serv., Mar. 19, 2003.

[76] IDF/MI, *Iraqi Support for and Encouragement*, supra note 60, Exec. Summ. ¶ 2.

through the Palestine Office in the all-Arab leadership of the Iraqi Ba'ath Party,"[77] and Ramadan "is described in a captured document as responsible for the Palestine Office in the all-Arab leadership of the Ba'ath party in Iraq."[78] Operating that office under the cover name "Abu Hassan," as Israeli Military Intelligence identified him,[79] Ramadan put his instructions in writing: in "a secret handwritten letter, signed by him," he "transfers instructions for building the Ba'ath party infrastructure in the PA areas, exploiting the Intifada events for achieving 'the complete liberation of Palestine from the river to the sea.'"[80] Israeli Military Intelligence drew the conclusion expressly: "The conclusion from these findings is that Taha Yassin Ramadan, Saddam Hussein's Deputy, is the person who operates the ALF and the Ba'ath Party in the PA."[81] The regime's own captured files record the same chain from the Baghdad end (*see infra* ¶ 50).

47. Ramadan ran the reward program, and the captured documents record his personal engagement with the payments themselves. Among them was "a report…(handwritten) addressed to Abu Hassan…on the depositing of money in 'Account No. 1'"—the account from which the Front distributed the payments (*see infra* ¶ 48).[82] The report records that Ramadan sought the identities and affiliations of the bombers: "in a letter to the PA Taha Yassin Ramadan requests a list of suiciders and a description of their political tendencies."[83] And Israeli Military Intelligence

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[77] Id. Rpt. ¶ 8.

[78] Id. Exec. Summ. ¶ 2.

[79] Id. Rpt. ¶¶ 8, 9, 43(b).

[80] Id. Exec. Summ. ¶ 2.

[81] Id. Rpt. ¶ 9.

[82] Id. Rpt. ¶ 43(b).

[83] Id. Rpt. ¶ 43(j).

placed him at the center of the policy in its own assessment: "In our assessment, Saddam Hussein is personally involved in formulating and overseeing this policy by means of his deputy, Taha Yassin Ramadan. Ramadan's expertise in the economic realm assists him in the intensive operation of the financial lever as a central tool for encouraging Palestinian terrorism."[84] That is the same official, exercising the same economic responsibility, who imposed the after-sales-service fee AWB paid (*see supra* Part I.B; *see infra* Part II).

48. The Front's distribution machinery ran from that same "Account No. 1", and the man who ran it answered to Ramadan. According to the captured document, the transfer of funds into the account "began to take place systematically in October 2000, after the Intifada broke out and continued through 2002," and the funds "were transferred on a monthly basis, and occasionally, when needed, money was transferred twice or even thrice a month."[85] From that account Rakad Salem "transfers funds…to sub-accounts in various areas in the West Bank and the Gaza Strip," which "are supervised by ALF / Ba'ath Party personnel in the various areas and through them the check transfers are made to the beneficiaries."[86] Israeli Military Intelligence identified who supervised that machinery and signed for it: "The collection of data and distribution of money are personally supervised by Rakad Salem (Abu Mahmud), secretary of the Arab Liberation Front and Ba'ath in the PA. Salem is a key figure in the system of money transfer from Iraq, and his signature appears on nearly all bank checks found in the captured documents."[87] The report placed Salem at the Ramallah end of the same axis, as "[t]he outstanding figure

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[84] Id. Rpt. ¶ 13.

[85] Id. Rpt. ¶ 43(c).

[86] Id. Rpt. ¶ 43(e).

[87] Id. Rpt. ¶ 43(d).

concentrating the activity in the PA from his Ramallah residence vis-a-vis Taha Yassin Ramadan and others in Iraq."[88] Israel's coordinator for the occupied territories said so publicly: on October 16, 2002, Major-General Amos Gilad said, "We arrested the representative of Saddam Hussein who was operated personally by Taha Yassin Ramadan, the closest friend and aide of Saddam Hussein."[89]

49. The correspondence that ran between Salem and Ramadan carried instructions as well as money. Israeli Military Intelligence found: "Taha Yassin Ramadan, as it transpires from the correspondence, is also involved in military activity."[90] It traced that involvement to the letter pleaded above (*see supra* ¶ 46): "In a handwritten appendix to the letter he instructs to use code sentences referring to 'military activities' in Gaza and in the West Bank and to requests for money (from Iraq) for arms. In addition, intelligence reports are transferred to his office on Israeli military activity in the PA."[91] Contemporaneous reporting of the Israeli disclosures supplied the code words. Agence France Presse, reporting the Israeli daily Yediot Aharonot's publication of October 10, 2002, described "a hand-written document from Ramadan that listed codes to inform him of attacks inside Israel," and set them out: "'We had a boy,' was the code for a terror attack in the Gaza Strip in the communications with Iraq, while 'we had a girl' was the code for a terror attack in the West Bank."[92] A request for weapons funding "needed to be coded: 'X needs a kidney

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[88] Id. Rpt. ¶ 14.

[89] Agence France Presse, Oct. 18, 2002.

[90] IDF/MI, *Iraqi Support for and Encouragement*, supra note 60, Rpt. ¶ 10.

[91] Id. Rpt. ¶ 10.

[92] Agence France Presse, Oct. 18, 2002.

operation'."[93] These were the communications of an operational relationship: attacks reported to Baghdad, and weapons purchases financed, through a single coded channel.

50. The regime's own captured records confirm that the Front and the Palestine Liberation Front operated as instruments of the regime. The Iraqi Intelligence Service's M8 Division annual report for 2002, pleaded above (*see supra* ¶¶ 30–31), records the same relationship from the Iraqi side. It sets out the "[r]eestablishing and equipping the military base of the Arab Liberation Front according to approval from the associate Taha Yassin Ramadan, official of the Palestine Office in coordination with the Construction and Housing Ministry,"[94] and an item recording "Information on paying an amount to the Abu A[l]-Abbas Group."[95] Among the communications routed to "the…director of the Palestine Office" it logs "a message from the associate Rukad Salim [Rakad Salem], secretary for the Arab Liberation Front,"[96] and it separately records "the arrest of associate Rakad Saalim, secretary of the Arab Liberation Front."[97] These records confirm, from the regime's own files, that the Front and the Palestine Liberation Front were administered, based, and funded by the Iraqi state—the conduits through which the regime's hard currency reached its rewards for suicide bombings. (*see supra* Part I.B; *see infra* Parts III, IV).

51. The ALF distributed the payments openly and through its own spokesmen. CBS News identified the ALF spokesman in Gaza, Ibrahim Zanen, who stated: "President Saddam

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[93] Agence France Presse, Oct. 18, 2002.

[94] *Iraqi Perspectives Project* vol. 2, supra note 31, at PDF p. 511.

[95] Id. at PDF p. 504.

[96] Id. at PDF p. 505.

[97] Id. at PDF p. 502.

considers the Palestinian people as part of his Arab nation. Both of us, the Iraqis and the Palestinians, are in the same trench facing an ugly aggression."[98] The same spokesman, quoted by the Associated Press as "Ibrahim Zaanen," said in March 2003: "Even in this crucial time, President Saddam has not forgotten his people in Palestine and he insists on making payments to the families of the martyrs."[99] An Israeli Foreign Ministry spokeswoman, Amira Oron, characterized the payments to CBS as showing "that Saddam is involved in every activity that is terrorism and murderous and leads to instability in the Middle East."[100] Per the Israel MFA report, the ALF's Ramallah office moved its funds through banks in the Palestinian Authority areas—"the money is transferred from Iraq to the Arab Bank in Ramallah."[101]

52. The regime's second instrument was the Palestine Liberation Front (PLF), headed by Abu Abbas and based in Baghdad. The Israel Ministry of Foreign Affairs, in a January 2003 report attributed to Israeli security sources, identified as "[p]rimary among these organizations…the Palestinian Liberation Front (PLF), headed by Mahmoud Zidan Abu El Abbas who operates from Iraq, and the Arab Liberation Front (ALF)," describing both as "avid pro-Iraqi organizations."[102] A September 2002 report published by the Israel MFA and attributed to Israel Defense Forces/Military Intelligence was captioned as describing the PLF, "Headed by Abu al-Abbas," as "a tool of the Iraqi regime for carrying out terrorist attacks against Israel," and stated that "[i]n the early 1990s, the PLF HQ settled in Iraq and became an instrument of terrorism in the

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[98] Murphy, *Palestinians Get Saddam Charity Checks*, supra note 67, at 1.

[99] Barzak, *Saddam Gives $210K*, supra note 68, at 3.

[100] Murphy, *Palestinians Get Saddam Charity Checks*, supra note 67, at 1.

[101] Isr. MFA, *Iraq's Involvement*, supra note 28, at screen p. p.4–5/13.

[102] Id. at screen p. 1/13.

hands of the Saddam Hussein regime."[103] The White House separately confirmed that "Iraq shelters" the PLF "in Baghdad," that the PLF is "headed by Abu Abbas," and that Abu Abbas "carried out [the] 1985 hijacking of [the] cruise ship Achille Lauro and murdered U.S. citizen Leon Klinghoffer."[104]

53. The regime and the PLF made no secret of their relationship. The IDF/Military Intelligence report quoted Iraqi Deputy Prime Minister Tareq Aziz, on MBC Television on September 14, 2002, describing Palestinian violence as "a legitimate activity which we support explicitly and not in secret."[105] According to the same report and the Israel MFA's January 2003 account, the PLF held public ceremonies at which "certificates and grants were distributed to the families of the deceased, each receiving approximately $10,000," with participants chanting, "Dear Saddam, strike strike Tel-Aviv."[106] These accounts identify the PLF and the ALF as the regime's distribution instruments.

54. Beginning in November 2004, congressional investigators publicly described the financial route by which the regime's illicit funds reached the bombers' families—through the Iraqi embassy in Amman and the Rafidain Bank.[107] The congressional record describing this route is set out *infra* at Part III.B.

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[103] IDF/MI, *The Palestine Liberation Front*, supra note 21, Ch.1 ¶6.

[104] White House, *Saddam Hussein's Support for International Terrorism*, supra note 15, at 1.

[105] IDF/MI, *The Palestine Liberation Front*, supra note 21, Executive Summary.

[106] Isr. MFA, *Iraq's Involvement*, supra note 28, at screen p. 3/13.

[107] This Complaint uses the spelling "Rafidain Bank." See Independent Inquiry Comm. into the U.N. Oil-for-Food Programme, Report on Programme Manipulation (Oct. 27, 2005), at 304 (IIC/Volcker); Report of the Inquiry into Certain Australian Companies in Relation to the UN Oil-for-Food Programme vol. 1 (Terence R.H. Cole, Comm'r, Nov. 2006), at 243 (Cole, "Al-

II. AWB Knowingly Paid US$224 Million in Concealed Kickbacks to the Saddam Hussein Regime

55. Between November 1999 and March 2003, AWB paid the government of Saddam Hussein US$224,128,189.98 in hard currency kickbacks, disguised as "inland transportation" and "after-sales-service" fees. That sum comprised US$146,101,906.59 in transportation fees and US$78,026,283.39 attributable to a surcharge equivalent to 10 per cent of the value of AWB's wheat.[108]

56. Those kickbacks did not cost AWB a penny, though: the company recovered every dollar of it from the very United Nations escrow account that had been designed to keep hard currency out of the regime's hands.[109]

57. The mechanism, the counterparties, and AWB's own contemporaneous words are set out in the transaction record below (*see infra* Part II.C) and in the concealment record that follows it (*see infra* Part II.D); this section establishes the rules AWB was bound to follow and the machinery Iraq built, with AWB's participation, to defeat them.

Rafidain Bank"). The Duelfer Report uses the transliteration "Rafidian Bank" for the same institution: "In late 1999, the state-owned Rafidian Bank took over the CBI's role in managing Iraqi government funds abroad, mostly through Rafidian's Amman branch." Cent. Intelligence Agency, Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD (Sept. 30, 2004), at PDF p. 185

[108] Cole Inquiry vol. 1, supra note 6, at lxiii.

[109] Id. at xii.

A. Oil-for-Food Required Every Payment to Flow Through a U.N. Escrow and Barred Providing Hard Currency to Iraq—Rules AWB Knew Well.

1. The sanctions regime barred any payment of funds to Iraq and channeled humanitarian trade through a United Nations escrow account.

58. The United Nations Security Council imposed comprehensive sanctions on Iraq by Resolution 661, adopted August 6, 1990, following Iraq's August 2, 1990 invasion of Kuwait.[110] Resolution 661 decided that all States "shall not make available to the Government of Iraq…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…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."[111] It likewise required States to prevent the sale or supply to Iraq of any commodities or products, "but not including supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs…."[112]

59. Resolution 687, adopted April 3, 1991,[113] provided that the prohibitions of Resolution 661 "shall not apply to foodstuffs notified to the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait…."[114] The same resolution required Iraq to renounce terrorism: it "[r]equires Iraq to inform the Council that

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[110] Christopher M. Blanchard & Kenneth Katzman, Cong. Rsch. Serv., RL30472, *Iraq: Oil-For-Food Program, Illicit Trade, and Investigations*, at 3.

[111] S.C. Res. 661 ¶ 4 (printed p. 20).

[112] S.C. Res. 661 ¶ 3(c) (printed p. 19).

[113] Blanchard & Katzman, RL30472, supra note 110, at 3.

[114] S.C. Res. 687 ¶ 20 (printed p. 14).

it will not commit or support any act of international terrorism or allow any organization directed towards commission of such acts to operate within its territory and to condemn unequivocally and renounce all acts, methods and practices of terrorism."[115]

60. On April 14, 1995, the Council adopted Resolution 986, establishing the Oil-for-Food Programme.[116] Under OFF, Iraq could sell oil under United Nations-approved contracts, with the proceeds paid into a United Nations-controlled escrow account, from which United Nations-approved humanitarian contracts—including contracts for foodstuffs like wheat—were funded.[117] The escrow account was maintained at the New York branch of Banque Nationale de Paris.[118]

61. The Security Council Committee established under Resolution 661 (the "661 Committee") adopted detailed procedures to implement OFF.[119] Those procedures required that letters of credit run to the Iraq escrow account in New York, and that full payment be made into the U.N. Iraq account rather than to any Iraqi entity.[120] AWB's own shipments were approved and paid through this same escrow-account, OIP-verification architecture.[121]

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[115] S.C. Res. 687 ¶ 32 (printed p. 15).

[116] Blanchard & Katzman, RL30472, supra note 110, at 3; Cole Inquiry vol. 1, supra note 6, at xiii.

[117] Cole Inquiry vol. 1, supra note 6, at xiii.

[118] Blanchard & Katzman, RL30472, supra note 110, at 4.

[119] Letter from Tono Eitel, Chairman, Security Council Committee Established by Resolution 661, to the President of the Security Council, U.N. Doc. S/1996/636 (Aug. 12, 1996) (UNO.0009.0334), at 1.

[120] Id. at 7, 9.

[121] AWB (International) Ltd, Briefing on the U.N. Escrow Account and Inland Transport Arrangements (Nov. 14, 2005) (WEA.0001.0059), at 1; Cole Inquiry vol. 2, supra note 4, ¶ 9.106.

2. For a supplier in AWB's position, the only permitted in-country charges were customary tolls, paid in Iraqi dinars, that could not enrich the Iraqi state.

62. That architecture governed how suppliers themselves were required to pay. The United Nations Office of the Iraq Programme advised in January 2000 that "all payments for procurement by the Government of Iraq under the 'oil for food' programme were to be made to the United Nations Iraq Account in New York"—not to any Government of Iraq account.[122] Where a contract instead required a supplier to deposit money in a bank account outside that escrow architecture, the Office of the Iraq Programme advised that the contract would be returned for amendment.[123]

63. The framework left only a narrow door for charges paid inside Iraq, and AWB's arrangement fell outside it. In a June 12, 1998 opinion addressing an overland shipment through Iraq, the United Nations Office of Legal Affairs advised the 661 Committee that transit charges must "not be of such a level as to represent a source of income to the Iraqi state," should be "limited to charges for transportation, such as road tolls, levied on a non-discriminatory basis," and "should also be payable in Iraqi dinars only."[124] Reviewing that and related advices, the Cole Inquiry distilled the rule as permitting "only reasonable and customary payments made in Iraqi dinars and necessarily associated with permitted transactions."[125] The Inquiry then applied that rule to a grain

[122] Note from J.A. Almstrom, Chief, Contracts Processing Section, U.N. Office of the Iraq Programme, to Benon Sevan (Jan. 4, 2000) (UNO.0006.0030), at 1.

[123] Id. at 1.

[124] Letter from Hans Corell, U.N. Under-Secretary-General for Legal Affairs, to Antonio Monteiro, Chairman, Security Council Committee Established by Resolution 661 (June 12, 1998) (UNO.0007.0273), at 3–4.

[125] Cole Inquiry vol. 1, supra note 6, ¶ 1.55.

supplier in AWB's position. An obligation on the supplier itself to deliver grain within Iraq "would appear not to infringe paragraph 4 of Resolution 661"; but "if the supplier then sought to subcontract the transportation within Iraq to an Iraqi entity, involving as it would the payment of funds from the supplier to the Iraqi subcontractor, paragraph 4 of Resolution 661 would be infringed," and "any payment to the Iraqi entity in currency other than dinars was impermissible."[126] Such a contract, the Inquiry concluded, "would infringe paragraph 4 of Resolution 661 if the method of performance of the delivery obligation involved dealing with an Iraqi entity, and paying it funds, particularly in currency other than dinars."[127] That is the arrangement AWB entered (*see infra* Parts II.B, II.C). The same two limits—a reasonable amount, and payment in Iraqi dinars rather than United States dollars—were conveyed to AWB in March 2001 (*see infra* ¶ 133).

64. These constraints survived the Programme's revision, and they governed the paperwork as well as the payment. Under the 661 Committee's procedures, a foodstuffs exporter seeking payment from the escrow account had to be notified to the Committee by the exporting State, and the notification had to state that the exporter sought payment from the Iraq account and attach the concluded contractual arrangements.[128] Resolution 1409, adopted May 14, 2002, carried that regime forward: every application for commodities or products, "to include services ancillary to the supply of such commodities and products," had to be forwarded to the Office of the Iraq Programme and financed from the escrow account, and payment issued only after United Nations

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[126] Id. ¶¶ 1.56–1.57.

[127] Id. ¶ 1.58.

[128] U.N. Doc. S/1996/636, supra note 119, at 7.

verification that the goods had arrived in Iraq as contracted.[129] At no point did the Programme authorize a supplier to route hard currency to Iraq or to an Iraqi entity outside the escrow account.[130]

3. AWB had studied these rules for years, and its own government repeatedly told it in writing that hard-currency and third-party payment structures were forbidden.

65. AWB was no newcomer to Iraq or to the sanctions regime. AWB participated in all 13 phases of the Programme from 1997 to 2003, selling wheat to Iraq under 41 contracts with a face value of US$2,290,718,296 and receiving over US$2.3 billion in payments from the United Nations escrow account.[131] By 1999, AWB was selling to Iraq about 10 per cent of Australia's annual wheat exports, on sales made to the Iraqi Grain Board—"an Iraqi Government instrumentality."[132]

66. Well before the fee mechanism was created, AWB was instructed on the payment rules in plain terms. In a November 6, 1995 letter, the Australian Department of Foreign Affairs and Trade ("DFAT") advised AWB's Regional Manager Marketing, Charles Stott, of the only methods of paying for humanitarian goods that were "acceptable to the UN Sanctions Committee," and warned that a permission to export could be denied where the method of payment—including the sourcing of the funds received in payment—would involve a breach of sanctions.[133] In a

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[129] S.C. Res. 1409 (May 14, 2002) (UNO.0009.0346), at 3–4.

[130] U.N. Doc. S/1996/636, supra note 119, at 7, 9.

[131] Cole Inquiry vol. 1, supra note 6, ¶ 5.10; IIC, *Report on Programme Manipulation*, supra note 5, at 311.

[132] Cole Inquiry vol. 1, supra note 6, at xiii.

[133] Letter from M.T. Skelly, Dep't of Foreign Affairs & Trade, to Charles Stott, AWB (Nov. 6, 1995) (AWB.0100.0301), at 1, 2.

January 25, 1996 letter to Stott, DFAT went further, advising that "in all future AWB applications to the Sanctions Committee the existence of third party payments should be made explicit."[134]

67. AWB repeatedly pressed the Australian Government to relax those constraints, and was repeatedly refused. When Stott proposed, in early 1996, to sell Iraq wheat against a five-year letter of credit assigned to an undisclosed third party, DFAT advised that a five-year letter of credit "was a different arrangement and looked more like the provision of financial resources to Iraq."[135] Stott himself acknowledged in that discussion that paragraph 4 of Resolution 661 did not permit states to make funds or financial resources available to Iraq except for humanitarian purposes.[136] On May 16, 1996, the Minister for Foreign Affairs, Alexander Downer, told his department there was "'not a chance'" of his agreeing to the proposal, stating that "Australia's policy was to support sanctions against Iraq, and that we were going to do just that."[137]

68. DFAT's most senior Middle East official rejected AWB's third-party structures as sanctions evasion and doubted AWB's candor. In an October 30, 1995 minute, Acting Assistant Secretary Bob Bowker wrote that "[t]here is no prospect in our view that the UN would allow approval to be granted to an arrangement whereby a third party (BHP) provided credit facilities to

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[134] Letter from M.T. Skelly, Dep't of Foreign Affairs & Trade, to Charles Stott, Australian Wheat Board (Jan. 25, 1996) (DFT.0010.0180), at 2.

[135] Dep't of Foreign Affairs & Trade Minute of telephone conversation with Charles Stott (Apr. 1, 1996) (DFT.0010.0082), at 1.

[136] Id. at 1.

[137] Dep't of Foreign Affairs & Trade Minute of telephone discussion with Minister Downer (May 16, 1996) (DFT.0010.0109), at 1.

Iraq for the supply of Australian wheat."[138] Bowker recorded that "[w]here the UN has approved AWB sales to Iraq, this has been on the basis of applications specifying cash against documents; we have not been aware that the AWB was being paid using the funds of third parties, nor was this made known to the UN Sanctions Committee."[139] Confronted with Stott's contrary claims, Bowker wrote flatly: "we do not believe him."[140]

69. By the time the fee mechanism took hold, then, AWB—including through Stott, who returned to AWB as General Manager, International Sales and Marketing, in July 2000—had studied the resolutions, held the domestic implementing regulations, and been told, over years and in writing, that hard-currency payments to Iraq and undisclosed third-party payment structures were incompatible with the sanctions regime.[141] AWB's knowledge of these rules is developed further below (*see infra* Part IV).

B. Iraq Built a Kickback Mechanism to Extract Hard Currency in Defiance of Those Rules, and AWB Fed It Through the Front Company Alia.

1. Iraq designed the fees for the express purpose of circumventing the sanctions.

70. The purported "transportation" and "service" fees AWB paid were an instrument of sanctions evasion, adopted for that purpose. The Cole Inquiry found that "[t]he decision to impose these fees and tariffs was deliberately made with the objective of circumventing UN Security Council Resolution 661 and subsequent resolutions," because "[p]rovision of foreign

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[138] Dep't of Foreign Affairs & Trade Minute from Bob Bowker (Oct. 30, 1995) (DFT.0013.0094), at 1–2.

[139] Id. at 1–2.

[140] Id. at 1–2.

[141] Skelly-Stott Letter (Nov. 6, 1995), supra note 133, at 1; Skelly-Stott Letter (Jan. 25, 1996), supra note 134, at 2; Id. at 1; Cole Inquiry vol. 1, supra note 6, at xxx.

currency to Iraq was prohibited by Resolution 661, paragraph 4."[142] Iraq required that the fees be paid "in a foreign currency and…directly to Iraq through its embassies or into the government bank accounts in Baghdad or, where that was not possible, to front companies with which Iraq had made arrangements to receive the monies and remit them promptly to Government of Iraq bank accounts in Baghdad."[143] Iraq would contract only with companies that agreed to pay the transportation and after-sales-service fees; AWB was therefore "confronted with the choice of not agreeing to pay…and potentially losing its Iraqi market or agreeing to pay the fees and retaining its market," and "[i]t chose the latter course."[144]

2. Iraq created the mechanism in two steps—a 1999 inland-transportation fee, then an August 2000 "after-sales-service" fee.

71. The first step came in June 1999. On June 10, 1999, at the start of Phase VI, the Iraqi Economic Affairs Committee issued a directive ordering ministries to impose non-negotiable "transportation fees" on all goods requiring inland delivery by Iraqi trucks, payable to designated Iraqi entities and regime-controlled front companies.[145] The mechanism's economics were designed to be costless to the supplier: "the amount of the inland transport fee was added to the otherwise agreed contract price and included in the price in the contract submitted to the United Nations and paid from the escrow account," so that "[t]he financial disadvantage to exporters was

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[142] Cole Inquiry vol. 1, supra note 6, at 83.

[143] Id. at 83.

[144] Id. at 83.

[145] Id. at 83, 84.

one of timing" only.[146] The introduction and escalation of this fee in AWB's own contracts is set out in the transaction record below (*see infra* Part II.C).

72. The second step came in August 2000, when the regime added a percentage surcharge on top of the transport fee. On August 3, 2000, Vice-President Ramadan issued a "confidential and urgent" memorandum directing that commercial contracts across all phases of the Programme carry an "After Sales Services" charge—2 to 5 per cent for food and medication, 5 to 10 per cent for everything else, to be set "at the highest rate whenever possible"—with the proceeds "transferred to general treasury."[147] That Programme portfolio was Ramadan's own. Israeli Military Intelligence, describing the Vice President's standing role in the regime, recorded that his "main realm of responsibility in the framework of Iraqi political activity is the economic realm," and that within it "he is in charge of implementing the policy of rewards and prioritization in the framework of the 'oil for food' arrangement."[148] The same report identified Ramadan as the official who directed the regime's aid to Palestinian terrorism (*see supra* Part I.C). A companion Council of Ministers Economic Affairs Committee memorandum three days later set a schedule of dollar-denominated per-tonne transport tariffs that, as the Cole Inquiry found, both confirmed that "Iraqi instrumentalities" were providing the transport and port services and reflected the regime's recognized need for "front companies" to enable suppliers to make the payments.[149] The regime then fixed the charge at a flat floor: a memorandum transmitting the decision of the 44th Council of Ministers meeting held October 22, 2000 directed that "[t]he final outcome with respect

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[146] Cole Inquiry vol. 1, supra note 6, at 84.

[147] Id. at 85–86.

[148] IDF/MI, *Iraqi Support for and Encouragement*, supra note 60, Rpt. ¶ 12.

[149] Cole Inquiry vol. 1, supra note 6, at 86–87.

to the 10% of the value of contracts that are made with external entities is considered the minimum per contract, exclusive of transportation fees. Any percentage above that will be welcomed, as this is the way sanctions are lifted. For this reason we want to provoke them so that they are faced with two options: either accept reality or lift the sanctions."[150] The regime thus recorded, in its own directive, that the surcharge was an instrument for breaking the sanctions regime—the regime into which AWB paid. AWB carried that surcharge on its own contracts through the trucking-fee mechanism, on top of the per-tonne fee: its two February 2001 wheat contracts were each priced at US$217.80 per tonne on an internal cost breakdown showing "US$25.00 for 'trucking'" and "a further '10% – 19.80.'"[151]

3. AWB paid these fees to Iraq through Alia, a Jordanian front company owned and controlled by Iraq's Ministry of Transport, that performed no actual trucking.

73. Alia for Transportation and General Trade presented itself to AWB in late 1999. On October 27, 1999, Alia's general manager, Othman Al-Absi, wrote to AWB's Mark Emons introducing Alia as a Jordanian company that was, in Alia's own words, "agents of the state company for Iraqi land Transport and Iraq," advising that it had been "informed officially form [sic] Ministry of Transportation Iraqi that your company won a contract to supply Iraq by (900 000) tons of (Wheat)," and asking AWB to call so Alia could "give you the way of payments."[152] Separately, in a letter dated October 20, 1999, Alia also introduced itself to AWB's Managing

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[150] Id. at 86.

[151] Id. at xli.

[152] Letter from Othman Al-Absi, Alia for Transportation & General Trade, to Mark Emons, AWB (Oct. 27, 1999) (AWB.0071.0223), at 1.

Director as a Jordanian transportation company offering services "form [sic] Um Qaser port in Basrah to the other governorate in Iraq."[153]

74. Alia was a regime front. Alia had been established in August 1994 as a joint venture between an Iraqi businessman and Iraq's Ministry of Transportation, with a Jordanian national holding a nominee interest to satisfy Jordanian ownership law and Ministry employees holding the remaining shares.[154] The Cole Inquiry described the State's stake, noting that Alia was "owned by or on behalf of the Iraqi Ministry of Transport."[155] In 1999, the Ministry of Transportation arranged for Alia to act as the collection agent of the Iraqi State Company for Water Transport ("ISCWT") for suppliers' inland-transportation payments, and Alia was receiving supplier fees by March 2000.[156] Alia was paid for that service. The Cole Inquiry found, on the evidence of Alia's own principal, that Alia was paid a commission on the inland transportation fees that it received, including from AWB, "in return for its agreement to receive and pass onto the ISCWT inland transportation fees."[157] In fact, "all transportation services for which Alia received payment from humanitarian suppliers were provided by employees of the Government of Iraq" using Ministry of

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[153] Letter from Alia for Transportation & General Trade to the Australian Wheat Board (Oct. 20, 1999) (AWB.0002.0195), at 1.

[154] IIC, *Report on Programme Manipulation*, supra note 5, at 302; Cole Inquiry vol. 1, supra note 6, at 136.

[155] Cole Inquiry vol. 2, supra note 4, ¶ 13.160.

[156] IIC, *Report on Programme Manipulation*, supra note 5, at 303; Cole Inquiry vol. 1, supra note 6, at 136.

[157] *Report of the Inquiry into Certain Australian Companies in Relation to the UN Oil-for-Food Programme* vol. 5 (Appendices) (Terence R.H. Cole, Comm'r, Nov. 2006), printed p. 277.

Transportation or Iraqi Grain Board trucks.[158] As Alia's own general manager put it: "There were no actual costs. The driver got maybe $10. This was a payment to the Government of Iraq."[159]

75. The routing was designed to move hard currency to Iraq while masking its destination. AWB paid the fees in foreign currency into Alia's accounts at Jordanian banks; Alia deducted a commission of 0.25 per cent and remitted the balance into Iraqi state accounts at the Rafidain Bank in Amman—those of the Iraqi State Company for Water Transport, the General Maritime Transportation Company and the Iraq Public Ports Company—from which the funds were distributed to Iraqi government ministries.[160] The disposition of those funds within the regime is addressed below (*see infra* Part III).

76. The character of these payments was evident to all involved. The United Nations Independent Inquiry Committee ("IIC") concluded that "AWB's payments to Alia were tantamount to payments to the Government of Iraq for nominally the provision of inland transportation services," and that "[b]y arranging for suppliers to make illicit payments to a Jordanian company such as Alia—instead of directly to ISCWT or another governmental entity of Iraq—the Iraqi regime disguised the illicit nature of such payments."[161] As the IIC found, and the

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[158] Cole Inquiry vol. 1, supra note 6, at 137; IIC, *Report on Programme Manipulation*, supra note 5, at 312.

[159] IIC, *Report on Programme Manipulation*, supra note 5, at 304.

[160] Id. at 304–305; Cole Inquiry vol. 1, supra note 6, at lxiii; Report of the Inquiry into Certain Australian Companies in Relation to the UN Oil-for-Food Programme vol. 3 (Terence R.H. Cole, Comm'r, Nov. 2006), ¶ 3.16.

[161] IIC, *Report on Programme Manipulation*, supra note 5, at 312, 304, 306.

Cole Inquiry quoted, "Alia knowingly acted as a front company, serving as a conduit for collecting hundreds of millions of dollars in illicit fees paid by suppliers to the Iraqi regime."[162]

C. AWB's Own Contracts, Vessel Records, and Payment Instructions Chart a Kickback That Escalated From 1999 Through 2003.

77. Through this machinery, AWB became the single largest source of the illicit fees the mechanism was built to collect. Between November 1999 and March 2003, AWB paid Alia US$224,128,189.98—US$146,101,906.59 in transportation fees and US$78,026,283.39 attributable to the 10 per cent after-sales-service fee.[163] AWB's payments dwarfed those of the other suppliers the Independent Inquiry Committee profiled—almost five times the more than $45.3 million the Committee was able to calculate for the next largest, the Belhasa Group, and more than five times the approximately $42.8 million it attributed to Chaiyaporn Rice Company.[164]

78. AWB's own later accounting to the Australian Wheat Export Authority establishes the outer dimensions of the contract record charted in this section. For the Programme's first five phases, AWB's contracts with the Iraqi Grain Board required shipment only to Iraq's point of entry. In July 1999 the parties added a term requiring AWB to bear the cost of inland transportation from Umm Qasr to points within Iraq—"CIF Free on Truck to Silo All Governorates via Umm Qasr Port"—and that provision "became standard in all AWB contracts for the remainder of the Programme."[165] Twenty of AWB's 41 contracts—all those concluded after the term was

[162] Cole Inquiry vol. 1, supra note 6, at 138–139.

[163] Id. at lxiii.

[164] IIC, Report on Programme Manipulation, supra note 5, at 326, 335–36.

[165] Id. at 311–12.

introduced—carried it.[166] AWB has itself dated the start of that pricing practice to the Programme's Phase 6, beginning June 1999, when the Iraqi Grain Board ("IGB") began inviting offers on terms styled "Free into Truck to all silos within all Governorates of Iraq" and "C.I.F. Free in Truck."[167] A separate AWB submission to the same regulator instead places the start of the inland-transport pricing component in July 1999 and describes the recipient only as "a Jordanian company," without using the name Alia.[168]

1. Iraq fixed the fee as a condition of tender, unrelated to any transport obligation AWB owed, and raised it at will.

79. Iraq moved the fee upward repeatedly, and set each new rate itself. The Cole Inquiry found that "[i]n June 1999 the Government of Iraq imposed inland transport fees on humanitarian goods imported into Iraq," and that "[i]n August 2000 it imposed a tariff described as an 'after-sales-service' fee" set for foodstuffs at "10 per cent of the contract value."[169] Across the Programme the fee "varied between US$12.00 per tonne and US$51.15 per tonne," was "fixed by Iraq for each phase of the Oil-for-Food Programme as a condition of tender," and "was not related to any contractual obligation AWB had with the IGB for discharge or transport of wheat."[170]

80. AWB's own records track that escalation from the beginning. In a June 17, 1999 internal critique of an Iraqi tender, AWB's Graham Owen flagged a contract term requiring

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[166] AWBI Briefing (Nov. 14, 2005), supra note 121, at 1.

[167] Id. at 2.

[168] AWB (International) Ltd, Briefing Note on Iraq Contracts and the Inland Transport Component (Aug. 21, 2004) (WEA.0001.0067), at 1.

[169] Cole Inquiry vol. 1, supra note 6, ¶¶ 3.1–3.2.

[170] *Report of the Inquiry into Certain Australian Companies in Relation to the UN Oil-for-Food Programme* vol. 4 (Terence R.H. Cole, Comm'r, Nov. 2006), ¶ 29.57.

AWB's price to include "land transport costs of USD12 per tonne," asking simply, "Why???"[171] By early December 1999, AWB's Michael Watson was confirming the same rate as a standing arrangement under the Programme's Phase 6, writing to Alia's Othman Al-Absi that "the trucking fee of USD 12 p/mt basis B/L weight at load port, will be remitted to your nominated account upon sailing of the vessels from Australia."[172] An Iraqi Grain Board telex of November 8, 1999 confirms the same period and the same rate—"12 USD for per Ton"—for the vessel M.V. Pretty Ruby under "M.O.U Phase Six."[173]

81. The rate rose to USD 15 per tonne within months, and AWB moved to pay it directly rather than through intermediaries. On February 9, 2000, AWB's Mark Emons confirmed to the Grain Board's Director General that "AWB Ltd agree with the terms of the contract that a trucking fee of USD 15 per tonne will be paid on the three contracts of 300,000 tonnes each," adding that "this payment will be made as per your instruction to the Transport company nominated by yourself"—a facsimile marked "strictly confidential."[174] On April 1, 2000, Watson confirmed the same USD 15 per tonne rate to Alia for "Phase 7."[175] On July 26, 2000, Watson advised Alia that, "[w]ith immediate effect, Trucking fee of USD 15 p/mt now to be made directly

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[171] Email from Graham Owen to Darryl Borlase, AWB (June 17, 1999) (AWB.0135.0075), at 2.

[172] Facsimile from Michael Watson, AWB, to Othman Al-Absi, Alia for Transportation & General Trade (Dec. 7, 1999) (AWB.0089.0309), at 1.

[173] Telex from the Grain Board of Iraq to AWB Ltd (Nov. 8, 1999) (AWB.0136.0642), at 1.

[174] Facsimile from Mark Emons, AWB, to Yousif A. Rahman, Director General, Grain Board of Iraq (Feb. 9, 2000) (MAE.0001.0080), at 1.

[175] Facsimile from Michael Watson, Chartering Manager, AWB Ltd, to Othman Al-Absi, Alia for Transportation & General Trade (Apr. 1, 2000) (AWB.0001.0077), at 1.

by AWB to the trucking company," routed to a Jordan National Bank account.[176] The Cole Inquiry described the arrangement those exchanges recorded: "The agreement was one in which AWB had no contractual obligation to arrange or effect the discharge of the wheat or its subsequent transportation to all governorates within Iraq, in which responsibility for these functions remained with the Iraqis, and in which AWB's only obligation was to pay to the person or account nominated by the IGB the fixed fee nominated by the IGB, which fee was said to be for the costs of discharge and transportation and was added to the CIF price at which AWB would have otherwise agreed to sell the wheat to the IGB on a CIF free out basis."[177]

82. By mid-2000, the Iraqi Minister of Trade himself linked the rate to the regime's own revenue interest, and to a distinct "after-sales service" charge layered on top of it. AWB's Mark Emons recorded that when AWB proposed recovering demurrage costs by holding back part of the trucking fee, "it was clear that the option of AWB holding part or all of the trucking fee would not be acceptable to the Minister (and therefore the Regime)," and that "the Minister had proposed to increase the trucking fee to USD 18 per tonne for phase 8 contracts" (pending Presidential approval), while AWB's rate already differed from the rate "charged to some Russian, Thai and Algerian companies."[178] In the same file note, Emons recorded that the Grain Board's former Director General, Dr. Zuhair, warned that reducing the trucking fee "could be a considerable increase in the costs of the 'after sales service' required"—the clearest statement, in

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[176] Email from Charles Stott to Michael Watson et al., AWB (July 26-27, 2000) (AWB.0138.0377), at 1; Email from Michael Watson to Charles Stott et al., AWB (July 26, 2000) (AWB.0138.0378), at 1.

[177] Cole Inquiry vol. 2, supra note 4, ¶ 13.120.

[178] File note of Mark Emons, AWB visit to the Iraqi Grain Board (June 13, 2000) (AWB.0176.0024), at 2.

AWB's own transaction record, that the trucking fee and the after-sales-service charge were fungible components of a single revenue demand.[179] In late October 2000 the Grain Board requested quotes with "inland transport charges equil [sic] to US$ (25) per metric ton" included.[180] And in February 2001, reporting to AWB on his return from Baghdad, Darryl Borlase wrote that the trucking fee was "now USD25.00 pmt all Governates of Iraq with a 10% service fee on the entire FIT value of the contract," and that "[w]e believe the increase in trucking fee and addition of the service charge is a mechanism of extracting more dollars from the escrow account."[181]

83. By December 2002, on the 1,000,000-tonne sale split into Contracts A1670 and A1680, the inland-transport component itself had risen to USD 51.15 per tonne, embedded in a Euro-denominated contract price.[182] The Iraqi Grain Board's own confirmation of the same contract itemized "INLAND TRANSPORT USD 51.15 PMT" within a final contract price of "USD 279.53 PMT EQUAL TO 280.37 EURO."[183]

2. AWB understood what the surcharge was, controlled the payments, and acknowledged that the money reached the Iraqi state.

84. The "after-sales-service" label was one AWB used itself, and AWB knew what it covered. The Cole Inquiry found that AWB treated the 10 per cent surcharge as part of the inland transportation fee "in the knowledge that payments to Alia were in truth payments to Iraq," and

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[179] Id. at 2.

[180] Email from the Grain Board of Iraq to Charles Stott, AWB (Oct. 25-26, 2000) (AWB.5009.0387), at 1.

[181] AWB internal Iraq trip report (excerpt) (AWB.0084.0046), at 4.

[182] Email from Nigel Edmonds-Wilson, AWB (Dec. 12, 2002) (AWB.0147.0092), at 1-2.

[183] Email from Yousif M. Abdul-Rahman, Director General, Grain Board of Iraq, forwarded within AWB (Dec. 17 & 23, 2002) (AWB.0147.0104), at 1.

that "[t]he treatment of the 10 per cent surcharge or after-sales-service fee as a 'trucking fee' was a device to disguise that surcharge and its true nature."[184] AWB's own file bears that out. On May 29, 2000, AWB's Michael Watson recorded that "AWB has been approached by IGB to provide 'after sales service,'"[185] and set the resulting action item as: "Determine what 'after sales service required' i.e equipment /cash (Board approval may be required for this)."[186] On May 10, 2001, an AWB Iraq-delegation report recorded, as its own heading, "Big issue is 'after sales service,'" alongside a Grain Board request for "performance bond 10% for splitting inland t/port fees."[187] And on October 30, 2001, a shipowner's broker asked AWB's charterer directly "when [it] is going to pay inland transportation charge & 10% commission to ISCWT (Iraqi State Company for Water Transport)," the full amount to be "paid in advance before ship's arrival at Umm Qasr pilot station" for the vessel's berthing turn—a 10-percent commission payable, on the face of that document, to an instrumentality of the Iraqi state.[188]

85. AWB used its own control over these payments as commercial leverage against Iraq, underscoring that AWB understood the payments as a lever it held. In September 2001, when a required letter of credit for the vessel MV Anassa had not issued, AWB's Dominic Hogan recorded that "AWB can hold back 2nd payment Inland Transport payments (USD16 million at Sept 30)—hence if by this date L/C is not on our counter, we withhold these second payments

[184] Cole Inquiry vol. 2, supra note 4, ¶ 19.66.

[185] Email from Michael Watson to Nigel Officer, AWB (May 29, 2000) (AWB.5076.0360), at 2.

[186] Id. at 3.

[187] Email from Dominic Hogan, AWB (May 10, 2001) (AWB.5068.0001), at 2.

[188] Email from Sandra Gatto to Dominic Hogan, AWB, forwarding an Austral Chartering telex (Oct. 30, 2001) (AWB.5062.0175), at 1.

from IGB."[189] Days later, Hogan recorded that the amount AWB was holding back had grown from USD 4.5 million to a projected USD 8.864 million, "which almost covers Anassa," pending an amendment routed from the Central Bank of Iraq to AWB's correspondent bank, BNP, in New York—the same institution AWB's own bills of lading elsewhere identify by its full name, BNP Paribas, New York.[190]

86. The transaction record set out above is drawn overwhelmingly from AWB's own internal faxes, emails, invoices, and payment-authorization forms. The examples given are illustrative, not exhaustive, of a payment practice AWB's own November 2005 submission describes as running across at least 20 of its 41 Oil-for-Food contracts.[191]

87. The Committee that investigated the Programme reached the same conclusion about what AWB's own dealings told it. Examining more than 25,000 of AWB's records, the Independent Inquiry Committee found that "AWB was aware that the price for Alia's transport services was determined by the Government of Iraq, not by Alia," and recorded the admission of Michael Long, AWB's General Manager for International Sales and Marketing from November 2001, that he "knew that Iraq's Ministry of Transportation set the price for Alia's inland transportation charges" and "was informed of the transport price during visits to the Ministry of Transportation."[192] That role, the Committee found, "should have alerted AWB to the probability

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[189] Email from Dominic Hogan to Paul Ingleby and Tim Goodacre, AWB (Sept. 10, 2001) (AWB.5050.0014), at 1.

[190] Email from Dominic Hogan to Paul Ingleby and Tim Goodacre, AWB (Sept. 13, 2001) (AWB.5050.0016), at 1; Bill of Lading, Austwheat 1960, Geelong to Umm Qasr (Sept. 23, 2000) (AWB.0081.0014), at 1.

[191] AWBI Briefing (Nov. 14, 2005), supra note 121, at 1.

[192] IIC, Report on Programme Manipulation, supra note 5, at 316.

that the Ministry of Transportation derived some benefit from AWB's payments for transportation fees to Alia."[193] AWB acknowledged to the Committee that "AWB did not initiate discussions for or negotiate a contract with Alia concerning the provision by Alia of inland transport services" and "did not negotiate with Alia either the inland transport services or the fees for those services," and explained that it had not contested the sharp price increases because the change was "revenue neutral" for AWB—the increases "could be incorporated into the price charged and recovered from the escrow account."[194] The Iraqi state enforced the payments directly. In a fax of November 24, 1999, Alia relayed to AWB a complaint from the Iraqi State Company for Water Transport that AWB had not paid—which, the Committee found, "clearly suggests AWB's awareness that the Government of Iraq was privy to its specific payments and arrangements with Alia and that the Government of Iraq possibly was the actual beneficiary of those payments."[195] In October 2001 Alia told AWB that "[y]ou are totally aware of the instructions issued by the ISCWT to pay the inland transportation charges (5) days before vessel[s] arrive to the port."[196] And on September 19, 2002 Alia sent AWB a fax marked "URGENT": "ISCWT informed us that you should credit their account with the amount of Euro 203303 immediately today otherwise they will stop the discharging of vessel and would not permit it to leave the harbour until money is received."[197] On the Committee's accounting, AWB paid Alia "over $221.7 million for what it termed inland

[193] Id.

[194] Id.

[195] Id. at 317-18.

[196] Id. at 318.

[197] Id.

transport or trucking fees," and "[t]hese payments were channeled to the Government of Iraq by Alia."[198]

D. AWB Designed Its Payment Architecture to Conceal the Money's Destination.

88. The concealment was integral to the architecture of AWB's Iraq payments. Across the life of the scheme AWB built and maintained recurring devices to obscure the movement of funds to and for the benefit of the Iraqi regime—a founding routing design, an interposed United Kingdom channel, split and suppressed invoices, communications routed off official systems, and destroyed records—each documented in AWB's own contemporaneous files and developed below.

89. AWB did not merely pay the fees; it worked to hide them. As the Cole Inquiry found, "AWB decided to try to hide the payments it was making to Iraq" because "it knew that payments to Iraq were contrary to UN sanctions and Australian government policy."[199] AWB employed a layered concealment structure: it amended charterparties so that shipowners paid the fee; it interposed the English company Ronly Holdings Limited and Ronly's Liechtenstein nominee, Tse Yu Hong Metal Limited; and it altered its short-form contract wording to remove any reference to the U.S.-dollar discharge fee.[200] AWB's own Mark Emons explained the object of the third-party structure in a March 7, 2000 email: it would "divorce clearly from the FOB price any connection with a shipping / logistics charge should the contracts come under scrutiny," and, he wrote, "[t]his not only saves us time but does disguise the fee."[201] The concealment was a joint

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[198] Id. at 325.

[199] Cole Inquiry vol. 1, supra note 6, at xx.

[200] Id. at xx–xxii.

[201] Id. at xix–xx.

undertaking. The Cole Inquiry found that "AWB and Iraq, through the IGB, had agreed to the fee being paid to a 'third party' as part of the hiding of the payment,"[202] and that the amendment of AWB's letters of credit "had the advantage, from the IGB's and AWB's points of view, of reducing the risk of detection of payments to Iraq known by both AWB and the IGB to be contrary to UN sanctions."[203]

90. AWB implemented that design in part by interposing a United Kingdom middleman, Ronly, between itself and the ultimate recipients of its Iraq payments—an entity with which AWB was simultaneously negotiating a controlled "Corgrain" trading joint venture. On March 6, 2000, AWB agreed to pay Ronly "a fee of USD 0.20 Per Metric Ton" to issue trucking and freight invoices to AWB, instructing that Ronly's fee invoices "should be kept separate to any trucking or freight invoices."[204] When AWB restructured the payments in mid-2000 to pay vessel owners and the Jordanian account directly, it resolved to "continue to pay Ronly the USD0.20 cents per tonne for performing the payment although they are no longer involved"[205]—a fee untethered from any service rendered. AWB's own David Cowan recorded that "Mark Eamons & Nigel O. wanted to disguise AWB payments into Iraq for trucking fees."[206] What this structure shows about AWB's knowledge is addressed below (*see infra* Part IV).

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[202] Id. at xxi.

[203] Cole Inquiry vol. 2, supra note 4, ¶ 13.119.

[204] Letter from Michael Watson, AWB, to Ronly (Mar. 6, 2000) (AWB.0087.0076), at 1.

[205] Email from Charles Stott to Kathleen Gibson et al., AWB (July 25, 2000) (AWB.0138.0380), at 1.

[206] Email exchange between Paul Ingleby and David Cowan, AWB (Sept. 21, 2000) (AWB.5076.0354), at 1.

91. AWB split its invoices to keep the true payment flows off its own books. In a May 9, 2000 email chain, AWB's Michael Watson instructed that a forwarding company's freight invoice for "USD 20.35 p/mt" was "to be sent directly to pacrim not awb," and emphasized: "Essential that Invoices to Pacrim not sent to AWB."[207] Responding the same day, AWB's Mark Emons wrote: "I am sure I don't need to remind you of the sensitivity of sending the freight invoices to AWB (by mistake no doubt) but with all the book balancing we are doing plus the discretionary payments to our friends in the middle east we do need to run a very tight admin."[208] AWB directed sensitive communications away from its official systems. In the same exchange, Emons advised: "if you have any doubts as to the security of what we are doing I suggest you fax the invoices to Michael[']s home fax."[209]

92. In designing that routing in 1999, AWB's own people measured the alternatives against whether "the link was not apparent that the funds were going into" Iraq, and contemplated a letter of credit that "does not require truck receipts."[210]

93. Finally, AWB's records of the trucking-fee arrangement were not preserved. On June 13, 2003, AWB's Darryl Borlase faxed Dominic Hogan "the only pages that I could find that

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[207] Email chain between Michael Watson and Mark Emons, AWB (May 9, 2000) (AWB.0182.0163), at 2.

[208] Id. at 1.

[209] Id. at 1.

[210] Email from Dominic Hogan to Mark Emons et al., AWB (Oct. 11-12, 1999) (AWB.5035.0338), at 2; Email from Mark Emons and Graham Owen, AWB (Oct. 12, 1999) (AWB.5035.0341), at 1.

inferred the trucking fee," and reported that "[t]here is no brief in the file with ref to the dates you indicated," adding: "(do you have a good shredder??)."[211]

94. The elaborateness and duration of this architecture—a multi-year structure of an interposed United Kingdom intermediary, split and suppressed invoices, and private fax lines—is itself probative that AWB's Iraq payments were not business as usual.[212] Commissioner Cole so found, in terms: AWB "went to extraordinary lengths to hide the payment of the fee to Alia," using shipowners and interposing Ronly and Tse Yu Hong Metal Limited as "subterfuges…undertaken because AWB knew that the fees were not approved by the United Nations."[213] And he found: "I find that AWB did mislead the United Nations."[214] The inferences this design supports as to AWB's knowledge are developed below (*see infra* Part IV).

III. AWB's Kickbacks Fed the Regime's Hard-Currency Reserve From Which the Martyr Payments Were Made

95. The preceding Parts establish, separately, the two ends of the regime's money machine: at one end, AWB and other humanitarian-goods suppliers paying concealed hard-currency kickbacks to the Saddam Hussein regime outside the United Nations escrow account (*see supra* Part II); at the other, the regime publicly advertising and paying fixed cash bounties to the families of Palestinian "martyrs," with a $25,000 premium for the families of suicide bombers (*see supra* Part I). This Part pleads the middle: the connection between AWB's illicit payments and

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[211] Facsimile from Darryl Borlase to Dominic Hogan, AWB (June 13, 2003) (AWB.6038.0344), at 1.

[212] Watson-Emons Email Chain (May 9, 2000), supra note 207, at 1; Email from Mark Emons to Michael Watson, AWB (Aug. 13, 1999) (MAE.0002.0041), at 1.

[213] Cole Inquiry vol. 4, supra note 170, ¶31.48.

[214] Id. ¶31.49.

Palestinian attacks in Israel. The kickbacks flowed—through regime front companies, false-name bank accounts in Jordan, and the Iraqi state's own overseas bank—into a discretionary reserve of hard currency that Saddam Hussein's government held and spent outside the United Nations escrow, free of the controls that account imposed (the "hard-currency reserve"). The regime built that reserve by evading the sanctions, concealed it in accounts opened under false names, and spent it as its leadership directed, for the purposes the sanctions existed to prevent. As pleaded below, the United States Government's own comprehensive investigation quantified that reserve and described its mechanics (Part III.A); beginning on November 16, 2004, congressional investigators traced Oil-for-Food kickback money held at the Rafidain Bank in Amman to the payments made to suicide bombers' families (Part III.B); and AWB's money moved through that same channel—the same front company and the same Amman bank the investigators described (Part III.C).

96. The regime engineered its illicit finances to obscure this path. As the U.S. Government's Iraq Survey Group found, the kickbacks moved through temporary accounts held under false names precisely "to disassociate the Iraqi government from the transaction."[215] The sources establish an identified reserve of unrestricted hard currency built substantially from supplier kickbacks; AWB's position as the largest single supplier-side contributor of such fees (*see supra* Part II); and the regime's use of that reserve, at its unfettered discretion, for the purposes it publicly proclaimed—including the reward program for suicide bombings that killed and injured plaintiffs and their family members (*see supra* Part I; *see infra* Part V). The regime's discretion over that reserve ran through the same hand at both ends: the Vice President who authored the after-sales-service fee AWB paid, Taha Yasin Ramadan (*see supra* Parts I.B, II), headed the

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[215] Cent. Intelligence Agency, *Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD* (Sept. 30, 2004), at PDF p. 175.

regime's Palestine Office, which funded and oversaw the Arab Liberation Front and its secretary, Rakad Salem—the instrument and the man through whom the regime distributed the martyr payments. *See supra* Part I.C; (*see infra* Part IV.A).

97. The regime's demand for money it could direct to the Palestinians was pressed on the Security Council itself. The request Iraq made in December 2000 (*see supra* ¶ 39) was made to the very body whose procedures governed AWB's own contracts (*see supra* ¶¶ 61, 64). On January 8 and 18, 2001, the Security Council Committee established by Resolution 661 took up "Iraq's decision to allocate 1 billion euros to the Palestinian people"; Iraq's Foreign Minister protested to the Secretary-General on January 23, 2001 that the United States and United Kingdom representatives had sought to "obstruct" it, and urged that "the members of the Committee authorize Iraq's request with all possible speed."[216]

98. The regime asserted that need publicly, and the Security Council refused it. On January 29, 2001, The Washington Post reported that "Hussein's plan to donate nearly $1 billion in official aid to the Palestinians was effectively killed in the U.N. Security Council last week at the behest of the United States and Britain"—a Council that, as the same report noted, "reviews expenditures under sanction provisions that allow Iraq to sell oil to buy food and medical supplies."[217] The regime's own distributing organization described the same grievance in the same terms, the Arab Liberation Front's spokesman in the Gaza Strip stating that Iraq "wants to transfer approximately $1 billion from its oil revenues from the supervised oil quotas, but the US vetoed

[216] S/2001/75 pp. 2–3 (annex); S/2001/76 pp. 2–3 (annex).

[217] Molly Moore, With Money for 'Martyrs,' Iraq Invests in Image, Wash. Post, Jan. 29, 2001.

the idea."[218] That refusal establishes two things. First, the escrow was a functioning control and not a formality: when the regime sought to direct Programme revenue to Palestinian causes through the lawful mechanism, that mechanism denied it. Second, the reserve the regime assembled outside the escrow was the substitute for what it had been refused—and the grievance remained live, a Palestinian delegation to Baghdad in May 2001 praising Iraq for the aid it bestowed "including some one billion Euros which were blocked by the United States."[219] AWB's payments did not diminish after that refusal became public. Within weeks AWB was pricing contracts at USD 25 per tonne (*see supra* ¶ 82); within three months it paid the regime's new 10-percent "after-sales-service" surcharge for the first time; and by December 2002 the inland-transport component had reached USD 51.15 per tonne (*see supra* ¶ 83).

A. The Kickbacks Flowed Into a Discretionary Reserve of Hard Currency the Regime Held and Spent Outside the U.N. Escrow's Controls.

1. The United States Government's own investigators described the same kickback mechanism AWB used.

99. The authoritative accounting of the regime's illicit revenues is the Comprehensive Report of the Special Advisor to the Director of Central Intelligence on Iraq's WMD (the "Duelfer Report"), prepared by the CIA's Iraq Survey Group ("ISG") and delivered in 2004.[220] The Duelfer Report found that, outside the United Nations-approved methods, the regime built a large reserve of unrestricted hard currency, funded in substantial part by the kickbacks it extracted on Oil-for-Food import contracts.[221]

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[218] Isr. MFA, *Iraq's Involvement*, supra note 28, at screen p. 4/13.

[219] Id. at screen p. 2/13.

[220] *Comprehensive Report of the Special Advisor*, supra note 215.

[221] Id. PDF pp.142, 174.

100. The kickback stream is the stream AWB fed (*see supra* Part II), and the Duelfer Report described it in terms that mirror AWB's own transactions. The Report found that "[b]eginning with the 8th phase in June 2000, Iraq began to demand a kickback on all UN OFF program import contracts to generate illicit income," generally "around 10 percent."[222] The mechanism was price inflation: contracts were written approximately 10 percent above the actual price, with the supplier depositing that increment into Iraqi accounts—and the fee, the Report found, was often denominated as a charge for spare parts or "after sales service," and was often applied, particularly in Jordan, through supplier performance bonds that were automatically swept into Iraqi accounts.[223]

101. Sworn testimony before Congress described the same mechanism. Ambassador Patrick Kennedy, testifying about the Coalition Provisional Authority's post-war review of Oil-for-Food contracts, explained that "suppliers had agreed to inflated prices and agreed to pay a percentage of the inflated contract value into regime officials' foreign bank accounts," and that "the level of the fee was assumed to be 10 percent of the total contract value for all of the contract from June 2000 onward. That was the date from which we had been told that the former regime officials really pushed to get these kickback fees."[224] The ministries the Duelfer Report identified as engaged in the 10 percent import-kickback scheme included the Ministry of Trade—the ministry

[222] Id. at PDF p. 173.

[223] Id. at PDF p. 173.

[224] *The Iraq Oil-for-Food Program: Starving for Accountability*: Hearing Before the Subcomm. on Nat'l Sec., Emerging Threats & Int'l Relations of the H. Comm. on Gov't Reform, 108th Cong. (Apr. 21, 2004), at 43.

whose Iraqi Grain Board was AWB's contract counterparty (*see supra* Part II)—and the Ministry of Agriculture.[225]

2. The kickbacks were collected through regime front companies and false-name accounts in Jordan and banked at Iraq's central bank and its state-owned Rafidain Bank in Amman.

102. The Duelfer Report traced the kickbacks' route into that discretionary hard-currency reserve. According to senior Iraqi Ministry of Trade and other official sources, supplier kickback payments were deposited into temporary "bridge" accounts at banks in Jordan and Lebanon controlled by the contracting Iraqi ministry—accounts held not in the ministry's name but under false names "to disassociate the Iraqi government from the transaction"—and within 24 hours the funds were transferred to a Central Bank of Iraq ("CBI") account at the same bank, leaving the bridge accounts at a zero balance at the end of each day.[226] The Report further found: "Kickback payments also were made to at least two Iraqi front companies: Alia in Jordan and Al-Wasel & Babel in the UAE. Ultimately, the kickback funds were couriered back to the CBI in Iraq."[227] Alia—the first of the two front companies the ISG named—is the Jordanian company to which AWB made its US$224 million in payments (*see supra* Part II; *see infra* Part III.C).

103. The reserve was banked, in substantial part, at the Iraqi state's own bank in Amman. The Duelfer Report found: "In late 1999, the state-owned Rafidian Bank took over the CBI's role in managing Iraqi government funds abroad, mostly through Rafidian's Amman branch."[228] The

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[225] *Comprehensive Report of the Special Advisor*, supra note 215, PDF pp.175, 192 (Fig. 22).

[226] *Comprehensive Report of the Special Advisor*, supra note 215, at PDF p. 175.

[227] Id. at PDF p. 175.

[228] Id. at PDF p. 185.

Report described the CBI's "hidden overseas accounts in Lebanon and Jordan," which the regime used for earnings from the 10 percent contract-kickback scheme and from oil surcharges, and found that a CBI Investment Department officer was directly responsible for transferring foreign currency from those hidden accounts to separate overseas accounts held by the regime leadership and by the Iraqi Intelligence Service ("IIS").[229] As to the Amman branch specifically, the Report found that "the Jordanian Branch of the Rafidian Bank…was established purely for use of the Iraqi government."[230]

104. Contemporaneous sworn testimony corroborated the Jordan routing. John Fawcett, testifying before a House subcommittee in May 2005, stated that "[t]he kickbacks were sent back to bank accounts in Jordan largely," and that, on his understanding of the mechanism, ministry signatories forwarded the money onward to further accounts, "implying that it was going to either Saddam's family or to the Iraqi intelligence."[231] The cash left Jordan the way illicit cash does: the Duelfer Report found that withdrawals from the regime's foreign accounts in Jordan and Lebanon—usually ranging between $5 million and $10 million at a time—were transported to Baghdad in diplomatic pouches via the Iraqi Embassy, and that the CBI's own director once carried $10 million in his vehicle on a return trip from Beirut to Baghdad.[232]

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[229] Id. at PDF p. 185.

[230] Id. at PDF p. 187.

[231] *The United Nations Oil-for-Food Program: Saddam Hussein's Use of Oil Allocations*: Hearing Before the Subcomm. on Oversight & Investigations of the H. Comm. on Energy & Commerce, 109th Cong. (May 16, 2005) (Serial No. 109-29), at 39–40.

[232] *Comprehensive Report of the Special Advisor*, supra note 215, at PDF p. 187.

3. The regime disbursed that reserve outside any budget or oversight, at its leadership's direction.

105. The reserve answered to no budget and no oversight. The Duelfer Report found: "The CBI provided foreign currency in cash to Saddam through an official funding mechanism established to release cash from CBI reserves to the Presidential Office. The Presidential Office did not have a fixed budget."[233] Disbursements to the Presidential Office ranged from thousands of U.S. dollars up to $1 million, always paid in cash in foreign currency.[234] Iraq's military and security services—including the IIS and the Military Industrialization Commission ("MIC")—drew on the same discretionary apparatus, submitting written requests for extra-budgetary funds to the Presidential Diwan or the Presidential Secretariat.[235] The results were visible in the regime's books: Duelfer's prepared statement to Congress reported that the MIC's budget surged from $7.8 million in 1998 to $350 million in 2001, with $500 million budgeted for 2003.[236] The kickbacks were valuable to the regime precisely because—unlike the more than $31 billion in humanitarian goods delivered under United Nations supervision through the escrow account—they arrived as cash the regime could spend free of every control the Programme imposed.[237]

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[233] Id. at PDF p. 189.

[234] Id. at PDF p. 189.

[235] Id. PDF pp.149–150.

[236] *The Oil-for-Food Program: Tracking the Funds*: Hearing Before the H. Comm. on Int'l Relations, 108th Cong. (2004) (Serial No. 108-157), printed p.27.

[237] *Comprehensive Report of the Special Advisor*, supra note 215, PDF pp.142, 157.

B. Oil-for-Food Kickback Money in the Regime's Amman Bank Accounts Funded the Payments to Suicide Bombers' Families.

106. That the Oil-for-Food kickbacks funded the regime's payments to the families of Palestinian suicide bombers is a matter of public record. On November 16, 2004, the Associated Press broke the story, reporting the findings of congressional investigators on the eve of a House International Relations Committee hearing: "Saddam Hussein diverted money from the U.N. oil-for-food program to pay millions of dollars to families of Palestinian suicide bombers who carried out attacks on Israel, say congressional investigators who uncovered evidence of the money trail."[238] According to the AP's report, investigators had found that "[m]oney from kickbacks on oil-for-food deals" and "other illicit funds were paid into accounts held by a Jordanian branch of the Iraqi government owned Rafidain Bank."[239]

107. The AP's November 16 report identified the withdrawal agent and the payment amounts, with the attribution the AP itself supplied: "According to employees of the Iraqi Central Bank and the Rafidain Bank, the former Iraqi ambassador to Jordan, Sabah Yassen, personally withdrew money from the accounts to make payments ranging from $15,000 to $25,000 to the families of Palestinian suicide bombers."[240] The range the Associated Press reported corresponds to the regime's own schedule as it stood across the period: $15,000 for a suicide bomber's family from August 2001, and $25,000 from March 2002 (*see supra* Part I.C). As for aggregates, the AP reported—attributing the figure to Palestinian sources—that "Palestinians have said before that

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[238] Desmond Butler, *AP NewsBreak: Saddam Diverted Oil-for-Food Money to Families of Palestinian Bombers*, AP Online (Nov. 16, 2004), at 1.

[239] Id. at 1.

[240] Id. at 1.

Saddam gave payments of more than $35 million to families of Palestinians killed or wounded in the conflict with Israel that began in September 2000," and reported that "[d]uring the four-year conflict, Palestinians have carried out 117 suicide bombings, killing 494 Israelis and others."[241]

108. On November 17, 2004, the House Committee on International Relations convened its hearing, "The Oil-for-Food Program: Tracking the Funds."[242] Committee Chairman Henry J. Hyde stated in his opening statement: "According to information provided to this Committee, Saddam paid $25,000 rewards to the families of Palestinian suicide bombers through the Iraqi Ambassador to Jordan out of accounts in the Rafidain Bank in Amman, which held kickback money Saddam demanded from suppliers to his regime."[243]

109. By late 2005, that reported money trail had been drawn to AWB itself, by name. On December 8, 2005—two days before Australia's Cole Inquiry opened hearings in Sydney—The Australian reported the connection.[244] The newspaper reported that kickbacks paid by Australia's monopoly wheat exporter to the Saddam Hussein regime were put into a bank account used to finance a US$10 million slush fund for the families of Palestinian suicide bombers, and that U.S. Government and Central Intelligence Agency documents revealed "a trail of blood money flowing from companies now known to have taken bribes into bank accounts in Jordan, which were then used by the Iraqi Government to pay money for deadly bombings or to buy weapons."[245] The newspaper identified "companies such as Jordanian firm Alia, which received hundreds of

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[241] Butler, *AP NewsBreak* (AP Online), supra note 238, at 1.

[242] *Tracking the Funds* Hearing, supra note 236, printed pp.1, 6.

[243] Id. printed pp.8–9.

[244] John Kerin, *Wheat Bribes Funded Bombers*, The Australian (Dec. 8, 2005), at 1–2.

[245] Id. at 1.

millions of dollars from Australian wheat exporter AWB," as having "paid money into 'front' accounts held under false names" that "were then emptied each evening into Iraqi Government accounts at the same bank."[246] The Australian reported that AWB had been accused of paying US$222 million in illegal bribes to the Iraqi Government through the program; and that AWB's payments represented the biggest single contribution to the kickbacks uncovered by the Volcker investigation.[247] The article re-published Chairman Hyde's November 2004 statement: "According to information provided to this committee, Saddam paid $US25,000 rewards to the families of Palestinian suicide bombers through the Iraqi ambassador to Jordan," "out of accounts in the Rafidain Bank in Amman (the Jordan capital), which held kickback money Saddam demanded from suppliers to his regime."[248]

110. In sum, the public record—congressional investigators' findings, the Chairman's statement at the Tracking the Funds hearing, and the Australian reporting that followed—described a "money trail" running from Oil-for-Food supplier kickbacks, to Iraqi government-owned Rafidain Bank accounts in Amman, to $15,000–$25,000 payments withdrawn for the families of Palestinian suicide bombers.[249]

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[246] Id. at 1.

[247] Id. at 1–2.

[248] Id. at 1.

[249] Butler, *AP NewsBreak* (AP Online), supra note 238, at 1; Desmond Butler, AP NewsBreak: Saddam Diverted Oil-for-Food Money to Families of Palestinian Bombers, AP Worldstream (Nov. 17, 2004), at 1–2; Desmond Butler & Edith M. Lederer, Saddam's Suicide Bomb Funds, CBS News (Nov. 17, 2004), at 1–2; *Tracking the Funds* Hearing, supra note 236, printed pp.8–9.

C. AWB's US$224 Million Entered That Same Reserve Through the Same Conduits.

111. AWB's money reached the regime's Amman accounts by a route the Cole Inquiry traced shipment by shipment. Between November 1999 and March 2003 AWB paid Alia, the Jordanian front company, US$224,128,189.98 in "inland transportation" and "after-sales-service" fees, of which Alia retained a commission and transferred the balance into Iraqi state accounts at the Rafidain Bank in Amman—those of the Iraqi State Company for Water Transport, the General Maritime Transportation Company and the Iraq Public Ports Company.[250] The regime knew, shipment by shipment, whose money it was receiving. As the Independent Inquiry Committee found, "[u]pon receipt of the funds, Alia informed ISCWT of the amount of the transfer and the corresponding supplier, contract, ship, and letter of credit," and "[s]hortly after sending such communications, Alia transferred the full payment amount (less a commission between one-quarter percent and one percent) to ISCWT's account at Rafidain Bank in Amman."[251] Money reaching that Amman account "was transferred promptly into the company's account at the Baghdad branch of the same bank."[252]

112. The Cole Inquiry traced the Amman leg ship by ship. Alia's bank statements record payments out of the accounts that received AWB's fees to the General Maritime Transportation Company's Rafidain account, in entries "expressed to be in relation to specific nominated vessels, including vessels chartered by AWB."[253] Examining one of those accounts for May and June 2001,

[250] Cole Inquiry vol. 1, supra note 6, at lxii.

[251] IIC, *Report on Programme Manipulation*, supra note 5, at 305.

[252] Cole Inquiry vol. 1, supra note 6, ¶ 5.41; IIC, Report on Programme Manipulation, supra note 5, at 271.

[253] Cole Inquiry vol. 3, supra note 160, ¶ 26.87.

the Inquiry identified four deposits traceable to AWB's inland transportation fees under AWB contracts A0430, A0552 and A0553 and corresponding transfers out to that account each naming a vessel; found that "each of the vessels named is a vessel that AWB chartered in respect of which inland transportation fees were paid by AWB"; and found that each transfer was 99.75 per cent of what Alia had received from AWB for that vessel.[254] Every leg of that route ran outside the United Nations escrow account, in hard currency, to destinations the regime controlled (*see supra* Part II).

113. The United States Government's investigators had independently identified both of AWB's conduits and AWB's mechanism: the ISG named Alia as one of only two Oil-for-Food kickback front companies it identified anywhere, named the Rafidain Bank's Amman branch as the institution that managed the regime's funds abroad, and described the same inflated-price, after-sales-service mechanism the Cole Inquiry found in AWB's contracts (*see supra* ¶¶ 100, 102-103).

114. That Alia was an instrument of the Iraqi regime was established well beyond the United Nations' warnings—in the Australian government's own intelligence. From 1998 onward, Australia's intelligence community held reporting that Alia was "part owned by the Iraqi Government and that it was involved in circumventing United Nations sanctions…on behalf of the Iraqi Government," and, by the first quarter of 2000, that Alia received the inland-transport fees "as agent for the Iraqi Government" and that the fees, less a small commission, "were paid into accounts accessible by Iraq in violation of sanctions."[255]

[254] Id. ¶¶ 26.88–26.89.

[255] *Distillation and Distribution of Secret Exhibit 4*, Cole Inquiry Ex. 641 (tendered Mar. 23, 2006) (GOV.0003.0018), at 1 ¶¶1–2.

115. The convergence is therefore complete at the institutional level, from independent directions. The CIA's ISG, tracing the regime's finances, found the kickback channel managed through the Rafidain Bank's Amman branch and fed through the front company Alia.[256] Congressional investigators, as the Associated Press reported in November 2004, described Oil-for-Food kickback money held in "accounts held by a Jordanian branch of the Iraqi government owned Rafidain Bank," from which "the former Iraqi ambassador to Jordan, Sabah Yassen, personally withdrew money…to make payments ranging from $15,000 to $25,000 to the families of Palestinian suicide bombers."[257] And the Cole Inquiry's findings and AWB's own documents place AWB's US$224 million in exactly those channels: paid to Alia, remitted to Iraqi state accounts at the Rafidain Bank in Amman, in hard currency, outside the escrow (*see supra* Part II).[258] Whether described by the CIA, by congressional investigators, or by Australia's Royal Commissioner, it is the same front company, the same state bank, the same branch, the same city, the same years—and, in the regime's own ledgers, the same shipments and the same dollars.

116. AWB's payments were, in character as well as location, the regime's most useful kind of money. The United Nations escrow architecture existed precisely so that the regime could obtain food without obtaining spendable cash (*see supra* Part II); AWB's fees defeated that design, delivering hard currency—U.S. dollars until May 2001, then Deutschmarks and euros—into accounts "accessible by Iraq in violation of sanctions."[259] Once inside the regime's hard-currency reserve (*see supra* ¶¶ 99, 105), those dollars were subject to no United Nations control, no

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[256] *Comprehensive Report of the Special Advisor*, supra note 215, PDF pp.175, 185, 187.

[257] Butler, *AP NewsBreak* (AP Online), supra note 238, at 1.

[258] Cole Inquiry vol. 3, supra note 160, ¶ 3.16.

[259] *Distillation and Distribution of Secret Exhibit 4*, supra note 255, at 1 ¶2.

humanitarian earmark, and no budget—only to the discretion of a leadership that drew cash from the reserve on request and without a fixed budget.[260] Plaintiffs accordingly allege that AWB supplied the specific instrument the martyr reward program required. The bounties were denominated and paid in United States dollars—by check drawn through Palestinian banks and handed to families in Ramallah and the Gaza Strip or deposited to their accounts (*see supra* ¶¶ 44–45, 48)—a form of payment the escrow account could not produce, because escrow funds could be spent only on approved goods delivered under United Nations supervision. AWB supplied that instrument—spendable hard currency—into that banking channel, in a greater volume than any other Oil-for-Food supplier, and through a structure built to conceal that the money was reaching the regime at all (*see supra* Part II).

IV. AWB Knew That It Was Illegally Funding a Terror Sponsor That Openly Rewarded Terrorist Attacks

117. AWB knew that it was covertly delivering unrestricted hard currency to the Saddam Hussein regime in breach of the sanctions regime, and it did so knowing that regime to be a designated state sponsor of terrorism that publicly announced and paid rewards to the families of suicide bombers and other terrorist "martyrs." Two features of the record establish that mental state. First, by the time AWB made its largest and most heavily disguised payments—the payments concentrated in 2001, 2002, and early 2003—the regime's sponsorship of Palestinian terrorism, including its publicly advertised practice of rewarding the families of deceased terrorists, had become a matter of open international and Australian public record. Second, AWB was repeatedly and specifically warned—by the United Nations, by the Australian Government, and by its own retained investigators—that it was funneling hard currency to Iraq in breach of sanctions, and

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[260] *Comprehensive Report of the Special Advisor*, supra note 215, PDF pp.149–150, 189.

AWB responded not by stopping but by deliberately deepening the concealment of what it was doing. A party that goes to "extraordinary lengths" to hide from the world that its money is reaching a designated state sponsor of terrorism cannot be heard to say it neither knew nor had reason to know where that money went.

A. The Regime's Sponsorship of Palestinian Terrorism, and Its Cash Rewards for Suicide Bombers, Were Notorious Before AWB Paid and Notorious While It Paid.

1. Years before AWB's first concealed payment, the U.S. Government identified AWB's counterparty as a state sponsor of terrorism that harbored Palestinian terrorists.

118. Beginning years before AWB agreed to its first concealed payment, and continuing while it paid, the United States Department of State published *Patterns of Global Terrorism*, its annual report to Congress on state-sponsored terrorism, submitted pursuant to 22 U.S.C. § 2656f(a).[261] Each annual edition named the governments the Secretary of State had designated as state sponsors of terrorism—and each edition covering 1996 through 2001 named Iraq among them.[262] What this official drumbeat of warnings supplied—annually, publicly, and officially—was notice of *who AWB's counterparty was*: a government the United States had formally designated a state sponsor of terrorism, and one identified every year as the host of the very

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[261] U.S. Dep't of State, *Patterns of Global Terrorism 1999* (Apr. 2000), at PDF p. 6 (Legislative Requirements).

[262] U.S. Dep't of State, *Patterns of Global Terrorism 1996: Overview of State-Sponsored Terrorism*, at 1; U.S. Dep't of State, *Patterns of Global Terrorism 1997: Overview of State-Sponsored Terrorism*, at 1; U.S. Dep't of State, *Patterns of Global Terrorism 1998: Overview of State-Sponsored Terrorism*, at 2; Patterns of Global Terrorism 1999, supra note 261, at PDF p. 2 (State Sponsors); U.S. Dep't of State, *Patterns of Global Terrorism 2000: Overview of State-Sponsored Terrorism* (Apr. 30, 2001), at 1; *Patterns of Global Terrorism 2001*, supra note 45, at 65.

Palestinian terrorist organizations, including the Arab Liberation Front and, in later editions, the Palestine Liberation Front, that the regime would later use to distribute its rewards for suicide bombings (*see supra* Part I).

119. The finding was annual and very nearly verbatim. Each edition covering 1996 through 1999 identified Iraq as a designated state sponsor and found, in the 1996 edition's words, that Iraq "continues to provide safehaven to a variety of Palestinian rejectionist groups, including the Abu Nidal organization (ANO), the Arab Liberation Front (ALF), and the former head of the now defunct 15 May Organization, Abu Ibrahim, who masterminded several bombings of US aircraft," the 1998 edition adding that "[t]he leader of the Abu Nidal organization may have relocated to Baghdad in late 1998."[263] Each edition reached the public before or during AWB's payments. The 1996 finding was on the public record before the Oil-for-Food Programme's first deliveries and before AWB concluded its first contract under the Programme, and the 1997 edition issued in the very year AWB's Oil-for-Food sales began and an AWB executive attended a United Nations briefing on the Programme's payment procedures (see infra Part IV.C).[264] The 1999 edition—published over the cover line "U.S. Department of State, April 2000,"[265] that is, in the middle of AWB's payment window, while AWB was remitting monthly fee payments through the concealment structure pleaded above (see supra Part II)—opened its Iraq entry: "Iraq continued to plan and sponsor international terrorism in 1999."[266] Its group-profile appendix named the Abu

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[263] Patterns of Global Terrorism 1996, supra note 262, at 1, 3; Patterns of Global Terrorism 1997, supra note 262, at 1, 4; Patterns of Global Terrorism 1998, supra note 262, at 2, 6; Patterns of Global Terrorism 1999, supra note 261, at PDF pp. 2 (State Sponsors), 57 (Iraq country entry).

[264] Email from Peter Geary, AWB (Mar. 3, 1997) (AWB.0172.0027), at 1.

[265] Patterns of Global Terrorism 1999, supra note 261, at PDF p. 1 (Introduction).

[266] Id. at PDF p. 57 (Iraq country entry).

Nidal Organization and the Palestine Liberation Front as based in Iraq and supported by it (*see supra* ¶¶ 23-24).[267] And that edition stated the United States' position in terms no exporter could misread: "The states that choose to harbor terrorists are similar to accomplices who provide shelter for criminals—and the United States will hold them accountable for their 'guests'' actions."[268]

120. The reporting broadened as AWB's payments grew. The 2000 edition, published in April 2001—the month in which AWB's first payment of the regime's new 10 percent "after-sales-service" fee was requested[269]—named the PLF for the first time in its narrative Iraq entry, alongside the Arab Liberation Front, the inactive 15 May Organization and the ANO, as "expatriate terrorist groups [that] continued to maintain offices in Baghdad," and reported that "PLF leader Abu `Abbas appeared on state-controlled television in the fall to praise Iraq's leadership in rallying Arab opposition to Israeli violence against Palestinians."[270] On May 1, 2001, the day after that report's stated publication date, AWB remitted DM 10,054,797.45 (approximately US$4.4 million) as the first instalment of disguised fees under contract A0430.[271] And the 2001 edition, published in 2002 over the preface of Secretary of State Colin L. Powell, reported that Iraq provided bases to the PLF and the ANO, continued training and political encouragement to terrorist groups, and hosted the Arab Liberation Front and the 15 May

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[267] Id. at PDF pp. 97, 111 (App. B, ANO and PLF profiles).

[268] Id. at PDF p. 55 (Overview of State-Sponsored Terrorism).

[269] Cole Inquiry vol. 2, supra note 4, ¶¶ 11.15, 21.50.

[270] *Patterns of Global Terrorism 2000*, supra note 262, at 1, 3.

[271] Cole Inquiry vol. 2, supra note 4, ¶ 21.50–21.52.

Organization in Baghdad.[272] Those reports were on the public record throughout the period in which AWB covertly delivered in excess of US$224 million to that regime.[273] A commercial party is charged with knowing who its counterparty is. Year after year, while AWB dealt with that regime, the United States government published the answer (*see supra* Part I).

2. The reward program was openly and contemporaneously reported throughout AWB's payment window.

121. The reward program's notoriety began early in AWB's payment window and continued through the rest of it. The Congressional Research Service publicized Iraq's use of "scarce currency reserves" to fund martyred Palestinian terrorists in early January 2001. On January 29, 2001—14 months into that window, and nine months before the first attack pleaded here—The Washington Post, under the headline "With Money for 'Martyrs,' Iraq Invests in Image," reported that "a representative of the Iraqi president has appeared on the doorstep of the family of every Arab who has been killed—more than 340 men and boys—bearing a $10,000 check," and that "the Iraqi government also ha[d] begun parceling out checks to an estimated 3,000 Palestinians wounded in the fighting."[274] The Post identified the distributor as "the Arab Liberation Front, a small Palestinian political movement and guerrilla group linked to Iraq's ruling Baath party," and quoted "Raked Salem, who heads the Ramallah office of the Arab Liberation Front"—the same Rakad Salem through whom the regime later distributed its escalating suicide-bomber rewards (*see supra* Part I.C). Similar accounts were published in the Middle East in February

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[272] *Patterns of Global Terrorism 2001*, supra note 45, at 65.

[273] Cole Inquiry vol. 2, supra note 4, ¶ 11.27.

[274] Molly Moore, *With Money for 'Martyrs,' Iraq Invests in Image*, Wash. Post (Jan. 29, 2001).

2001.[275] These accounts establish that the regime's program of cash payments to the families of Palestinians killed in the intifada was a matter of prominent, international public record from early in AWB's payment window and well before its largest payments.

122. By the spring of 2002, the program's escalation was carried worldwide on the wire services. On April 4, 2002, the Associated Press reported from Nablus that "Saddam Hussein has increased the money he pays relatives of suicide bombers from $10,000 to $25,000," under a new payscale under which "the families of gunmen and others who die fighting the Israelis will still receive $10,000, while the relatives of suicide bombers will get $25,000."[276] The AP quoted the leader of the Arab Liberation Front, Mahmoud Safi, who delivered the checks in the West Bank: "We go to every family and give them a check.…We tell them that this is a gift from President Saddam and Iraq."[277]

123. On September 14, 2002, the *Sydney Morning Herald*—a leading newspaper in AWB's home market—reported that Iraq had been giving money to the relatives of Palestinian suicide bombers and others killed in the conflict with Israel, and that it was now increasing those payments.[278] The report quoted Ibrahim Zannen, spokesman in Gaza for the pro-Iraq Arab Liberation Front [which the Herald rendered "Arab Liberation Army"], declaring: "Iraq is supporting the Palestinian uprising by all means."[279] Zannen stated that Iraq had contributed

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[275] Gil Sedan, Saddam presents himself as the champion of the intifada, Jewish Telegraphic Agency (Feb. 27, 2001).

[276] *Iraq Raises Suicide-Bomber Payment to $25,000*, Associated Press (Apr. 4, 2002).

[277] Id.

[278] *Iraq Stepping Up Support of Palestinian Uprising*, Sydney Morning Herald (Sept. 14, 2002), at 1.

[279] Id. at 1.

between US$30 million and US$35 million to the Palestinians since the conflict began, and reported that Arab Liberation Front officials had, that week, passed out checks for US$10,000 to families of Palestinians killed in the conflict at a Gaza rally.[280]

124. American network television carried the same reality in the final months of AWB's payment window. In a December 19, 2002 World News Tonight report by John Yang, datelined Gaza City, ABC News described a public ceremony at which "25 Palestinians are called to the stage one by one," each "handed a check—a gift from Saddam Hussein," totaling "$285,000," the recipients being "the mother, father, wife or other close relative of either a suicide bomber or someone killed in a clash with Israeli soldiers."[281] The report recited the "well-known scale"—"[f]amilies of suicide bombers get $25,000 each and families of those killed in confrontations with Israel get $10,000"—and showed the widow of a suicide bomber collecting "her $25,000 check."[282]

B. AWB Had Long Followed Iraqi Politics Closely, And Knew Exactly What Kind of Regime Was Taking Its Illicit Kickbacks.

125. AWB's knowledge of its counterparty was deep and first-hand. AWB and its statutory predecessor sold wheat to Iraq continuously from 1948, and Iraq was, in the Cole Inquiry's description, "one of the most strategically important buyers of Australian Premium White wheat."[283] AWB's own 1989–90 annual report told its growers and its Parliament: "Set to be the AWB's largest market in the 1990s, Iraq has regularly purchased 10% of Australia's wheat

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[280] Id. at 1–2.

[281] John Yang, *Saddam Rewards Suicide Bombers' Families*, ABC News (World News Tonight) (Dec. 19, 2002).

[282] Id.

[283] Cole Inquiry vol. 2, supra note 4, ¶¶ 10.1–10.2.

exports and is our largest buyer of hard wheat and of freight. Australia was Iraq's largest wheat supplier."[284] The same report shows AWB experiencing Iraq's political character first-hand: writing to the Minister of "recent events in the Middle East," the Board's Chairman reported that "one of our staff members and three other people on contract to the AWB have been unable to leave Iraq,"[285] and the report narrated the UN sanctions themselves as a market factor—"The decision of the Australian Government to respond to the UN calls for trade sanctions against Iraq in August 1990 had a further depressing effect on prices."[286] From the beginning, AWB's Iraq business and Iraq's politics were, in AWB's own reporting, inseparable.

126. AWB brought to that franchise a dedicated corporate apparatus built to know its markets. Its International Sales and Marketing division was run by a succession of general managers and staffed with a Regional Manager for the Middle East and a named manager responsible for the Iraq market;[287] it maintained a Cairo office, in charge of which from August 1998 was Dominic Hogan, who made several trips to Iraq from there and assumed primary responsibility for the Iraq market in August 2000;[288] it maintained a United States office, in New York until August 2000 and thereafter in Portland, Oregon;[289] and its Executive Leadership Group—the chief executive and his direct reports—met fortnightly to set and review strategy, with

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[284] Australian Wheat Board, *Annual Report 1989-90*, at 10.

[285] Id. at 2.

[286] Id. at 10.

[287] Cole Inquiry vol. 2, supra note 4, ¶¶ 9.68–9.80.

[288] Cole Inquiry vol. 4, supra note 170, ¶ 31.328.

[289] Id. ¶ 31.486.

Iraq among the topics of its consideration.[290] Its Trading Division, by AWB's own description, sourced market intelligence on international price movements and monitored, among other things, the impact of foreign government policy.[291] That apparatus was pointed at Iraq more than at any other market: in the 1999–2000 season AWB sold Iraq a record 2.4 million tonnes—by its own manager's report, "98% of the supply of wheat to Iraq."[292]

127. These are AWB's own words. In March 2003, Managing Director Andrew Lindberg told AWB's annual general meeting that Iraq was "one of our longest standing, and most important wheat markets," and spoke of "our 50 year trading relationship" with it.[293] AWB's own annual report called Iraq "[o]ne of AWB's most enduring relationships," a business AWB managed "[d]espite the political sensitivities,"[294] and around "quality, shipping and political considerations."[295] A company that followed Iraqi politics that closely cannot plausibly have missed what its most important customer was: a designated state sponsor of terrorism whose sponsorship of Palestinian terrorism was a matter of open public record, established not only in the United States Government's annual reports but in AWB's own home-market press, in the findings of international and congressional investigators, and in the regime's own public conduct (*see supra* Parts I and IV.A).

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[290] Cole Inquiry vol. 2, supra note 4, ¶¶ 9.51–9.54.

[291] AWB Limited, *Investor Fact Book 2003* (ASX announcement, May 21, 2003), at 28.

[292] Cole Inquiry vol. 2, supra note 4, ¶ 17.2.

[293] AWB Limited, *2003 Annual General Meeting - Chairman's and Managing Director's Address* (ASX announcement), at 17–18.

[294] AWB Limited, *Annual Report 2002*, at 5.

[295] Id. at 10.

128. AWB's own records show that Alia, the Jordanian front company through which AWB paid its inland-transportation fees to the regime, could reach Saddam Hussein himself. In August 2001 AWB's chartered vessels were waiting to discharge their wheat at Umm Qasr and the delays were running up demurrage; the Cole Inquiry records that the purpose of the trip that followed was to resolve "an issue that AWB had with IGB with respect to particular contracts including demurrage."[296] Dominic Hogan and Nigel Edmonds-Wilson of AWB arrived in Amman on August 26, 2001 and met at Alia's offices with Othman Al-Absi, Alia's general manager. Following that meeting Hogan sent an email to eight AWB colleagues—among them Charles Stott, who by then ran AWB's international marketing—reporting that Al-Absi "had met the President Saddam Hussein the preceding Thursday" and had raised with him "the issue about the delayed discharge at Umm Qasr and the lengthy delays of the vessels," and that the "President ordered all outstanding vessels to be discharged and situation to be fixed."[297] A company whose principal obtains a personal audience with the head of state, and a presidential order, to resolve his customer's commercial problem is a company with access to the regime at its highest level—and AWB's most senior commercial executives were told so in writing, in the same period in which AWB was routing its concealed hard-currency fees through that company.

[296] Cole Inquiry vol. 3, supra note 160, ¶ 23.113.

[297] Id. ¶ 23.114.

C. AWB Knew It Was Covertly Handing the Regime Hard Currency in Breach of Sanctions, and Disregarded How It Would Be Used.

1. The illegitimacy of AWB's hard-currency payments was repeatedly identified by the United Nations and the Australian Government, and AWB was on notice.

129. AWB had known the sanctions rules from the outset, and had been instructed on them directly (*see supra* Part II.A). Those instructions reached the men who ran the Iraq trade. In March 1997, AWB's Peter Geary circulated to Mark Emons and Dominic Hogan, among others, a briefing headed "IRAQ 986 PROCEDURES" reporting what the United Nations Secretariat had said at a briefing session Geary attended: the "Sanctions Committee will prescreen applications before moneys are available in the Escrow Account."[298] Emons then held primary responsibility for the Iraq market until June 2000, and Hogan was in charge of AWB's Cairo office from August 1998.[299] Every tonne AWB sold to Iraq under the Programme passed through that approval channel (*see supra* ¶¶ 59–61, 64). The illegitimacy of hard-currency payments outside that escrow was then identified, repeatedly and specifically, by the United Nations. On February 7, 2000, a United Nations Office of the Iraq Programme ("OIP") communication recorded that, "aside from the contracts we see," the Iraqi Ministry of Trade "may be requiring payments, into a bank in Jordan, for transport fees," and warned: "ANY HARD CURRENCY PAYMENTS, OTHER THAN INTO THE ESCROW ACCOUNT, ARE OF COURSE CONTRARY TO RESOLUTION 661, SO WE MAY HAVE STUMBLED ACROSS A CASE OF SANCTIONS EVASION."[300]

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[298] Geary Email (Mar. 3, 1997), supra note 264, at 1.

[299] Cole Inquiry vol. 4, supra note 170, ¶ 31.328.

[300] U.N. cable re inland transport and sanctions-evasion concern (Feb. 7, 2000) (UNO.0006.0029), at 1.

130. The United Nations even flagged AWB by name. In an internal OIP memorandum dated January 13, 2000, a UN official recorded that the Canadian mission had been told by the Grain Board of Iraq that "similar arrangements were made with the Australian wheat board in relation to a recent large contract," and calculated that, if the same "transport costs" were applied to a recently approved AWB contract for 25,000 metric tons of wheat (UN approval OC 4988), Iraq would benefit by $350,000.[301] A companion communication of the same date, January 13, 2000, reported OIP's account of a related scheme in stark terms: a wheat board negotiating with the Iraqi Grain Board had been "ASKED TO AGREE TO A PAYMENT SYSTEM WHEREBY USD 14.00 PER METRIC TONNE OF WHEAT WOULD BE PAID 'OUTSIDE THE OIL-FOR-FOOD PROGRAM,'" with the money to be routed to a bank account in Jordan, and OIP characterized it as "a system designed to generate illegal revenue in USD."[302] When that wheat board declined the scheme and lost the contract, the Grain Board of Iraq told it that "'OTHER COMPANIES' - THE AWB AND ONE OTHER COUNTRY WERE SPECIFICALLY MENTIONED - HAD CONCLUDED CONTRACTS SIMILAR TO THE ONE WHICH HAD BEEN REQUESTED OF THIS COUNTRY."[303]

131. OIP then flagged the concealment structure embedded in AWB's own contracts. A DFAT cable of March 10, 2000 reported that "THE CUSTOMS AREA OF OIP HAD RECENTLY NOTICED THAT THE STANDARD CONTRACT USED BY THE AWB AND THE IRAQI

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[301] Memorandum from Felicity Johnston to John Almstrom, U.N. Office of the Iraq Programme (Jan. 13, 2000) (UNO.0006.0037), at 1.

[302] Cable from the Australian Mission to the United Nations, New York, to Canberra (Jan. 13, 2000) (DFT.0001.0179), at 1.

[303] Id. at 2.

GRAIN BOARD CONTAINED A PARAGRAPH WHICH IMPLIED ADDITIONAL CONDITIONS WERE ATTACHED TO THE CONTRACT, BUT NOT INCLUDED IN THE PAPER SUBMITTED TO THE UN"—namely a clause invoking undisclosed "STANDARD TERMS AND CONDITIONS FOR AUSTRALIAN WHEAT OF WHICH THE PARTIES ADMIT THEY HAVE KNOWLEDGE AND NOTICE."[304] The next day, an AUSTRADE cable reporting a Washington meeting with AWB's Chairman and its New York representative recorded that OIP had received an "insufficient response," that OIP had identified a clause "that implied there was a separate contract in place and of which the OIP had not been made aware," and that it was "imperative that this matter be 'put to rest' before the mission of the third country makes a formal complaint against the AWB."[305] At that meeting, AWB's New York representative "expressed the view that all clauses in the contract were standard and that it was not necessary to provide additional information to OIP."[306] AWB's further answer was to attribute the allegations to its competitors. Pressed on the same irregularity, AWB—through its Government Relations officer McConville—characterized the contested reference as merely pointing to a long-standing memorandum of understanding, and asserted that "AWB SUSPECT, BUT CANNOT PROVE, THAT THE ALLEGATIONS OF IRREGULARITIES ON ITS PART - WHICH AWB DISMISSES - ARE BEING PROMOTED BY ITS CANADIAN COMPETITORS."[307] The

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[304] Cable from the Australian Mission to the United Nations, New York, to Canberra (Mar. 10, 2000) (DFT.0001.0174), at 1.

[305] Cable from Alistair Nicholas, Austrade Washington, to Canberra (Mar. 11, 2000) (DFT.0001.0261), at 1–2.

[306] Id. at 2.

[307] Cable from the Dep't of Foreign Affairs & Trade, Canberra, to the Australian Mission to the United Nations, New York (Mar. 22, 2000) (DFT.0001.0169), at 1.

payments continued, and the rates the regime set and AWB accepted went on rising (*see supra* Part II).

132. The warnings continued into the period of AWB's largest payments. A DFAT cable of March 26, 2001 recorded OIP's confirmation "THAT THE IRAQ SANCTIONS COMMITTEE WAS GIVING INCREASED ATTENTION TO THE ISSUE OF COMMISSIONS AND KICKBACKS," and OIP's advice that "THERE ARE INDICATIONS THAT, IN ADDITION TO ITS ATTEMPTS TO ADD SURCHARGES TO OIL PRICES…IRAQ HAS IN RECENT MONTHS BEGUN DEMANDING KICKBACKS AND ILLEGAL COMMISSIONS ON CONTRACTS FOR HUMANITARIAN SUPPLIES."[308] The cable further recorded OIP's advice that a fee "PAID SEPARATELY IN U.S. DOLLARS, RATHER THAN BEING FACTORED INTO THE PRICE OF THE GOODS ... THIS WOULD NOT BE ACCEPTABLE."[309] That cable was the Australian Mission's report of advice AWB had itself solicited through Mr. Snowball, the manager of AWB's U.S. office. Its subject line read "UN: IRAQ—AWB LTD EXPORTS," and it recorded that "AWB (USA) LTD (SNOWBALL) CONTACTED US ON THE EVENING OF 23 MARCH TO SEEK OUR ADVICE ABOUT THE PAYMENT OF PORT FEES IN IRAQ…AWB LTD ASKED US IF WE COULD CLARIFY WHETHER THESE PORT FEES WERE PERMISSIBLE UNDER THE SANCTIONS REGIME."[310]

133. The advice set two conditions. Bronte Moules, First Secretary of Australia's mission to the United Nations to whom AWB put its question, took it to the OIP and to the

[308] Cable from the Australian Mission to the United Nations, New York, to Canberra (Mar. 26, 2001) (DFT.0001.0161), at 2.

[309] Id. at 2.

[310] Id. at 1.

Norwegian mission chairing the 661 Committee. The Cole Inquiry found that Ms Moules was advised of "a legal opinion" to the effect that such fees "were not inconsistent with the sanctions regime, provided they were a 'reasonable' amount and provided they were paid in Iraqi dinars, not US dollars."[311] The Cole Inquiry found that the answer was conveyed to AWB: "On 26 March 2001 Ms Moules conveyed to Mr Snowball the substance of the advice she had received from the Office of the Iraq Programme and the Norwegian mission. Part of the advice conveyed was that any payments in US dollars to Iraq would breach the UN sanctions and that the 661 Committee was aware of the problem concerning port fees and was looking into the matter."[312] The Inquiry quoted the officer's own record of the exchange: "We conveyed the preliminary information provided by OIP and the Norwegian Mission to AWB (USA) Ltd (Snowball) today, emphasising that…port fees could only be paid in Iraqi dinars. Snowball mentioned that the Master of vessels carrying AWB shipments to Iraq had, until now, been paying USD 1,500 per shipment direct to the port agents as port fees, and asked if this too would be inconsistent with sanctions. We reiterated the advice that port fees should only be paid in dinars. AWB said that, pending any further advice from the sanctions committee—which, AWB is aware, could take some time—they might take up the matter directly with their Iraqi contacts…."[313] AWB was thus told, in terms and to a named officer, that United States dollar payments to Iraq would breach the sanctions; it responded by disclosing dollar payments it was already making, was told a second time, and raised the prospect of taking the matter up with its Iraqi counterparties instead.

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[311] Cole Inquiry vol. 2, supra note 4, ¶ 12.26.

[312] Id. ¶ 12.27.

[313] Id. ¶ 12.27.

134. The next day AWB put the same conclusion in its own words. On March 27, 2001, Mr Snowball emailed AWB's Mr Rowland: "Iraq has the ability to charge port fees, but payment of these fees need to be in Iraq currency. Any payments in USD to Iraq are breaching sanctions. The USD15.00 the vessel has been paying on past shipments is therefore technically in breach of sanctions…The only way around this is to pay in Iraq currency, not USD, but this is obviously quite difficult."[314] The Inquiry also recorded the same officer's warning that "[t]he current environment of increased scrutiny of the operation of the Oil-for-Food program and heightened awareness of attempts by Iraq and by some suppliers to circumvent the sanctions regime underlines the importance of AWB adhering closely to the current regulations concerning the payment of port fees," and found that she "appreciated the risk that AWB might be the subject of Iraq's attempts to circumvent the sanctions."[315] The USD 15.00 Mr Snowball described was not the port fee—the same email treats the port charge separately, as "the USD0.50/mt charge"—but the inland transportation fee AWB was paying on its wheat, recorded in AWB's own contracts as a "discharge cost…of USD 15.00" per tonne payable by AWB to Iraq's nominated agents.[316] AWB's own manager had therefore concluded, in writing, that the fee at the heart of this Complaint breached the sanctions. AWB went on paying it, and on its new contracts the rate had already risen to USD 25 per tonne with a 10 percent surcharge added on top (*see supra* ¶ 82)—payments it concealed from the United Nations (*see supra* Part II.D).

135. The Independent Inquiry Committee chaired by Paul Volcker made its own finding on AWB's state of notice. The Committee found that "numerous documentary and circumstantial

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[314] Id. ¶ 12.28.

[315] Cole Inquiry vol. 4, supra note 170, ¶30.110.

[316] Cole Inquiry vol. 2, supra note 4, ¶¶ 15.10, 15.22.

warning signs placed at least some employees of AWB on notice that payments to Alia may have been illicitly funding the Iraqi regime,"[317] and that "AWB's payments to Alia were tantamount to payments to the Government of Iraq."[318] And AWB's own representatives, meeting with the Committee, acknowledged that the documents "raised at least 'debatable' questions about whether AWB employees should have known that AWB's payments to Alia were channeled to the Government of Iraq."[319]

2. AWB deliberately designed its payments so that "the link was not apparent," confirming its knowledge that the payments were illegitimate and reached the regime.

136. The mechanics by which AWB disguised its payments are pleaded in detail above (*see supra* Part II). Their significance for AWB's scienter is decisive: one does not elaborately conceal a payment one believes to be lawful. In October 1999, as AWB worked out how to move the money, the manager of AWB's Cairo office, Dominic Hogan, wrote to three colleagues that AWB "could probably bypass the Account in Jordan and transfer directly to the 'special' nominated account - as long as the link was not apparent that the funds were going into Ir[a]q."[320] That was the criterion against which AWB measured the alternatives, and the channel it built met it. Structuring the payments so the link to Iraq would not be apparent is affirmative, deliberate conduct establishing AWB's consciousness both that the payments were prohibited and that they reached the regime.

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[317] IIC, *Report on Programme Manipulation*, supra note 5, at 315.

[318] Id. at 312.

[319] Id. at 324–25.

[320] Hogan Email (Oct. 11-12, 1999), supra note 210, at 2; Cole Inquiry vol. 4, supra note 170, ¶ 31.336.

137. AWB also knew—because its own written policy said so—that concealed payments benefiting foreign officials were criminal. From April 2000, when Andrew Lindberg became Managing Director, AWB's Corporate and Code of Conduct Policy carried his signed instruction that AWB's "business affairs and operations are at all times being conducted legally, ethically and in accordance with the highest standards of integrity and propriety," and that "[n]o employee should ever feel that his or her conduct could not survive the test of public scrutiny."[321] The Code instructed every employee: "The Commonwealth Criminal Code provides that it is a criminal offence to bribe a foreign public official. You or AWB may be guilty if you try to obtain an advantage that is not legitimately due to you by providing a benefit to a person with the intent of influencing a foreign public official."[322] The Code required that "[a]gency payments must be made strictly in accordance with the policy guidelines and have the prior approval of the member of the Executive Leadership Group of the appropriate Division. All payments must be recorded and reported to the Managing Director within one month of payment,"[323] and stated that "AWB opposes the making of facilitation payments to speed up routine administrative services that should be provided without additional payment."[324] Measured against AWB's own written standards—approval, recording, monthly reporting to the Managing Director—the concealed, undocumented, intermediary-routed payments pleaded above (*see supra* Part II) were not a lapse of understanding. They were a departure from rules AWB had reduced to writing.

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[321] Cole Inquiry vol. 1, supra note 6, ¶ 8.4; Cole Inquiry vol. 4, supra note 170, ¶ 31.357.

[322] AWB, *Code of Conduct: Business Practices and Personal Conduct* (undated) (AWB.0131.0022), at 5 (AWB.0131.0025).

[323] Id. at 5 (AWB.0131.0025).

[324] Id. at 5 (AWB.0131.0025).

138. Within months of that Code taking effect, AWB acted on its own suspicions in a manner that confirms it understood the gravity of what it faced. On September 5, 2000—during the same period the United Nations and DFAT were raising kickback concerns—AWB Limited's senior corporate counsel retained Arthur Andersen to investigate "the integrity of international business transactions conducted by the International Marketing Group," to determine "the existence of any illegal or unethical behaviour and any failure of the control systems," and to do so "discreetly so as not to alert anyone of your concerns."[325] Arthur Andersen agreed to conduct the inquiry "covertly under the guise of and in tandem with an Arthur Andersen Business Process Review," and the engagement expressly included "[a]ssessing your exposure to the Commonwealth Criminal Code anti-bribery provisions."[326] The engagement further provided that Arthur Andersen would "keep our written product to a minimum" and "not prepare or otherwise issue a written report unless requested by you."[327] A company that quietly retains outside auditors to assess its own criminal-bribery exposure—and structures the engagement to minimize any written record—is a company aware that its conduct is unlawful.

139. The most authoritative adjudication of the record—the Cole Inquiry—confirmed both the fact and the deliberateness of the concealment. Commissioner Cole found that "[t]he concealment by AWB of this material information from DFAT and the United Nations was intentional and dishonest," and was known by senior officers "whose knowledge and intentions

[325] Engagement Letter from Arthur Andersen to Alicia Sachak, Senior Corporate Counsel, AWB Ltd (Sept. 5, 2000) (WST.0002.0131), at 1.

[326] Id. at 1–2.

[327] Id. at 2.

accordingly can and should be attributed to AWB."[328] That is a finding of actual knowledge, and of its attribution to AWB itself.

140. AWB's contemporaneous records confirm that it understood the inland-transportation line as a channel for moving money to the regime, and that it structured its payments to avoid that characterization. In a memorandum dated February 7, 2003—circulated to AWB's general counsel James Cooper and to the executives responsible for the Iraq trade—AWB addressed a proposal to repay the Iraqi Grain Board approximately US$2 million "through the inland transport payments," as the Iraqi Minister of Trade had demanded.[329] The memorandum recorded the risk in AWB's own words: "direct payment to a company with links to the Iraqi regime may be construed to be in contravention of the UN Sanctions."[330] It set out the text of Security Council Resolution 661 and concluded that the Australian Government "would be obliged to prevent AWB Limited from making any remittance of funds to the IGB."[331] AWB's internal legal advice was to structure around that prohibition: payments should be made "in installments over time," should "preferably be made to a company other than the IGB and in a jurisdiction other than Iraq," and should be "recorded as being made as a part of a settlement," after which it would be "at least arguable" that AWB was not "making funds or financial resources available to the Iraqi Government."[332] AWB then identified the company. The same memorandum recommended

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[328] Cole Inquiry vol. 4, supra note 170, ¶31.33.

[329] AWB Ltd v Honourable Terence Rhoderic Hudson Cole (No 5) [2006] FCA 1234, ¶¶ 25, 223 (Young J) (reproducing the memorandum in full).

[330] Id.

[331] Id.

[332] Id.

that the $2 million be repaid "as per method outlined in AWBs legal opinion (and requested by the Minister of Trade) directly to Alia Transport in Jordan in instalments."[333] The intermediary AWB's lawyers described in the abstract was Alia, the front company AWB had been paying since 1999.

141. AWB resolved to keep both the United Nations and its own government out of the arrangement. The same memorandum recorded that "Public Affairs also expressed concern that this would not be well received by the UN OIP office and that there was a reasonable chance of them finding out," while "IS & M" (AWB's International Sales and Marketing division) "on the other hand do not want them involved and feel confident that this issue could be handled without the need for the OIP to be consulted."[334] As to Australia, AWB resolved that the "Managing Director only [would] convey our intentions to the Australian Government at the appropriate time prior to Shipment," that "nothing be done until at least Letters of Credit are in place for these contracts," and that because that was "unlikely to happen until after a war with Iraq[,] it may allow us a further chance of renegotiation with a new regime."[335] Reviewing this record, the Federal Court of Australia found that the material "indicates clearly that AWB knew that paying inland transportation fees to Alia was a means of making payments to the Iraqi Government."[336] The court also found that the prices in contracts A1670 and A1680 "were inflated as a means of extracting money from the United Nations' escrow account," and that the transaction was "deliberately and dishonestly structured by AWB so as to misrepresent the true nature and purpose

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[333] Id.

[334] AWB Ltd v Cole (No 5) [2006] FCA 1234, ¶ 223.

[335] Id.

[336] Id. ¶ 225.

of the trucking fees and to work a trickery on the United Nations."[337] The court further found "a more than adequate prima facie case that AWB knowingly and deliberately disguised the true nature of the prices in contracts A1670 and A1680," and that the evidence established those matters "on the balance of probabilities and to a level of satisfaction commensurate with the seriousness of the allegation."[338]

3. AWB's own repeated, categorical denials show it understood the payments as prohibited kickbacks to the Saddam regime.

142. AWB's contemporaneous denials—issued as public allegations of kickbacks mounted in 2003 and 2004—confirm both that AWB understood the precise nature of the accusation against it and that its defense was a self-serving invocation of nominal UN approval rather than any genuine account of where the money went. On May 2, 2003, AWB's Darryl Hockey relayed to his colleague Chris Whitwell, under the subject line "kickback rumour," the accusation AWB was then facing: "It is purported that AWB Limited deposited funds into a Jordanian account - ultimately benefiting Saddam Hussein - in order to secure the wheat sales under the UN's Oil-for-Food Program ??," and that AWB's contracts carried a "20 percent deposit, or said another way .. kick back."[339] AWB's answer, drafted over three days of briefing to Australian embassy and DFAT officials, acknowledged that "we did pay money into a Jordanian

[337] Id. ¶¶ 225, 229.

[338] Id. ¶ 227.

[339] Email from Darryl Hockey to Chris Whitwell, AWB (May 2, 2003) (AWB.0241.0043), at 1; Cole Inquiry vol. 3, supra note 160, ¶ 28.1.

account for the inland transportation component of our contract," while insisting that "the 20% 'kickback' is completely untrue."[340]

143. By a letter dated June 11, 2003 and sent the following day, AWB's Managing Director, Andrew Lindberg, directed a formal cease-and-desist demand to US Wheat Associates in Washington, DC—which had alleged that AWB's inflated contract prices "provided foundation to the rumours that some of the excess may have gone into accounts of Saddam Hussein's family"—asserting that "[a]ll contracts entered into between AWB and the [I]raqi Grains Board were made and executed in accordance with the United Nations (UN) sanctioned Oil-for-Food Programme."[341] In a media release dated June 6, 2003, AWB called the allegations "absurd, with no foundation," and insisted its contracts had been "totally transparent and above board."[342]

144. AWB carried the same denials to the Australian Foreign Minister. On June 10, 2004, Managing Director Andrew Lindberg wrote to the Minister that AWB "has gone to great lengths to demonstrate its integrity in dealing with the OFF program and has denied allegations made in the United States that a complicit relationship existed between Saddam Hussein's regime and AWB."[343]

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[340] Email from Darryl Hockey to Chris Whitwell, AWB (May 4-5, 2003) (AWB.5011.0286), at 1.

[341] Letter from Andrew Lindberg, Managing Director, AWB, to Alan T. Tracy, President, U.S. Wheat Associates (June 11, 2003) (AWB.0241.0019), at 1–2; Cole Inquiry vol. 3, supra note 160, ¶ 28.16.

[342] AWB Media Release (2003) (DFT.0013.0040), ¶¶4, 8.

[343] Facsimile from Andrew Lindberg, Managing Director, AWB, to the Hon. Alexander Downer MP (June 10, 2004) (DFT.0013.0016), at 1.

145. These denials demonstrate that AWB understood, precisely and early, what it stood accused of: paying kickbacks into a Jordanian account for the benefit of Saddam Hussein and his regime—the very transaction it had designed to keep from view. And their content is telling: AWB never denied paying the money to a Jordanian account; it denied only that the payments were improper, resting on the fig leaf of nominal UN approval that its own concealment had procured by fraud. A party that must lean on approval it obtained by "mislead[ing] the United Nations"[344] has admitted the knowledge that condemns it.

146. In the same month it issued those denials, AWB commenced an internal investigation that found the opposite. Following the US Wheat Associates allegations, AWB's Managing Director directed its General Counsel to investigate, and AWB engaged outside solicitors to conduct "a factual review designed to gather together all AWB documents in order to establish the relevant facts" and then to "advise AWB on the legal consequences of the facts that had been found."[345] The investigation, later code-named "Project Rose," reviewed "14 IS&M ring binders," "100 chartering files," and "30,000+ AWB emails for 1999 & 2000," and interviewed AWB personnel.[346] By August 15, 2003—nine weeks after AWB told US Wheat Associates that its contracts had been "made and executed in accordance with the United Nations (UN) sanctioned Oil-for-Food Programme"[347]—AWB's own solicitors had advised the company that "it is possible that AWB and/or certain of its employees have committed breaches of the Criminal Code Act 1995 (Cth)," that "it is possible that AWB and/or certain of its employees have committed breaches of

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[344] Cole Inquiry vol. 4, supra note 170, ¶31.49.

[345] Cole Inquiry vol. 1, supra note 6, ¶ 8.18.

[346] Cole Inquiry vol. 3, supra note 160, ¶ 28.84.

[347] Id. ¶ 28.16.

the Crimes Act 1958 (Vic)," and that "it is possible that AWB's conduct has resulted in a contravention by Australia of UN Resolution 986 (1995)."[348]

147. AWB then withheld what its investigation had found, because of what it had found. On July 26, 2004, AWB's General Counsel briefed the Executive Leadership Group on Project Rose and recorded the outcome in his own notes: "Can't cooperate fully—too damaging," and "Limited cooperation—AL's preferred pos."—"AL" being Managing Director Andrew Lindberg.[349] That same day AWB's General Manager, Corporate circulated the resulting position: "the view is that we should take a 'passive cooperative approach'—i.e. assist where asked and provide appropriate responses—but not much upside in being actively co-operative."[350] The effect on the international investigation of the Programme was measurable. Of the 164 documents AWB's own lawyers had identified as relevant and briefed to counsel, AWB produced only 45 to the Independent Inquiry Committee.[351] The Cole Inquiry found that "[i]n truth, there was no full cooperation with the IIC."[352] Cole drew the inference the conduct compels: "the directors decided to try and prevent disclosure of damaging documents. Of course, if the material was not damaging there could be no reason to try to prevent its disclosure."[353]

[348] Id. ¶ 28.32.

[349] Id. ¶ 28.120.

[350] Cole Inquiry vol. 1, supra note 6, ¶ 8.64.

[351] Id. ¶ 8.44.

[352] Id. ¶ 8.114.

[353] Id. ¶ 8.128.

4. The same regime official who dictated AWB's fee publicly proclaimed Iraq's support for the intifada "using all means available."

148. The architecture of AWB's payments and the architecture of the regime's terror sponsorship converged in a single figure. Iraqi Vice President Taha Yassin Ramadan directed the August 2000 escalation of the after-sales-service fee that AWB paid (*see supra* Part II), and the hard currency AWB funneled to the regime flowed into the discretionary reserve controlled by the regime's senior leadership (*see supra* Part III). That same Vice President Ramadan, on January 31, 2001, publicly received George Habash, secretary-general of the Popular Front for the Liberation of Palestine, in Damascus, where—according to a broadcast of the regime's own radio, monitored by the BBC—Ramadan "reiterated Iraq's stand that supports the intifadah using all means available."[354] The regime made no secret of what it stood for or of how it used its discretionary hard currency (*see supra* Part I); AWB delivered that hard currency anyway, in concealed form.

5. The fee arrangement was unique and extraordinary for AWB, and AWB built it in breach of its own written rules.

149. AWB extended this counterparty special treatment, in knowing violation of its own written Code of Conduct (*see supra* ¶ 137). The Cole Inquiry, which examined AWB's Oil-for-Food conduct in detail, described the arrangement in the same terms. What Iraq demanded in June 1999 was "a requirement rendering the contractual arrangements in Iraq unique for AWB," because it purported to oblige AWB to accept responsibility for discharge and transportation beyond the discharge port.[355] And of the fee itself the Inquiry found: "The payment of such a fee

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[354] *Ramadan Meets Habash*, supra note 46, at 1.

[355] Cole Inquiry vol. 4, supra note 170, ¶ 31.454(b).

was unique, if not extraordinary, for AWB."[356] Cole further found that AWB "went to extraordinary lengths to hide the payment of the fee to Alia," interposing Ronly and Tse Yu Hong Metal Limited as "subterfuges…undertaken because AWB knew that the fees were not approved by the United Nations."[357] The United Nations' own Office of the Iraq Programme made a similar observation contemporaneously. Advising the Australian Mission in March 2001 about the port fees Iraq was then demanding of AWB, OIP noted that "IN MOST CASES PORT FEES WOULD BE AGREED AT THE OUTSET BETWEEN THE SUPPLIER AND PURCHASER - AS OPPOSED TO AWB'S CURRENT CASE, WHERE THE FEES APPEAR TO HAVE BEEN INTRODUCED WELL AFTER THE CONCLUSION OF THE CONTRACT - AND ARE MOSTLY SUBSUMED IN THE CONTRACT."[358] That the arrangement was peculiar to this counterparty is confirmed by its origin: the regime created the fee, demanded it as the price of market access, and would deal only with suppliers who agreed to pay it. (*See supra* Part II.B.)

V. The Regime Funded, Trained and Rewarded the Designated Terrorist Organizations That Killed and Injured Plaintiffs

A. During the Second Intifada, Palestinian Terrorist Organizations, Including PIJ and the PFLP, Waged a Terrorist Campaign Against Israeli Civilians.

150. Beginning in September 2000, the Palestinian uprising known as the "Al-Aqsa" or Second Intifada gave rise to a sustained campaign of suicide bombings and other lethal attacks directed against civilians in Israel and the territories it then controlled. The United States Department of State reported that in 2002 alone, Palestinian terrorist organizations killed "more than 370 persons—including at least 10 US citizens—compared to fewer than 200 persons killed

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[356] Id. ¶ 31.70.

[357] Id. ¶ 31.48.

[358] Australian Mission Cable (Mar. 26, 2001), supra note 308, at 2.

in 2001," in attacks that "included suicide bombings, shootings, and mortar firings against civilian and military targets."[359]

151. Three organizations bore principal responsibility for that campaign. The State Department found that Hamas, the Palestine Islamic Jihad, and the Al-Aqsa Martyrs Brigade "were responsible for most of the attacks" in Israel, the West Bank, and the Gaza Strip in 2002.[360] The PIJ "increased its number of lethal attacks in 2002, staging a car bombing in June that killed 17 Israelis near Megiddo" and conducting "deadly shooting attacks" as well.[361] A fourth designated organization, the PFLP, claimed responsibility for one of the attacks at issue here—the February 2002 Karnei Shomron pizzeria suicide bombing (*see infra* Parts V.B, V.E).[362]

152. The campaign deliberately targeted places where civilians gathered. Human Rights Watch, reporting in October 2002, documented that governmental and private actors had provided support to groups "responsible for suicide attacks against civilians," and specifically noted that "[i]n promoting suicide attacks, Iraqi leaders have made no distinction between attacks against civilians and attacks against military targets."[363]

153. The suicide-bombing method was central to the campaign, and its sponsors celebrated it as such (*see supra* ¶ 43). The campaign's signature weapon was the human bomb—an individual who detonated an explosive device, worn on the body or carried in a bag, in the midst of a civilian crowd.

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[359] *Patterns of Global Terrorism 2002*, supra note 65, at 55.

[360] Id. at 55.

[361] Id. at 56.

[362] Id. at 84.

[363] HRW, *Erased in a Moment*, supra note 58, at 1, 3.

154. Two of the attacks in this campaign killed or injured the Plaintiffs. Those attacks, which occurred November 4, 2001 and February 16, 2002, are set out individually below (*see infra* Part V.E), together with the Plaintiffs killed or injured in each.

B. Each Perpetrating Organization Was a Designated Foreign Terrorist Organization on the Date of Its Attacks.

155. Each organization that committed the attacks pleaded below was a designated foreign terrorist organization under Section 219 of the Immigration and Nationality Act, 8 U.S.C. § 1189, on the date of the attack it committed. The Secretary of State designated the Palestine Islamic Jihad-Shaqaqi Faction, pleaded here as PIJ, and the Popular Front for the Liberation of Palestine, effective October 8, 1997,[364] and redesignated both effective October 8, 1999, October 5, 2001, and October 2, 2003.[365]

C. The Regime's Announced, Escalating Rewards Foreseeably Incentivized the Very Attacks That Killed and Injured Plaintiffs.

156. The reward was announced and publicized. The regime announced it to the United Nations itself, in letters to the Secretary-General and the President of the Security Council in November and December 2000 (*see supra* ¶ 39). In January 2001 a leading United States newspaper reported that a representative of the Iraqi president had appeared on the doorstep of the family of every Arab killed in the fighting bearing a $10,000 check (*see supra* ¶ 121). The regime's August 2001 decision to raise the payment for the family of a suicide bomber was published in the Palestinian press (*see supra* ¶ 42), and the payments were handed out openly, at public ceremonies held on Saddam Hussein's behalf (*see supra* ¶¶ 40, 43, 53).

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[364] 62 Fed. Reg. 52,650–51.

[365] 64 Fed. Reg. 55,112; 66 Fed. Reg. 51,088; 68 Fed. Reg. 56,860.

157. The reward was structured as a premium that singled out suicide bombing for the highest payment. Human Rights Watch found that "Iraq, in its provision of funds to families of 'martyrs' and others, has established a differential in which families of suicide bombing operatives are said to receive a considerably larger sum of $25,000, while other families that have suffered a death receive $10,000."[366] Human Rights Watch characterized the larger sum as a "sizeable 'premium' to families of suicide bombers," the "intent" of which "is expressly to encourage the commission of crimes against humanity."[367] The regime widened that premium during the attack window, raising the payment reserved for the family of a suicide bomber to $15,000 in August 2001 (and later to $25,000) while holding the payment for any other death at $10,000 (*see supra* Part I.C), reinforcing the incentive as the suicide-bombing campaign reached its peak lethality.

158. The reward was paid after the fact, to the families of terrorists who had already died. That timing is what made the program an incentive rather than a mere subsidy: by publicly and reliably rewarding a completed martyr attack with a large payment, the regime advertised to every prospective terrorist and every organization that recruited and dispatched them that an attack would be honored and its family enriched. The ALF officials who ran the distribution said as much, telling a reporter in March 2002 that the additional payment "was to encourage more volunteers for suicide missions."[368] The State Department found that "[p]ayments by Iraq to the families of Palestinian 'martyrs' in 2002 were intended to encourage attacks against Israeli targets."[369] The promise of financial provision for a bomber's family operated as a recruiting inducement. The

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[366] HRW, *Erased in a Moment*, supra note 58, at 3.

[367] HRW, *Erased in a Moment*, supra note 58, at 6.

[368] Id. at 4.

[369] *Patterns of Global Terrorism 2002*, supra note 65, at 56.

Israel Security Agency, the agency that investigated these attacks, has recorded that "during the period of conflict, a trend emerged in which ideological motives declined in comparison to growing financial motives," and that "[i]n many cases the terrorists enlisted to carry out suicide bombings are Palestinians with social or financial problems, who agree to carry out the attack in exchange for the promise that the terrorist organization, for which they are carrying out the attack, will take care of their family financially after their death."[370]

159. The reward was substantial in the aggregate and continued through the attack window. By October 2002, Iraq had paid tens of millions of dollars to Palestinian families in connection with the intifada: the State Department recorded that the Arab Liberation Front's West Bank leader admitted under Israeli interrogation to having overseen the transfer and distribution of "up to $15 million in Iraqi money to martyrs' families."[371]

160. An announced, escalating, publicly celebrated, after-the-fact cash reward for suicide bombings foreseeably increases the number of terrorist attacks. That is the ordinary and intended operation of a bounty: it lowers the cost and raises the payoff of the rewarded conduct, and it does so for every actor deciding whether to recruit, equip, dispatch, or become a terrorist or suicide bomber. The regime's own officials described the reward in exactly those incentive terms—as designed "to encourage more volunteers for suicide missions"[372]—and both organizations that attacked Plaintiffs dealt with the regime as a patron: Iraq's Vice President received the PFLP's secretary-general in January 2001, and the regime cultivated ties to the PIJ

[370] ISA, Suicide Terrorists in the Current Conflict (Sept. 2007), foreword.

[371] *Patterns of Global Terrorism 2002*, supra note 65, at 56; Isr. MFA, *Iraq's Involvement*, supra note 28, at screen p. 4/13.

[372] HRW, *Erased in a Moment*, supra note 58, at 4.

(*see infra* ¶¶ 162–163). The attacks that killed and injured the Plaintiffs were the foreseeable consequence of that reward program.

161. AWB helped make that reward program possible. As pleaded in Parts II and III (*see supra*), AWB paid the regime hundreds of millions of dollars in concealed kickbacks that reached the regime as unrestricted hard currency outside the United Nations escrow, and into the discretionary reserve from which the martyr payments were made. A sophisticated commercial party in AWB's position knew that unrestricted funds of that magnitude, delivered to that regime outside United Nations control, would be spent free of the controls the escrow existed to impose—including on the publicly announced program rewarding the very terrorist attacks that were, at that time, killing civilians—including United States nationals—in Israel. The scope of AWB's knowledge is pleaded in Part IV (*see supra*).

D. The Regime Supported and Cultivated Both Organizations That Attacked Plaintiffs.

162. The regime's ties reached the Palestine Islamic Jihad, which carried out the November 4, 2001 French Hill attack. A PIJ operative trained in Iraq and was afterwards pressed by the Palestine Liberation Front's leadership to carry out attacks (see supra ¶ 29). Israeli Military Intelligence, drawing on captured documents, concluded that a shooting attack carried out jointly by the PIJ and Fatah's Al-Aqsa Martyrs Brigades at the Afula central bus station on November 27, 2001—23 days after the French Hill attack—was "directly and indirectly supported by large sums of money coming from Damascus and Baghdad." A captured Arab Liberation Front letter of May 9, 2002 records that the families of the two gunmen, both killed in the attack, sought the grant Iraq paid for a suicide attack: they "insist that it was a suicide operation and demand that it be

recognized as such in order to receive the [due] respect and financial rights."[373] The Iraqi Intelligence Service in turn listed among its activities for 2002: "[o]pening political and intelligence channels of communication wit[h] the Islamic Jihad Movement in Syria."[374]

163. The regime cultivated the Popular Front for the Liberation of Palestine, which carried out the February 16, 2002 Karnei Shomron bombing, at its highest level: Vice President Ramadan received the PFLP's secretary-general, George Habash, on January 31, 2001, and reiterated Iraq's support for the intifada (*see supra* ¶¶ 35, 148). In sworn testimony before a House subcommittee on April 21, 2004, Dr. Nimrod Raphaeli, a senior analyst at the Middle East Media Research Institute, was asked whether "Abu Abbas in one case, or the Popular Front for the Liberation of Palestine in another…received financial compensation under the Oil-for-Food program," and answered, "That's right."[375] And among the Iraqi Intelligence Service's recorded activities for 2002 was "[b]uilding secret relations with officials from secret wings and special operations of Palestinian groups in Syria (the Popular Front-General Command, Fatah Movement and the Popular Front)," a list that names the Popular Front separately from the Popular Front–General Command.[376]

E. The Attacks on Plaintiffs

164. Plaintiffs are United States nationals who were themselves injured in the attacks pleaded below; the personal representatives of the estates of United States nationals killed in them;

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[373] IDF/MI, Iraqi Support for and Encouragement, supra note 60, Rpt. ¶¶ 25–27.

[374] Iraqi Perspectives Project vol. 2, supra note 31, at 509.

[375] Starving for Accountability Hearing, supra note 224, at 203.

[376] Iraqi Perspectives Project vol. 2, supra note 31, at 509.

and members of those victims' immediate families who suffered injury in their own persons by reason of those attacks.

1. The November 4, 2001 Shooting Attack in Israel (Ben-Yishai Family)

165. On November 4, 2001, PIJ committed a shooting attack in Jerusalem District, Israel (the "November 4, 2001 Attack").

166. The November 4, 2001 Attack would have violated the laws of war if these terrorists were subject to them because, among other reasons, the victims of this attack were civilians not taking part in hostilities. Further, the terrorist(s) who committed the attack neither wore uniforms nor otherwise identified themselves as enemy combatants, and the attack indiscriminately placed civilians at risk.

167. **Shoshana Ben-Yishai** was a 16-year-old student on a bus returning home from classes at the time of the attack. Shoshana Ben-Yishai was injured in the November 4, 2001 Attack. Shoshana Ben-Yishai died on November 4, 2001, as a result of injuries sustained during the attack.

168. Shoshana Ben-Yishai was a U.S. national at the time of the attack and her death.

169. Plaintiff Miriam Ben-Yishai is a U.S. national and the mother of the decedent Shoshana Ben-Yishai. She brings claims in both her individual capacity and in her capacity as co-representative for the Estate of Shoshana Ben-Yishai.

170. Plaintiff Yitzhak Ben-Yishai is a U.S. national and the father of the decedent Shoshana Ben-Yishai. He brings claims in both his individual capacity and in his capacity as co-representative for the Estate of Shoshana Ben-Yishai.

171. Plaintiff Aviel Ben-Yishai is a U.S. national and the brother of the decedent Shoshana Ben-Yishai.

172. Plaintiff Hannah Ben-Yishai is a U.S. national and the sister of the decedent Shoshana Ben-Yishai.

173. Plaintiff Israel Ben-Yishai is a U.S. national and the brother of the decedent Shoshana Ben-Yishai.

174. Plaintiff Jacob Ben-Yishai is a U.S. national and the brother of the decedent Shoshana Ben-Yishai.

175. Plaintiff Yael Ben-Yishai is a U.S. national and the sister of the decedent Shoshana Ben-Yishai.

176. As a result of the November 4, 2001 Attack and Shoshana Ben-Yishai's injuries and death, each member of the Ben-Yishai family has experienced severe mental anguish, emotional pain and suffering, and the loss of Shoshana Ben-Yishai's society, companionship, and counsel.

177. As a result of the November 4, 2001 Attack, Shoshana Ben-Yishai was injured in her person and/or property. The Plaintiff members of the Ben-Yishai family are the survivors and/or heirs of Shoshana Ben-Yishai and are entitled to recover for the damages Shoshana Ben-Yishai sustained.

2. The February 16, 2002 Suicide Bombing Attack in Karnei Shomron, West Bank (Braun, Edri, Shatsky, Thaler, and Trattner Families)

178. On February 16, 2002, PFLP committed a suicide bombing attack in Karnei Shomron in the West Bank (the "February 16, 2002 Attack").

179. The February 16, 2002 Attack would have violated the laws of war if these terrorists were subject to them because, among other reasons, the victims of this attack were civilians not taking part in hostilities. Further, the terrorist(s) who committed the attack neither wore uniforms

nor otherwise identified themselves as enemy combatants, and the attack indiscriminately placed civilians at risk.

180. **Steven Braun** was at a pizzeria located at an outdoor shopping mall in Karnei Shomron at the time of the attack. The February 16, 2002 Attack severely wounded Steven Braun, who suffered from chronic PTSD, dysthymia, and wounds to both legs by shrapnel and projectile debris.

181. Plaintiff Steven Braun was a U.S. national at the time of the attack and remains one today.

182. As a result of the February 16, 2002 Attack and his injuries, Steven Braun has experienced severe physical and emotional pain and suffering.

183. **Chana Edri** was at a pizzeria located at an outdoor shopping mall in Karnei Shomron at the time of the attack. The February 16, 2002 Attack severely wounded Chana Edri, who suffered serious burns to her face, back, hand and foot, shrapnel in her face and eye, and a burst eardrum. She still has shrapnel in her eye and sometimes hears buzzing sounds in her ear. She was hospitalized for burn treatments and plastic surgeries to repair her scars (she still has a lot of scarring). She has been diagnosed with chronic PTSD and depression.

184. Plaintiff Chana Edri was a U.S. national at the time of the attack and remains one today.

185. As a result of the February 16, 2002 Attack and her injuries, Chana Edri has experienced severe physical and emotional pain and suffering.

186. Plaintiff Bella Friedman is a U.S. national and the mother of Chana Edri.

187. Plaintiff Ilan Friedman is a U.S. national and the brother of Chana Edri.

188. Plaintiff Miriam Friedman is a U.S. national and the sister of Chana Edri.

189. Plaintiff Yehiel Friedman is a U.S. national and the brother of Chana Edri.

190. Plaintiff Zvi Friedman is a U.S. national and the brother of Chana Edri.

191. As a result of the February 16, 2002 Attack and Chana Edri's injuries, Plaintiff members of Chana Edri's family have experienced severe physical and emotional pain and suffering.

192. **Keren Shatsky** was at a pizzeria located at an outdoor shopping mall in Karnei Shomron at the time of the attack. Keren Shatsky was injured in the February 16, 2002 Attack. Keren Shatsky died on February 16, 2002, as a result of injuries sustained during the attack.

193. Keren Shatsky was a U.S. national at the time of the attack and her death.

194. Plaintiffs Shabtai Shatsky and Jo Shatsky bring claims both in their individual capacities and as co-representatives for the Estate of Keren Shatsky.

195. Plaintiff Jo Shatsky is a U.S. national and the mother of the decedent Keren Shatsky.

196. Plaintiff Shabtai Shatsky is a U.S. national and the father of the decedent Keren Shatsky.

197. Plaintiff David Shatsky is a U.S. national and the brother of the decedent Keren Shatsky.

198. Plaintiff Miriam Shatsky is a U.S. national and the sister of the decedent Keren Shatsky.

199. Plaintiff Sara Shatsky is a U.S. national and the sister of the decedent Keren Shatsky.

200. Plaintiff Tzippora Shatsky is a U.S. national and the sister of the decedent Keren Shatsky.

201. Plaintiff Yosef Shatsky is a U.S. national and the brother of the decedent Keren Shatsky.

202. As a result of the February 16, 2002 Attack and Keren Shatsky's injuries and death, each member of the Shatsky family has experienced severe mental anguish, emotional pain and suffering, and the loss of Keren Shatsky's society, companionship, and counsel.

203. As a result of the February 16, 2002 Attack, Keren Shatsky was injured in her person and/or property. The Plaintiff members of the Shatsky family are the survivors and/or heirs of Keren Shatsky and are entitled to recover for the damages Keren Shatsky sustained.

204. **Leor Thaler** was at a pizzeria located at an outdoor shopping mall in Karnei Shomron at the time of the attack. The February 16, 2002 Attack severely wounded Leor Thaler, who suffered from shrapnel (including nails) wounds and severe burns. His bowels were perforated (resulting in peritonitis), his gall bladder was removed, and one of his ears was nearly torn off. He underwent numerous surgeries, has many scars, permanent hearing loss, tinnitus, blurry vision, headaches, and permanent bowel injuries.

205. Plaintiff Leor Thaler was a U.S. national at the time of the attack and remains one today.

206. As a result of the February 16, 2002 Attack and his injuries, Leor Thaler has experienced severe physical and emotional pain and suffering.

207. Plaintiff Ginette Thaler is a U.S. national and the mother of Leor Thaler.

208. Plaintiff Michael Thaler is a U.S. national and the father of Leor Thaler.

209. Plaintiff Isaac Thaler is a U.S. national and the brother of Leor Thaler.

210. Plaintiff Zvi Thaler is a U.S. national and the brother of Leor Thaler.

211. As a result of the February 16, 2002 Attack and Leor Thaler's injuries, Plaintiff members of the Thaler family have experienced severe physical and emotional pain and suffering.

212. **Rachel Thaler** was at a pizzeria located at an outdoor shopping mall in Karnei Shomron at the time of the attack. Rachel Thaler was injured in the February 16, 2002 Attack. Rachel Thaler died on February 27, 2002, as a result of injuries sustained during the attack.

213. Rachel Thaler was a U.S. national at the time of the attack and her death.

214. Plaintiffs Ginette Thaler and Michael Thaler bring claims both in their individual capacities and as co-representatives for the Estate of Rachel Thaler.

215. Plaintiff Ginette Thaler is a U.S. national and the mother of the decedent Rachel Thaler.

216. Plaintiff Michael Thaler is a U.S. national and the father of the decedent Rachel Thaler.

217. Plaintiff Leor Thaler is a U.S. national and the brother of the decedent Rachel Thaler.

218. Plaintiff Isaac Thaler is a U.S. national and the brother of the decedent Rachel Thaler.

219. Plaintiff Zvi Thaler is a U.S. national and the brother of the decedent Rachel Thaler.

220. As a result of the February 16, 2002 Attack and Rachel Thaler's injuries and death, each member of the Thaler family has experienced severe mental anguish, emotional pain and suffering, and the loss of Rachel Thaler's society, companionship, and counsel.

221. As a result of the February 16, 2002 Attack, Rachel Thaler was injured in her person and/or property. The Plaintiff members of the Thaler family are the survivors and/or heirs of Rachel Thaler and are entitled to recover for the damages Rachel Thaler sustained.

222. **Hillel Trattner** was at a pizzeria located at an outdoor shopping mall in Karnei Shomron at the time of the attack. The February 16, 2002 Attack severely wounded Hillel Trattner, who suffered complete and permanent blindness in his left eye, permanent hearing loss in his left ear, burns, and various fractures. He still has multiple pieces of shrapnel embedded in his brain and body. All of this has caused him serious emotional and psychological trauma.

223. Plaintiff Hillel Trattner was a U.S. national at the time of the attack and remains one today.

224. As a result of the February 16, 2002 Attack and his injuries, Hillel Trattner has experienced severe physical and emotional pain and suffering.

225. Plaintiff Shelley Trattner is a U.S. national and the mother of Hillel Trattner.

226. Plaintiff Aron Trattner is a U.S. national and the father of Hillel Trattner.

227. As a result of the February 16, 2002 Attack and Hillel Trattner's injuries, Plaintiff members of the Trattner family have experienced severe physical and emotional pain and suffering.

VI. AWB Executed Its Scheme Through the United States

A. AWB Was Paid for Its Wheat Exclusively Out of a United Nations Escrow Account in New York.

228. Payment for AWB's Iraqi wheat sales came out of a United Nations-controlled escrow account located in New York. The Programme's governing rule, as the United Nations Office of the Iraq Programme stated it, was that "all payments for procurement by the Government of Iraq under the 'oil for food' programme were to be made to the United Nations Iraq Account in New York."[377] AWB's own notifications to the United Nations confirmed that it would be paid

[377] Almstrom Note (Jan. 4, 2000), supra note 122, at 1.

from that account: on its November 1999 notification to the Security Council Committee established by Resolution 661, AWB Limited of Melbourne stated that payment for its shipment of 200,000 metric tonnes of wheat, plus or minus five per cent, to the Iraqi Grain Board at Umm Qasr would be made "From the Iraq Account in accordance with SC resolution 986 (1995)."[378] The more than US$2.3 billion AWB received under the Programme (*see supra* Part II) was paid to it out of that New York account. This escrow arrangement was a United Nations-mandated feature of the Programme, pleaded to show that AWB's dollar operation ran through New York; Plaintiffs do not rely on the United Nations escrow account, or on the Programme's United Nations approval processes, as a basis for personal jurisdiction. Jurisdiction rests instead on Defendants' own volitional New York conduct—AWB Limited's use of its own Bank of New York account to receive the contract proceeds and, with the account of its agent AWB (Australia) Limited, to remit the illicit fees, the clearing of those payments through New York banks, AWB Limited's New York office, and the transaction of AWB International's wheat business in New York through AWB Limited as its agent (*see infra* Parts VI.B, VI.D).

B. Until May 2001, AWB Paid Its Illicit Fees Out of the AWB Group's Accounts at the Bank of New York.

229. The hard-currency fees at the center of this Complaint moved through New York. The AWB group held two United States-dollar accounts with the Bank of New York in New York—one in the name of AWB Limited, the other in the name of its wholly owned subsidiary AWB (Australia) Limited—and both were operated by AWB's treasury in Melbourne.[379] The

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[378] Notification form submitted by Australia to the U.N. Security Council Committee Established by Resolution 661 for an AWB wheat shipment (Nov. 1999) (AWB.0058.0062), at 1.

[379] Cole Inquiry vol. 2, supra note 4, ¶¶ 9.23, 9.105.

account in AWB Limited's name received the proceeds of the Oil-for-Food wheat contracts (see supra Part VI.A).[380] AWB built that into its own contract terms: in July 1999 it proposed to the Grain Board that the letter of credit be payable to AWB Limited at an account "WITH THE BANK OF NEW YORK, 1 WALL STREET, NEW YORK, USA."[381] The fees were paid out of the same two accounts. The Cole Inquiry found: "Between 1999 and March 2003 payments were made from both the US dollar accounts with the Bank of New York. This included inland transportation fees paid between November 1999 and early May 2001 in respect of AWB shipments of wheat to Iraq under the Oil-for-Food Programme during that period."[382] During that period, "all inland transportation fees paid by AWB were paid in US dollars," and "most of those fees were paid by AWB Chartering from a US dollar bank account maintained in New York with the Bank of New York in the name of AWB (Australia) Limited."[383] The Inquiry explained that those fees "appear to have been paid from this account because, prior to September 2000, all trading activities of the AWB Group including AWB Chartering were conducted through AWB (Australia) Limited."[384] New York was thus the channel through which most of AWB's fee payments to Alia passed throughout the period, ending in May 2001, in which those fees were paid in United States dollars.

230. Individual transactions show the mechanism. On November 26, 1999, US$453,600—90 per cent of the inland transportation fees on the Pretty Ruby shipment—"was

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[380] Cole Inquiry vol. 2, supra note 4, ¶ 9.106.

[381] Telex from Mark Emons, AWB Ltd, to the Grain Board of Iraq (July 9, 1999) (AWB.0058.0444), at 2.

[382] Cole Inquiry vol. 2, supra note 4, ¶ 9.107.

[383] Cole Inquiry vol. 3, supra note 160, ¶ 26.16.

[384] Cole Inquiry vol. 2, supra note 4, ¶ 18.27 n.59

remitted to Alia from one of AWB's US dollar accounts with the Bank of New York in New York."[385] On September 12 and October 3, 2000, same-day wires of USD 576,450.00 and USD 723,000.00 went from the Bank of New York, through the New York agency of American Express Bank Ltd., to Alia's account at Jordan National Bank in Amman.[386] Each was made on a payment request of AWB's chartering division authorized by Michael Watson,[387] who signed an April 1, 2000 facsimile to Alia as "Chartering Manager, AWB Limited," on AWB Limited letterhead bearing its Australian Company Number (*see supra* ¶ 13).[388]

231. AWB Limited carried on that New York business as AWB International's agent (*see supra* ¶ 14). The Cole Inquiry found that "[u]nder the terms of the contracts for sale concluded with the IGB in the period from 1999 until December 2002, the seller of the wheat was AWB, which sold the wheat as agent for AWB (International) Limited."[389] AWB International had no means of its own with which to conduct that business. The Cole Inquiry found that it "has no capital or financial resources of its own," that it did not employ any personnel before the restructure announced in September 2006, and that it "does not itself operate or manage…the National Pool: AWB performs those functions for it."[390] AWB Limited and other members of its group performed

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[385] Id. ¶ 13.176.

[386] Bank of New York Audit Trail Report, wire transfer to Alia (Sept. 12, 2000) (AWB.0064.0040), at 1; Bank of New York Audit Trail Report, wire transfer to Alia (Oct. 3, 2000) (AWB.0064.0044), at 1.

[387] AWB internal United States-dollar payment request, trucking fee to Alia (Sept. 11, 2000) (AWB.0164.0050), at 1; AWB internal United States-dollar payment request, trucking fee to Alia (Sept. 29, 2000) (AWB.0081.0013), at 1.

[388] Watson-Al-Absi Facsimile (Apr. 1, 2000), supra note 175, at 1

[389] Cole Inquiry vol. 2, supra note 4, ¶ 11.42.

[390] Id. ¶ 9.18.

those functions under a services agreement supplying AWB International with pool-management, finance and supply-chain services "necessary for AWBI to carry out its functions as the manager of the National Pool."[391] The chartering division that paid the illicit fees supplied AWB International under that arrangement: its services to AWB International "formed part of the 'supply chain services' AWB provided to the National Pool."[392] AWB International was paid for that wheat through the same letters of credit and the same Bank of New York account in AWB Limited's name (*see supra* ¶ 228): the letters of credit were those "under which AWB (and through it AWBI) was paid for the wheat sold pursuant to the contracts it concluded."[393]

232. The cost of the illicit fees was charged back to AWB International's wheat pool. The Cole Inquiry found that "[w]hen inland transportation fees were first payable by AWB they were paid by AWB Chartering in the first instance," and that "[w]hen these inland transportation fees were paid by AWB Chartering, it would in turn obtain reimbursement for the cost of the fees from the AWB [National] Pool"—first by invoicing the Pool for each shipment, and later by factoring the fees into the freight it invoiced the Pool.[394] The Inquiry stated the consequence directly: where pool wheat was among the wheat sold to Iraq under Programme contracts concluded after June 1999, "the expenses borne by the pool included (in addition to the cost of ocean freight) the inland transportation fees paid by AWB pursuant to those contracts," and the revenue the pool received "included amounts received from the UN escrow account in respect of the sale of that wheat, including the amount by which the price of the wheat sold to the IGB was

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[391] Id. ¶ 9.19.

[392] Id. ¶ 9.86.

[393] Id. ¶ 9.83.

[394] Id. ¶ 11.61.

inflated through the addition of the inland transportation fees and, after November 2000, the after-sales-service fees imposed by Iraq."[395] The fees AWB Limited remitted from New York to the regime's Jordanian conduit were therefore charged back to, and borne by, the National Pool operated for AWB International's account.

C. AWB Itself Understood That Its Iraq Payments Cleared Through New York and Could Be Frozen There.

233. AWB's own personnel recognized, from the outset of the fee arrangement, that its Iraq-related payments cleared through New York and were exposed to seizure there. In an October 20, 1999 internal exchange concerning the proposed USD 12-per-tonne trucking fee, AWB's Graham Owen wrote: "I am concerned if the shipping company incorrectly effects payment the money will be frozen in New York, then Iraq may not release the vessel, until money is received in their nominated account."[396] Owen proposed instead that AWB route the fee funds through BNP: "Over all the contracts we are talking about USD11.34 million why can't we remit those funds to BNP for use by the Iraqi Government to purchase approved commodities as is done with the Oil for food agreement."[397] AWB went on to time its own fee payments to the New York leg. Reporting from Baghdad in February 2001, AWB's Darryl Borlase recorded that the trucking fee was to be paid in two instalments, the first before the vessel's arrival at Umm Qasr and "the second one within one week of receiving payment from BNP in New York."[398]

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[395] Id. ¶ 9.127.

[396] Email from Graham Owen and Mark Emons, AWB (Oct. 20, 1999) (AWB.5056.0157), at 1.

[397] Id. at 1.

[398] AWB Iraq Trip Report, supra note 181, at 4.

D. AWB Conducted Its United States Business Through an Office in New York Until August 2000.

234. AWB Limited conducted its business in the United States through a wholly owned subsidiary, AWB (U.S.A.) Limited, with an office in New York until August 2000 and thereafter in Portland, Oregon.[399] The subsidiary's manager, Mr Snowball, "represented AWB (and its related companies) in both North and South America."[400]

235. AWB Limited's shipments were submitted for clearance in New York by the Australian Mission to the United Nations, on forms naming AWB Limited as the exporter and stating the end-use as "SUPPLY TO THE GOVERNMENT OF IRAQ FOR GENERAL FOOD DISTRIBUTION."[401] That Mission also transmitted and pressed AWB's export applications from New York: in a December 9, 1999 cable, the Mission reported that the United Nations Secretariat had approved AWB application A4822 to export 200,000 metric tons of wheat to Iraq, while a related AWB application (A4821, for 25,000 tons) remained held pending a legal question, and the Mission was continuing to press the United Nations for an answer.[402] From its New York office, AWB Limited conducted its Oil-for-Food correspondence: when the OIP questioned a "standard terms and conditions" reference in AWB's Iraqi contracts, "AWB LTD (NEW YORK OFFICE) HAS NOW PROVIDED TO THE MISSION A COPY OF THE STANDARD TERMS

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[399] Corporate Disclosure Statement of Defendants AWB Limited and AWB (U.S.A.) Limited ¶ 2, Boyd v. AWB Ltd., No. 07 Civ. 3007 (GEL) (S.D.N.Y. Dec. 14, 2007), ECF No. 23; Cole Inquiry vol. 2, supra note 4, ¶ 9.91; Email from Graham Owen and Mark Emons, AWB (Oct. 20, 1999) (AWB.5056.0157), at 1; Cole Inquiry vol. 4, supra note 170, ¶ 31.486.

[400] Cole Inquiry vol. 2, supra note 4, ¶ 9.92.

[401] 661 Committee Notification (Nov. 1999), supra note 378, at 1.

[402] Facsimile from the Australian Mission to the United Nations, New York, to AWB New York (Dec. 9, 1999) (AWB.0058.0059), at 1.

AND CONDITIONS USED BY THE AWB AND THE IRAQI GRAIN BOARD," and—"AS AGREED BY AWB LTD"—the Mission in turn "PROVIDED A COPY OF THE STANDARD TERMS AND CONDITIONS TO THE OFFICE OF THE IRAQ PROGRAM (OIP) ON 5 APRIL," after which "OIP…CONFIRMED THAT THIS CLARIFIES THE MATTER AND REMOVES ANY GROUNDS FOR MISPERCEPTION."[403]

236. The New York approval machinery repeatedly flagged the very irregularity at the heart of this Complaint, and AWB answered those flags through the same New York channel. In January 2000, OIP contract-processing staff in New York advised that Programme payments had to go to the United Nations Iraq Account in New York and not to a Government of Iraq account in Jordan, after a competing supplier's contract surfaced a US$700,000 "transport costs" deposit into a Jordanian bank account.[404] United Nations staff in New York then linked AWB by name to the same pattern, and calculated the benefit to the Iraqi Grain Board on AWB's contemporaneous 25,000-metric-tonne contract (United Nations approval OC 4988, issued January 5, 2000) (*see supra* ¶ 130).[405] United Nations staff in New York went so far as to ask the Australian Mission discreetly whether financial arrangements had been made outside the BNP Iraq account with the Government of Iraq.[406] The same memorandum recorded that, on the application then before it, "there is no evidence of any irregular financial activity in the contract associated with this

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[403] Cable from the Australian Mission to the United Nations, New York, to Canberra (Apr. 5, 2000) (DFT.0001.0009), at 1.

[404] Almstrom Note (Jan. 4, 2000), supra note 122, at 1.

[405] Johnston Memorandum (Jan. 13, 2000), supra note 301, at 1.

[406] Id. at 1.

application."[407] The United Nations was examining the contract price. The fee AWB was paying to Alia was inside that price, not disclosed as a fee (*see supra* Part II). When pressed on the "standard terms and conditions" irregularity, AWB—through its Government Relations officer McConville—characterized the reference as merely pointing to a long-standing memorandum of understanding and asserted that "AWB SUSPECT, BUT CANNOT PROVE, THAT THE ALLEGATIONS OF IRREGULARITIES ON ITS PART - WHICH AWB DISMISSES - ARE BEING PROMOTED BY ITS CANADIAN COMPETITORS."[408] These exchanges establish that AWB knew that its payment structure had been questioned as irregular through the United Nations' New York apparatus, and that AWB used its New York presence to respond to those questions.[409] Plaintiffs plead these exchanges, and AWB's answers to them, as evidence of AWB's knowledge; Plaintiffs do not rely on the United Nations' approval and inquiry processes as a basis for personal jurisdiction.

E. AWB Paid the Fees in United States Dollars Through New York Until May 2001, Then Restructured Them Into Deutschmarks and Euros.

237. The scheme began as a United States-dollar operation, and AWB moved it out of dollars when doing so became useful. Until early May 2001 the fees were paid in United States dollars, and most of them out of a Bank of New York account (*see supra* ¶ 229). In 2001 AWB changed currencies. Payment shifted "initially to Deutschmarks in May 2001," and "[f]rom November 2001 until March 2003, inland transportation fees were paid by AWB in euros"—both

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[407] Id. at 1.

[408] DFAT Cable (Mar. 22, 2000), supra note 307, at 1.

[409] Almstrom Note (Jan. 4, 2000), supra note 122, at 1; Johnston Memorandum (Jan. 13, 2000), supra note 301, at 1; Australian Mission Cable (Apr. 5, 2000), supra note 403, at 1.

routed to Alia's accounts at the Jordan National Bank in Amman "through its correspondent bank in Frankfurt, Germany."[410] The shift was not confined to the fee: it "coincided with the change in both the currency of the price for which wheat was sold and the currency in which AWB received the proceeds of those sales from the United Nations escrow account."[411] The Inquiry identified what the change accomplished: "From May 2001 and the time inland transportation fees were paid in these other currencies, the US Embargo was no longer a bar to payment."[412] AWB had agreed to the change in advance, and agreed to it for the fee specifically: in February 2001, three months before the first Deutschmark payment, Borlase recorded that "AWB have agreed to remit the trucking fee in a foreign currency other than US Dollars (most likely in DM)."[413] AWB's payments to the regime's conduit thus ran through the United States financial system for the first 18 months of the scheme, and were restructured out of it thereafter.

F. AWB Directed Additional Claims-Related Conduct Into the United States, at Washington, D.C.

238. AWB Limited's claims-related United States contacts extended beyond New York. In March 2000, as the United Nations' concerns about irregularities in AWB's Iraqi wheat contracts came to a head, AWB Limited's Chairman and its New York representative traveled to Washington, D.C.; as an Australian Trade Commission cable reporting that meeting recorded, AWB's representative there "expressed the view that all clauses in the contract were standard and that it was not necessary to provide additional information to" the United Nations Office of the

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[410] Cole Inquiry vol. 3, supra note 160, ¶ 26.17.

[411] Id. ¶ 26.18.

[412] Id. ¶ 26.19.

[413] AWB Iraq Trip Report, supra note 181, at 4.

Iraq Programme, even as that Office was pressing the very irregularity at the heart of this action (*see supra* ¶ 131).[414] Three years later, by a letter dated June 11, 2003 and sent the following day, AWB Limited's Managing Director directed a formal cease-and-desist letter into Washington, D.C.—addressed and sent to US Wheat Associates at 1620 I Street NW, Washington, D.C.—demanding retraction of the allegation that the inflated prices AWB built into its Oil-for-Food contracts "provided foundation to the rumours that some of the excess may have gone into accounts of Saddam Hussein's family," and asserting that AWB's contracts "were made and executed in accordance with the" Oil-for-Food Programme (*see supra* ¶ 143).[415] The June 2003 letter was a communication AWB purposefully directed into the United States. Both episodes arose out of the Oil-for-Food contracts and the payment structure at the heart of this action, and Plaintiffs do not rely on any United States presence of Defendants unrelated to the conduct sued upon. They are among the contacts with the United States as a whole that support this Court's exercise of personal jurisdiction under the alternative basis of Federal Rule of Civil Procedure 4(k)(2). *See supra* ¶ 19.

CLAIMS FOR RELIEF

GENERAL ALLEGATIONS APPLICABLE TO ALL COUNTS

239. Plaintiffs incorporate by reference each of the allegations set forth above in Parts I through VI as if fully set forth herein.

240. Each of the attacks described *supra* Part V.E involved violent acts dangerous to human life that would constitute a criminal violation if committed within the jurisdiction of the United States or of any State; appeared to be intended to intimidate or coerce the civilian

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[414] Austrade Cable (Mar. 11, 2000), supra note 305, at 2.

[415] Lindberg-Tracy Letter (June 11, 2003), supra note 341, at 1–2; Cole Inquiry vol. 3, supra note 160, ¶¶ 28.16–28.17.

population of Israel and to influence the policy of the Government of Israel by intimidation or coercion; and occurred outside the territorial jurisdiction of the United States and transcended national boundaries in the means by which they were accomplished and the persons and locale involved. Each such attack was therefore an "act of international terrorism" within the meaning of 18 U.S.C. § 2331(1). *See supra* Part V.E.

241. Each of the attacks was committed, planned, and/or authorized by an organization that, as of the date the attack was committed, had been designated a foreign terrorist organization by the Secretary of State under Section 219 of the Immigration and Nationality Act, 8 U.S.C. § 1189. *See supra* ¶ 155.

242. Each of the attacks occurred on or after September 11, 2001, within the scope of the cause of action created by the Justice Against Sponsors of Terrorism Act, Pub. L. No. 114-222, § 7, 130 Stat. 852, 855 (2016).

243. Plaintiffs are nationals of the United States (or the estates, survivors, or heirs of such nationals) who were killed or injured, or whose decedent was killed, in one of the attacks described above. *See supra* The Parties and Part V.E.

COUNT I—VIOLATION OF THE ANTI-TERRORISM ACT, 18 U.S.C. § 2333(d)(2) (AIDING-AND-ABETTING LIABILITY)

244. Plaintiffs reallege and incorporate their allegations above.

245. Defendants aided and abetted the acts of international terrorism described above by knowingly providing substantial assistance. Between November 1999 and March 2003, Defendants paid the regime US$224,128,189.98 in "inland transportation" and "after-sales-service" fees, routed through the Jordanian front company Alia and into Iraqi state accounts, in deliberate breach of the sanctions regime and of the Oil-for-Food Programme's requirement that every payment flow through the United Nations escrow. Defendants concealed those payments—

inflating contract prices to bury the fees, paying them to a regime-nominated intermediary, splitting invoices, and using private channels—so that the destination of the money would not be apparent.

246. That assistance delivered to the regime unrestricted hard currency outside United Nations control—the spendable cash the escrow system existed to deny it—which the regime used to fund its announced program of escalating cash payments to the families of Palestinians killed in the conflict with Israel, of which the largest payment was reserved for the family of a suicide bomber.

247. Defendants were generally aware of their role in an overall illegal activity from which the attacks that injured Plaintiffs were foreseeable. When they made these payments, Defendants knew that Iraq was a designated state sponsor of terrorism; that the regime funded, armed, and directed Palestinian terrorist organizations; that the regime publicly announced and paid an escalating cash reward whose largest payment was reserved for the family of a suicide bomber; and that they were delivering unrestricted hard currency to that regime in violation of the sanctions that existed to deny it.

248. Defendants' assistance was substantial. It was sustained for more than three years, from November 1999 until March 2003. Defendants paid this counterparty on terms unique among their dealings, delivered those payments through a concealed channel of their own construction, and from April 2000 did so in knowing violation of their own written Code of Conduct. Defendants delivered more of that hard currency to the regime than any other supplier under the Programme.

249. Defendants provided that assistance knowing what it was. The Cole Inquiry found that AWB "sought to hide the payments to Alia, knowing such payments were payments to Iraq," because "it knew that payments to Iraq were contrary to UN sanctions and Australian government

policy."[416] It found that AWB's concealment of that information "from DFAT and the United Nations was intentional and dishonest," and that it "was known by senior officers of AWB who had actual or de facto responsibility for AWB's trade with Iraq and whose knowledge and intentions accordingly can and should be attributed to AWB."[417] And it found that AWB treated the 10 per cent after-sales-service surcharge as part of the inland transportation fee "in the knowledge that payments to Alia were in truth payments to Iraq."[418] Defendants made each of the payments described above with that knowledge.

250. Defendants' payments assisted the commission of each of the attacks that killed and injured Plaintiffs and their decedents. Before those attacks began, the regime had announced that it would pay the family of every Palestinian killed in the conflict with Israel, and in August 2001 it raised the payment to the family of a suicide bomber above all others; it paid openly and reliably, at public ceremonies held on its behalf; and in March 2002, weeks after the second attack, it raised the suicide-bomber payment again. The hard currency Defendants delivered flowed into the same state bank, and the same Amman branch, from which those payments were made. Each of the attacks was carried out against that standing, funded, publicly advertised promise—a promise that, as the agency that investigated these attacks has found, in many cases drew recruits who agreed to carry out a suicide bombing in exchange for their families being provided for after their deaths.

251. Defendants' assistance was systemic and pervasive. It ran from November 1999 until March 2003—more than three years, shipment after shipment—and carried

[416] Cole Inquiry vol. 1, supra note 6, at xx.

[417] Cole Inquiry vol. 4, supra note 170, ¶ 31.33.

[418] Cole Inquiry vol. 2, supra note 4, ¶ 19.66.

US$224,128,189.98 to the regime across at least 20 of Defendants' 41 Oil-for-Food contracts, at fees that escalated from roughly US$12 per tonne to US$25 per tonne plus a 10-per-cent surcharge on contract value and, by December 2002, to US$51.15 per tonne. Throughout, it was delivered by a concealment architecture Defendants built and maintained for that purpose. Assistance furnished on that scale, for that duration, and by those means assisted each of the attacks the regime's announced rewards induced, including those pleaded here.

252. The attacks that killed and injured Plaintiffs and their decedents were a foreseeable consequence of the assistance Defendants knowingly gave. The regime's reward program was announced publicly, escalated openly, and paid its largest sum for a completed suicide bombing; it existed to produce more such attacks, and it did.

253. Plaintiffs were injured in their persons, property, or businesses by reason of the acts of international terrorism that Defendants aided and abetted.

254. As a result of Defendants' violation of 18 U.S.C. § 2333(d)(2), Plaintiffs are entitled to recover economic and non-economic damages, including solatium damages, trebled, together with the costs of this suit and attorneys' fees, pursuant to 18 U.S.C. § 2333(a).

COUNT II—VIOLATION OF THE ANTI-TERRORISM ACT, 18 U.S.C. § 2333(d)(2) (CONSPIRACY LIABILITY)

255. Plaintiffs reallege and incorporate their allegations above.

256. The Saddam Hussein regime, the Iraqi-controlled Palestinian organizations through which it advertised and paid its rewards, and the organizations that carried out the attacks on Plaintiffs were engaged in a single, continuing illegal operation. Hard currency was taken outside the controls of the United Nations escrow through concealed payment channels; it was held in a discretionary reserve banked in substantial part at the Iraqi state's own bank in Amman; and it was paid out through the Arab Liberation Front and the Palestine Liberation Front, at public ceremonies

held on the regime's behalf, to the families of Palestinians killed in the conflict with Israel, with the largest payment reserved for the family of a suicide bomber. Each participant performed a different part of that one operation.

257. Defendants and the Iraqi regime entered into an agreement. Its terms were set by the regime and accepted by Defendants in writing: Defendants would pay the regime's inland-transportation fees and, later, its after-sales-service surcharge, and would pay them not to the regime but to a recipient the regime nominated. Defendants and the regime made and remade that agreement over more than three years, at rates the regime repeatedly raised and Defendants repeatedly accepted.

258. The object of that agreement was the funding and continued operation of the regime's reward apparatus: that hard currency would reach the regime free of United Nations control and be disbursed through the regime's Palestinian instruments to the families of Palestinians killed in the conflict with Israel, with the largest payment reserved for the family of a suicide bomber. That object was unlawful in each of its parts—the delivery breached the sanctions regime, and the disbursements rewarded and encouraged attacks on civilians.

259. Defendants and the regime also agreed how the payments would be concealed—routed to a recipient the regime nominated rather than to the regime itself, papered through an interposed United Kingdom middleman that issued Defendants' trucking and freight invoices, and recorded under a label that disguised what the money was. Both sides understood the payments to be prohibited, and both acted to keep them from being detected.

260. Defendants did not simply sell wheat into a market. They paid this counterparty on terms unique among their dealings, delivered those payments through a concealed channel of their own construction, and from April 2000 did so in knowing violation of their own written Code of

Conduct. Defendants delivered more hard currency to the regime through that channel than any other supplier under the Programme, and they treated the fee as a term of their own bargain, withholding payments as leverage against the regime when it served them.

261. Defendants performed that agreement, and the rates they paid continued to rise, after the regime's reward program had become open public record and after the regime had twice increased the sum it paid the family of a suicide bomber.

262. The two ends of the operation met in a single official. Vice President Taha Yassin Ramadan authored the after-sales-service fee that Defendants agreed to pay, and headed the regime's Palestine Office, which funded and directed the Arab Liberation Front that distributed the rewards.

263. The organizations that carried out the attacks were participants in, and beneficiaries of, that operation. The families of gunmen killed in a joint PIJ shooting attack sought the grant the regime paid for a suicide attack; the regime's Vice President received the PFLP's secretary-general and reiterated Iraq's support for the intifada; and the regime's own intelligence service recorded that in 2002 it maintained channels with both organizations—the Palestine Islamic Jihad and the Popular Front for the Liberation of Palestine.

264. Each of the attacks that killed or injured Plaintiffs and their decedents was an unlawful overt act committed by a participant in that operation, and each was done in pursuance of the operation's common design. The reward program was the operation's engine, and the operation's purpose was to produce more attacks: the regime announced a standing payment, twice raised the sum reserved for the family of a suicide bomber, and paid publicly and reliably. Attacks of the kind that killed and injured Plaintiffs were not outside the scope of that operation—they were what it existed to bring about.

265. Plaintiffs were injured in their persons, property, or businesses by reason of the acts of international terrorism committed in furtherance of the operation Defendants joined.

266. As a result of Defendants' violation of 18 U.S.C. § 2333(d)(2), Plaintiffs are entitled to recover economic and non-economic damages, including solatium damages, trebled, together with the costs of this suit and attorneys' fees, pursuant to 18 U.S.C. § 2333(a).

JURY DEMAND

267. Plaintiffs demand a trial by jury on all issues so triable. Fed. R. Civ. P. 38(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants, jointly and severally, and award:

a. compensatory damages in an amount to be proven at trial, trebled pursuant to 18 U.S.C. § 2333(a), which provides that a prevailing plaintiff "shall recover threefold the damages he or she sustains and the cost of the suit, including attorney's fees";

b. reasonable attorneys' fees and the costs of this suit, as provided by 18 U.S.C. § 2333(a);

c. prejudgment interest, as allowed by law;

d. such other and further relief as the Court deems just and proper.

Dated: September 27, 2026

Respectfully submitted,

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