



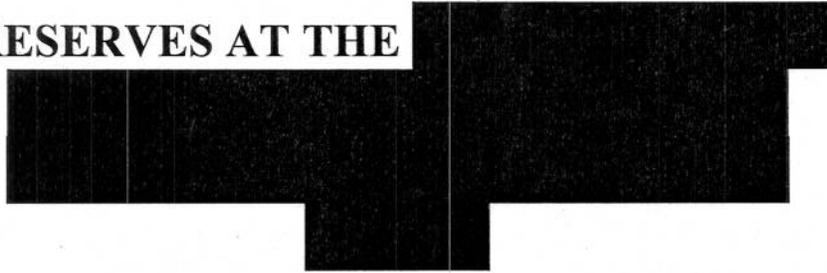
United Nations

Nations Unies

**OFFICE OF INTERNAL OVERSIGHT SERVICES
PROCUREMENT TASK FORCE**

*This Report is protected under paragraph 18 of
ST/SGB/273 of 7 September 1994*

**REPORT ON THE STRATEGIC FUEL
RESERVES AT THE**



Report no. PTF-R007/08

Procurement Task Force case no. PTF/015/07

Investigations Division case no. 0895/06

REDACTED

**STRICTLY
CONFIDENTIAL**

This Investigation Report of the Procurement Task Force of the United Nations Office of Internal Oversight Services is provided upon your request pursuant to paragraph 1(c) of General Assembly resolution A/RES/59/272. The Report has been redacted in part pursuant to paragraph 2 of this resolution to protect confidential and sensitive information. OIOS' transmission of this Report does not constitute its publication. OIOS does not bear any responsibility for any further dissemination of the Report.

5 December 2008

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ALLEGATIONS.....	1
III.	APPLICABLE UNITED NATIONS STAFF REGULATIONS AND RULES	2
IV.	METHODOLOGY	5
V.	DUE PROCESS COMPLIANCE.....	6
VI.	BACKGROUND.....	7
VII.	██████████ FUEL CONTRACTS	8
A.	OVERVIEW OF FUEL CONTRACTS	8
B.	BIDDING FOR BULK FUEL	8
1.	<i>Bulk Fuel Request for Proposals</i>	8
2.	<i>Requests for Proposal no. ██████████</i>	9
3.	<i>Acquisition and Advance Payment of the strategic fuel reserves</i>	10
VIII.	THE TASK FORCE'S ANALYSIS	15
A.	LACK OF AGREEMENT ON PROCUREMENT PLAN	15
B.	LINKING THE FUEL RESERVES TO EXISTING FUEL CONTRACTS FOR ██████████, MATERIAL CHANGES TO THE CONTRACTS, AND LACK OF REVIEW BY HCC	17
C.	ADVANCE PAYMENTS FOR FUEL RESERVES: ANALYSIS UNDER THE PROCUREMENT MANUAL AND FINANCIAL REGULATIONS AND RULES.....	20
D.	RISK AWARENESS ON THE PART OF SENIOR MANAGEMENT	21
IX.	FINDINGS AND CONCLUSIONS.....	22
X.	RECOMMENDATIONS	24
A.	RECOMMENDATION PTF-R007/08/1.....	24
B.	RECOMMENDATION PTF-R007/08/2.....	24
C.	RECOMMENDATION PTF-R007/08/3.....	24

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

I. INTRODUCTION

1. The Procurement Task Force (the "Task Force") was created on 12 January 2006 to address all procurement matters referred to the Office of Internal Oversight Services ("OIOS"). The Task Force has been referred more than 400 cases since its creation, many of which involved fraud and corruption in United Nations procurement operations at the Secretariat, various peacekeeping missions, and overseas offices.

2. Under its Terms of Reference, the Task Force operates as part of OIOS, and reports directly to the Under-Secretary-General for OIOS. The remit of the Task Force is to investigate all procurement cases, including all matters involving procurement bidding exercises, procurement staff, and vendors doing business with the United Nations.

3. The Task Force has focused extensively on peacekeeping missions, including the [REDACTED]. Forty-eight individual matters involving sixteen current and former United Nations staff members, numerous procurement exercises, and a multitude of international and national United Nations contractors have been examined by the Task Force concerning this [REDACTED] location.

4. This Report focuses on the acquisition of the strategic fuel reserves for the Mission, and the advance payment for these reserves, by [REDACTED] in [REDACTED]. The case discussed in this Report originated from a written confidential complaint made in [REDACTED] to the [REDACTED] of [REDACTED], which, in turn, referred the case to the Task Force on [REDACTED].

II. ALLEGATIONS

5. This Report addresses allegations that [REDACTED] management, including [REDACTED], failed to procure the strategic fuel reserves in compliance with the Organization's financial rules and procurement procedures. Specifically, the complainant alleged that:

(i) in or around [REDACTED], Task Orders were issued instead of a contract by one of the [REDACTED] offices without contracting authority and against the advice of authorized offices;

(ii) an advance payment of US\$5,719,046 was made for the strategic fuel reserves without proper authorization and was based on a written statement of a third party, [REDACTED], with which [REDACTED] had no contractual relationship and in contradiction with United Nations Financial Regulations and Rules;

(iii) the acquisition of the strategic fuel reserves exposed the United Nations to an undue risk because the vendors did not post performance bonds, and, as of [REDACTED], US\$2 million of the advanced money remained to be recovered; and

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

(iv) there were no Receiving and Inspection Reports to show that the fuel reserves were delivered.

6. In light of these allegations, the Task Force's investigation also examined whether the procurement and execution of fuel contracts by [REDACTED] in the calendar year [REDACTED] was tainted by acts of fraud and corruption.

III. APPLICABLE UNITED NATIONS STAFF REGULATIONS AND RULES

7. The following provisions of the **Staff Regulations of the United Nations** ("the Staff Regulations") are relevant:

(i) **Regulation 1.2(b)**: "Staff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status."

(ii) **Regulation 1.2(e)**: "By accepting appointment, staff members pledge themselves to discharge their functions and regulate their conduct with the interests of the Organization only in view. Loyalty to the aims, principles and purposes of the United Nations, as set forth in its Charter, is a fundamental obligation of all staff members by virtue of their status as international civil servants."

(iii) **Regulation 1.2(f)**: "[Staff members] shall conduct themselves at all times in a manner befitting their status as international civil servants and shall not engage in any activity that is incompatible with the proper discharge of their duties with the United Nations. They shall avoid any action and, in particular, any kind of public pronouncement that may adversely reflect on their status, or on the integrity, independence and impartiality that are required by that status."

8. The following provision of the **Staff Rules of the United Nations** is relevant:

(i) **Rule 112.3**: "Any staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of the staff member's negligence or of his or her having violated any regulation, rule or administrative instruction."

9. The following provisions of the **Financial Rules and Regulations of the United Nations** are relevant:

(i) **Regulation 5.8(b)**: "The Secretary-General shall . . . [c]ause all payments to be made on the basis of supporting vouchers and other documents which ensure that the services or goods have been received and that payments have not previously been made."

(ii) **Regulation 5.12**: "The following general principles shall be given due consideration when exercising the procurement functions of the United Nations:

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

- (a) Best value for money;
- (b) Fairness, integrity and transparency;
- (c) Effective international competition;
- (d) The interest of the United Nations.”

(iii) **Rule 105.13(b):** “The Under-Secretary-General for Management shall establish review committees, at Headquarters and other locations, to render written advice to the Under-Secretary-General for Management on procurement actions leading to the award or amendment of procurement contracts, which, for the purposes of these Regulations and Rules, includes agreements or other written instruments such as purchase orders and contracts that involve income to the United Nations. The Under-Secretary-General for Management shall establish the composition and the terms of reference of such committees, which shall include the types and monetary values of proposed procurement actions subject to review.”

(iv) **Rule 105.14:** “[P]rocurement contracts shall be awarded on the basis of effective competition.”

(v) **Rule 105.19(a):** “Except where normal commercial practice or the interests of the United Nations so require, no contract or other form of undertaking shall be made on behalf of the United Nations which requires a payment or payments on account in advance of the delivery of products or the performance of contractual services. Whenever an advance payment is agreed to, the reasons therefor[e] shall be recorded.”

10. The following provision of the **United Nations Field Finance Procedure Guidelines** is relevant:

(i) **Article 3.3.1:** “In general, no advance payments should be made to vendors. However, there may be exceptional circumstances when these advances are required, as covered by [Rule 105.19(a)]. In such cases, it is recommended that the approval of the Chief Administrative Officer be obtained, especially for significant amounts, i.e. contracts for rations or contractual services.”

11. The following provisions of the **United Nations Procurement Manual** are relevant:

(i) **Section 4.2.1(1):** “It is of overriding importance that the staff member acting in an official procurement capacity should not be placed in a position where their actions may constitute or could be reasonably perceived as reflecting favourable treatment to an individual or entity by accepting offers or gifts and hospitality or other similar considerations.”

(ii) **Section 4.2.5(2)(i):** “‘Bribery’ means the act of unduly offering, giving, receiving or soliciting anything of value to influence the process of procuring goods or services, or executing contracts.”

(iii) **Section 4.2.5(3)(ii):** “The UN . . . [w]ill declare a firm ineligible, either indefinitely or for a stated period of time, to become a UN registered Vendor if it at any

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

time determines that the firm has engaged in corrupt practices in competing for or in executing a UN Contract.”

(iv) **Section 4.2.5(3)(iii):** “The UN . . . [w]ill cancel or terminate a contract if it determines that a Vendor has engaged in corrupt practices in competing for or in executing a UN Contract.”

(v) **Section 9.9.13(1):** “The Procurement Officer shall exercise professional judgement to ensure adequate safeguards are in place to protect the interest of the Organization throughout the term of the contractual obligation.”

(vi) **Section 9.9.13(2):** “For contracts with a value over US\$100,000, . . . [t]he decision to require such a [performance] bond shall be based on factors such as the contractor’s reputation and experience, as well as the cost of the [performance] bond weighed against the perceived potential risk to the UN should the contractor fail to perform the contract satisfactorily.”

(vii) **Section 12.1.1(1):** “When any of the following categories of procurement actions irrespective of whether the action originated at HQ or in a Mission/OAH, is applicable to a proposed award, in accordance with the UN FRR the recommendation of Headquarters Committee on Contracts (HCC) and the prior approval of the ASG/OCSS shall be obtained prior to any contractual commitment being made:

a. Any proposed award to a single contractor . . . which in total exceeds US\$200,000 (“HCC threshold”) during a calendar year, or such amount as determined from time to time by the ASG/OCSS[;]

...

b. Any proposed amendment, modification or renewal of a contract previously reviewed by the HCC where the amendment, modification, or renewal, increases the contractual amount more than twenty (20) percent (hereinafter the “20% rule”) or US\$200,000 whichever is lower;

c. Any proposed amendment or modification of a contract previously reviewed by the HCC, where in the judgment of the Procurement Officer, such amendment in relation to the criteria on which the original award was made may significantly affect the procurement process or the original contractual terms.”

(viii) **Section 12.1.2(2):** “When any of the following categories of procurement actions affect a proposed contract which involves income to the Organisation, the recommendation of the [Local Committee on Contracts] and the prior approval of the CAO/DOA shall be obtained, prior to any contractual commitment being made:

a. Any proposed contract or a series of related contracts which involve income to the Organisation during a calendar year of US\$10,000 or more;

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

...

c. Any proposed amendment, modification or renewal of a contract which involves income to the Organisation previously reviewed by the LCC, where any contract amendment(s) in the aggregate increases the income during a calendar year by the lower of twenty (20%) percent of the contract value or US\$10,000 or more.”

(ix) **Section 12.1.3(2):** “For procurement cases in the Mission/OAHs the case shall be submitted to the LCC if the monetary value exceeds the threshold value so delegated to the CPO. . . . However, if the monetary value exceeds the monetary value requiring HCC consideration, the procurement action shall first be the subject to a recommendation by the LCC and upon approval by the CAO/DOA forwarded to the UN HQ for HCC consideration.”

12. The following provisions of the **United Nations General Conditions of Contract** are relevant:

(i) **Article 2.0:** “The Contractor shall refrain from any action that may adversely affect the United Nations and shall fulfill its commitments with the fullest regard to the interests of the United Nations.”

IV. METHODOLOGY

13. As part of this investigation, the Task Force collected, examined, and analyzed thousands of pages of documents, both in hard-copy and in electronic format. The Task Force investigators collected and reviewed extensive documentation related to the procurement and contract awards for fuel between the calendar years [REDACTED] and [REDACTED], including:

- a. Procurement files;
- b. Statement of Requirements;
- c. Relevant bids and requisitions for the contracts in question;
- d. Purchase and Task Orders;
- e. LCC and HCC meeting minutes;
- f. Fuel contracts [REDACTED];
- g. Background materials, including Resident Auditor Reports;
- h. Internal memoranda;
- i. Correspondence files; and
- j. Electronic evidence.

14. The Task Force interviewed more than twenty witnesses in connection with this investigation, and investigators traveled to the [REDACTED]

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

[REDACTED] in furtherance of the case to collect relevant documents and conduct interviews with relevant United Nations staff members and vendors. A written record of conversation was prepared after each interview. Staff members were then invited to review the records of conversation for accuracy and to sign them upon review. In addition, investigators provided all interviewees with the opportunity to provide any further evidence to the Task Force.

15. It is significant to note that the lack of formal minutes and consolidated documents in connection to the procurement of the strategic fuel reserves contributed to difficulties experienced by the Task Force in attempting to piece together the events leading to the acquisition and the advance payment of [REDACTED] fuel reserves during the financial year [REDACTED]. In addition, many of the documents related to [REDACTED] fuel contracts were not readily available for the Task Force's review.

16. The Task Force provided a draft copy of this Report to [REDACTED], the [REDACTED], to ensure fairness and factual accuracy of the Report. On [REDACTED] [REDACTED] provided comments to the draft copy of the Report and, specifically, to the proposed recommendations. The Task Force has carefully examined [REDACTED] [REDACTED] comments and incorporated them into the final Report.

V. DUE PROCESS COMPLIANCE

17. The OIOS Manual of Investigation Practices and Policies ("OIOS Investigation Manual"), under which the Task Force operates, defines the official standard of due process to which a staff member is entitled as "fairness." The Manual specifies that the "fairness" requirements for a fact-finding exercise are met if a staff member has been:

- (i) made aware of the scope of the possible misconduct, including any possible new instances of misconduct which arose during the investigation;
- (ii) given the opportunity to explain why his or her actions were proper; and
- (iii) given the opportunity to respond to the allegations, including presenting evidence, explanations, information, or witnesses to support their explanation.

18. All the interviewed staff members in this case were informed of the scope of the allegations and were provided with the opportunity both to explain why his or her actions were proper, and to present any additional evidence, explanations, or witnesses to support their explanation.

19. Each staff member was provided with a record of conversation in connection to their Task Force interview and invited to review it for accuracy and provide comments or any additional information and sign the document. During the review of the record of conversation, some staff members made handwritten comments, editions, and corrections to the document, after which they signed the record. These handwritten comments, editions, and corrections were incorporated into the text or footnotes of each record of conversation.

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

VI. BACKGROUND

20. The [REDACTED] to facilitate the implementation of the [REDACTED]. With a budget exceeding [REDACTED],

21. Since the beginning of [REDACTED] peacekeeping operations in the [REDACTED], fuel expenditures have comprised a large percentage of [REDACTED] budget. [REDACTED] purchases of fuel are governed by the United Nations Procurement Manual, United Nations Financial Regulations and Rules, and the Department of Peacekeeping Operation's Field Finance Procedure Guidelines.

22. Administratively, [REDACTED], each with its own section chief and staff. In [REDACTED], the [REDACTED] was subdivided into sub-units—namely, the [REDACTED].

23. Since [REDACTED] has served as the [REDACTED] at [REDACTED]. He reported to [REDACTED], who, in turn, reported to the [REDACTED]. From [REDACTED], [REDACTED] served as the [REDACTED], after the departure of [REDACTED], and before the arrival of [REDACTED], the [REDACTED], and served from late [REDACTED].

24. As the requisitioning office, the responsibility of the [REDACTED] is to coordinate the supply and delivery of fuel and rations, as well as to distribute water and general supplies. In the case of fuel supplies, the [REDACTED] is supported by the [REDACTED] positioned at separate focal points or locations throughout the peacekeeping operations in the [REDACTED].

25. As [REDACTED] coordinated the fuel requirements and deliveries for the Mission based on estimates provided by the [REDACTED] in each of the peacekeeping locations. As discussed below, in the execution of these responsibilities, [REDACTED] consulted with the various [REDACTED] in the [REDACTED] and with the [REDACTED] relevant [REDACTED], including [REDACTED]. [REDACTED], as the [REDACTED], also interacted with [REDACTED]s major fuel vendors to arrange the acquisition, delivery, and payment for fuel.

26. In this Report the term [REDACTED] senior management" refers to those United Nations staff members who during the financial year [REDACTED] held the positions of [REDACTED].

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

VII. [REDACTED] FUEL CONTRACTS**A. OVERVIEW OF FUEL CONTRACTS**

27. The process to procure fuel supplies at [REDACTED] can be generally described as follows. The [REDACTED] of the [REDACTED] obtains the estimated quantities of fuel needed for the peacekeeping locations throughout the [REDACTED] by consulting with the appropriate fuel end-users (e.g., the Aviation and Transport Sections). Based on this information, the [REDACTED] will prepare a Scope of Works, also known in [REDACTED] as a statement of requirements ("SORs"), which lists generic specifications, as well as the requisite quantities of fuel, oil, and lubricant required for a given period, ranging from a few months to three years. The SORs becomes the formal background document upon which the [REDACTED] relies to compile and issue the requests for proposals ("RFPs") to prospective fuel vendors.

28. The [REDACTED] is responsible for the development of the procurement plan and for cooperation with the [REDACTED] in making these plans available in a timely manner. It is also the responsibility of the [REDACTED] to ensure the availability of sufficient funding for the required product.

29. It is also the role of the [REDACTED] to process the proposals received from all bidding vendors. During the execution of a contract between a vendor and [REDACTED], the [REDACTED]'s role is normally limited to formalizing subsequent amendments or addenda to existing contracts. Thus, the [REDACTED] is not responsible for monitoring the execution of the contract.

30. The [REDACTED], in cooperation with the [REDACTED], is responsible for administering [REDACTED] contracts with regard to fuel. Vendors of fuel claim contractual payments in compliance with the payment terms stipulated in an existing fuel contract. In turn, before the [REDACTED] makes payments to the contracted fuel vendors, invoices and signed delivery certificates, known as R&I reports, need to be first verified and cleared by the [REDACTED].

B. BIDDING FOR BULK FUEL**1. Bulk Fuel Request for Proposals**

31. During the initial stages of the Mission, [REDACTED] bought fuel for cash on an *ad hoc* basis from [REDACTED]. On [REDACTED] issued a competitive solicitation (ITB no. [REDACTED]) to four local fuel suppliers for the supply of Jet A-1 fuel, diesel fuel, gasoline, oil, and lubricants to [REDACTED]. However, this ITB was subsequently cancelled due to substantial changes in the requisite quantities of fuel needed and points of deliveries, and was replaced by a modified ITB, which incorporated the revised estimates and new points of deliveries. The modified ITB was

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

then issued to twenty-six local and international fuel vendors on [REDACTED]. Ten offers were received. [REDACTED] and eight other fuel bidders had submitted partial offers; [REDACTED] was the only vendor submitting a full offer on all products required for all locations. As a result, [REDACTED] was awarded a non-exclusive, open-ended contract for the provision of Jet A-I fuel, diesel, gasoline, oil, and lubricant to [REDACTED] for the period extending from [REDACTED]. Through three consecutive amendments, this contract was extended from [REDACTED].

32. On [REDACTED] issued RFP no. [REDACTED]. Based on the technical and commercial evaluations of the proposals that were submitted, a total of four contracts were awarded by location for the provision of aviation fuel, diesel fuel, and lubricants. [REDACTED] was awarded contracts nos. [REDACTED], and [REDACTED] and [REDACTED]—all of which extended from [REDACTED]. Contracts no. [REDACTED] and [REDACTED] were formally amended five and seven times respectively. Each amendment to these contracts either added or subtracted locations to which fuel was to be delivered in addition to extending the contracts from [REDACTED], when new fuel contracts, based on RFP no. [REDACTED], were awarded to [REDACTED].

2. Requests for Proposal no. [REDACTED]

33. On [REDACTED] issued RFP no. [REDACTED] for the provision of petrol, oils, and lubricants, inviting thirty-three local and regional fuel vendors to submit offers for identified peacekeeping locations. In [REDACTED], [REDACTED] was awarded a multi-year contract (no. [REDACTED]) for a Not-to-Exceed (“NTE”) amount of US\$38,233,022. Likewise, in [REDACTED], [REDACTED] was awarded a multi-year contract (no. [REDACTED]) for a NTE of US\$20,534,117. [REDACTED] contract was to provide aviation and diesel fuel to nine locations, and [REDACTED]’s contract was to provide aviation fuel, diesel fuel, and lubricants to nineteen locations throughout the [REDACTED]. Both the [REDACTED] contracts spanned the period from [REDACTED], and included an option to extend at the discretion of [REDACTED]. [REDACTED], another local fuel vendor, was also awarded a contract by [REDACTED]; however, [REDACTED] contract was terminated because the company failed to deliver the aviation and diesel fuel in accordance with the terms of its contract.

34. During the implementation period of these contracts (i.e., [REDACTED]), [REDACTED] experienced increasing problems in supplying fuel to designated locations in the eastern region of the [REDACTED] based on mine clearance activity, poor weather and road conditions. On account of [REDACTED] problems, the existing contracts for [REDACTED] and [REDACTED] were formally amended, and certain locations to which [REDACTED] had been providing fuel were re-awarded to [REDACTED] through amendments to both [REDACTED] contracts. Taken together, the effect of these amendments decreased the value of [REDACTED] contract to [REDACTED].

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

an NTE amount of US\$12,289,650 and increased the value of [REDACTED] contract to an NTE amount of US\$54,014,498.

35. In general, all the contracts for [REDACTED]—the two largest fuel suppliers to [REDACTED]—were initially drawn for a period of one year, and later extended through contract amendments or formal solicitations, as will be detailed below.

3. Acquisition and Advance Payment of the strategic fuel reserves

36. In or about the [REDACTED], during the execution of the existing fuel contracts no. [REDACTED], [REDACTED] senior management, through [REDACTED], determined that the Mission should acquire strategic fuel reserves (to serve as fuel stock) on account of the following factors: (i) the funds were available against the budget of financial year [REDACTED]—[REDACTED] (specifically, the Aviation budget had available funds); (ii) fuel was the only commodity that was in [REDACTED] charge that could be purchased quickly; and (iii) according to [REDACTED], it was [REDACTED] aim to have fuel stocks available at all strategic locations for emergency operational requirements and to support the pending elections in the [REDACTED] (see figure below). Indeed, presidential and legislative elections for the [REDACTED] were to be held on [REDACTED], and the second round of presidential elections on [REDACTED].

REDACTED

Figure : [REDACTED] email to [REDACTED] et al. ([REDACTED])

37. The acquisition of fuel reserves by [REDACTED] was to be paid in advance using a portion of the unexpended funds for the financial year [REDACTED], which were transferred to the Field Supply account from the accounts of UNHQ Transport and Field Aviation on [REDACTED]. The purpose of the transfer of these funds—in the amount of US\$11,225,000—was to procure, *inter alia*, aviation fuel, diesel fuel, fuel tanks and equipment for the anticipated increase in military and civilian personnel at [REDACTED]. These funds were to be liquidated and the fuel purchased was to be consumed before [REDACTED].

38. [REDACTED] planned and arranged the process to acquire the strategic fuel reserves under the existing fuel contracts with [REDACTED] without conducting either a formal solicitation or bidding exercise or amending the current contracts. Rather, he contacted [REDACTED]—suppliers with which [REDACTED] had pre-existing contracts—and negotiated an informal agreement with them to supply the fuel reserves sought by [REDACTED].

39. The Task Force interviewed [REDACTED], the then [REDACTED], as well as certain senior managers at these two companies, with whom [REDACTED] consulted when he

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

arranged the acquisition of the fuel reserves for [REDACTED]. These company officials confirmed that [REDACTED] had consulted with them and requested that they lend their support to the effort to create fuel reserves for [REDACTED]. The [REDACTED] indicated to the Task Force that they perceived the idea of creating fuel reserves as reasonable in a country such as the [REDACTED], particularly given its infrastructure and logistical challenges prior to, and during, the financial year [REDACTED]. Although [REDACTED] officials confirmed having received payments for the fuel reserves from [REDACTED], they denied that [REDACTED] had made advance payments for these reserves, claiming that the fuel [REDACTED] had requested as reserves was already available in the storage facilities for [REDACTED] when these companies received the payments from [REDACTED].

40. Prior to making an informal agreement with [REDACTED] to provide fuel reserves to [REDACTED], [REDACTED] consulted the [REDACTED] involved in the processing of fuel awards, including the [REDACTED], [REDACTED], and [REDACTED]. During the ensuing meetings and email dialogue, the Chiefs of [REDACTED], [REDACTED], and the [REDACTED] (part of the [REDACTED]) expressed reservations with regard to [REDACTED] plans to acquire reserves without a formal solicitation and to issue [REDACTED] reports in order to pay the vendors in advance—i.e., prior to [REDACTED] physically taking control of the fuel from vendors. These concerns were based on the fact that the establishment of fuel reserves was not stated as a requirement in either the original [REDACTED] for the RFP no. [REDACTED] of [REDACTED] or the existing fuel contracts for [REDACTED]. Despite these concerns, [REDACTED] authorized the acquisition of the reserves in his capacity as [REDACTED].

41. When asked as to why the fuel reserves were not acquired through a procurement exercise, [REDACTED] asserted that the lack of a procurement exercise was based on the fact that the provision of the reserves was a delivery of a product already covered by the pre-existing contract, which had not been exceeded in terms of either time or cost (i.e., below the NTE amount). He further explained that acquiring the reserves involved [REDACTED] asking for 4.5 million liters of fuel to be drawn down from previously authorized and legitimate existing contracts, as opposed to a new request for [REDACTED] to provide fuel to [REDACTED].

42. In an [REDACTED] email to [REDACTED], set forth in the figure below, [REDACTED]. [REDACTED] wrote that “[b]esides raising [purchase orders] . . . there are no other procurement action[s] to be taken since these purchase[s] of fuel are done against the approved contracts within the approved NTEs [amounts] and in accordance with the terms of payments of the said contracts. Therefore, I didn’t see the need to further discuss the issue with you or your staff to implement the plan. I think that I’m already asking your involvement on several other key issues which need urgent actions without having to bother you with things that don’t need your involvement.”

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

REDACTED

Figure: [REDACTED] email to [REDACTED] ([REDACTED])

43. Although [REDACTED] email to [REDACTED] did not include an explicit reference to the numbers of the contracts to which he was referring, it is clear that he was referring to the fuel contracts for [REDACTED], as these were the existing contracts for [REDACTED] at the time of this email communication. Notably, [REDACTED] email of [REDACTED] did not refer to involvement of the [REDACTED], and a formal solicitation for the fuel reserves was not conducted. Indeed, after this email, no evidence has been identified that [REDACTED] contacted the [REDACTED] to arrange the acquisition of the fuel reserves until *after* the advance payments were made to [REDACTED].

44. On [REDACTED] issued one Task Order to [REDACTED] and three Task Orders to [REDACTED], all of which are set forth in the figures below. These Task Orders requested that [REDACTED] provide a total of 7,500,000 liters of Jet A-1 fuel and 500,000 liters of diesel fuel in [REDACTED] for use as reserves for [REDACTED]. These Task Orders further indicated that [REDACTED] should charge [REDACTED] the same unit price per liter for the reserves as the price that [REDACTED] had negotiated under the RFP no. [REDACTED]—i.e., the same price per liter as stipulated in the existing contracts for [REDACTED]. On [REDACTED] respectively, [REDACTED] signed each of these Task Orders, thereby, validating [REDACTED] request for the fuel reserves.

REDACTED

Figure: Task Order no. [REDACTED] for Jet A-1 and issued to [REDACTED] ([REDACTED])

REDACTED

Figure : Task Order no. [REDACTED] for Jet A-1 and issued to [REDACTED] ([REDACTED])

REDACTED

Figure : Task Order no. [REDACTED] for Jet A-1 and issued to [REDACTED] ([REDACTED])

REDACTED

Figure : Task Order no. [REDACTED] for diesel and issued to [REDACTED] ([REDACTED])

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

45. As demonstrated in the figures set forth above, these Task Orders appear to establish a formal link between the reserves and the existing fuel contracts for [REDACTED] and [REDACTED] in that [REDACTED] referenced RFP no. [REDACTED] on the four Task Orders. However, a sufficient explanation for the justification appears to be lacking in these documents. The execution of these orders had the effect of tying the unit price per liter of the reserves to the pricing terms for fuel as was stipulated in the pre-existing fuel contracts that were awarded to [REDACTED] through RFP no. [REDACTED].

46. Although these Task Orders pre-dated the formal approvals for the acquisition of the fuel reserves and the advance payments for the reserves, the Task Force's interviews of [REDACTED] staff and review of relevant documents indicate that [REDACTED] issued the aforementioned Task Orders on the basis of verbal consensus—i.e., rather than a formal agreement or contract—amongst [REDACTED] senior management in an effort to ensure that the reserves were physically available and stored in the fuel storage facilities of [REDACTED] prior to [REDACTED] having formally authorized this acquisition on [REDACTED]. In turn, this authorization led to the release of the advance payment for fuel on [REDACTED].

47. Documents provided by [REDACTED] indicate that prior to obtaining authorization and making advance payments for the reserves to [REDACTED] held consultative meetings on [REDACTED] with his supervisor, [REDACTED] the then [REDACTED]

[REDACTED]. These meetings were held in order to discuss and reach an agreement as to an appropriate way to process the payment for the fuel reserves, which [REDACTED] had not received into a UN-owned storage facility or had not inspected at the time that [REDACTED] and [REDACTED] were to be paid (in advance).

48. In an email communication of [REDACTED], set forth in the figure below, [REDACTED], after a meeting held by [REDACTED] senior management one day earlier, wrote to [REDACTED] that “the appropriate way to make payments for the strategic fuel reserves is to request advance payment . . . the payment cannot be charged directly to the budget before the fuel is made available to [REDACTED].” He then wrote that despite the fact that advance payments are generally not permitted to be made to vendors, under Section 3.3.1 of the Field Finance Procedure Guidelines advance payments may be made to vendors under exceptional circumstances when approved by the [REDACTED] (see figure below).

REDACTED

Figure: [REDACTED] email to [REDACTED] et al. ([REDACTED])

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

49. Indeed, Section 3.3.1 of the Field Finance Procedure Guidelines, as read with Financial Rule 105.19(a) of the Financial Regulations and Rules, states that under exceptional circumstances when advances are required, approval should be obtained from the [REDACTED] or [REDACTED], especially in the case of significant amounts, such as in the case of contracts for rations, or, in this case, the acquisition of the fuel reserves.

50. Following [REDACTED] email of [REDACTED] formally requested authorization from [REDACTED] to acquire the fuel reserves without a competitive bidding process and to make advance payments to [REDACTED] based on the provision of Section 3.3.1 of the Field Finance Procedure Guidelines.

51. However, there is no record to indicate that the fuel reserves were acquired under "exceptional circumstances," as per Section 3.3.1 of the Field Finance Procedure Guidelines. In addition, it should be noted that neither the UN Financial Regulations and Rules, Field Finance Procedure Guidelines, nor the 2004 Procurement Manual offer a precise definition of what constitutes "exceptional circumstances."

52. On [REDACTED] wrote a follow-up memorandum to [REDACTED] and repeated his request for authorization to make advance payments to [REDACTED], which had furnished to [REDACTED] the documents required for the United Nations to release the advance payment for the strategic fuel reserves at the time of this request. [REDACTED] attached to this memorandum his initial memorandum of [REDACTED], together with [REDACTED] invoices, and letters from [REDACTED], which operates fuel storage facilities in the [REDACTED], confirming the availability of Jet A-1 fuel stock in these facilities.

53. On [REDACTED] approved the acquisition and the advance payment for the strategic fuel reserves that [REDACTED] had formally requested. In his hand-written approval notes on the [REDACTED] memorandum sent to [REDACTED], as set forth in the figure below, [REDACTED] indicated that the NTE amounts for the existing fuel contracts should not be exceeded, as well as that the amounts owed to the vendors for actual receipts of fuel should at all times exceed the amount paid in advance to vendors.

REDACTED

Figure: [REDACTED] approval memorandum to [REDACTED] ([REDACTED])

54. As demonstrated by [REDACTED] hand-written notes, [REDACTED] was aware that the reserves were to be acquired under the auspices of the then existing fuel contracts with [REDACTED], and, in turn, that the fuel reserves were not to be acquired through a new solicitation.

55. Subsequent to [REDACTED] approval, [REDACTED] Finance Section released US\$2,588,609 to [REDACTED] as advance payment in full for 4,500,000 liters of Jet A-1 fuel for storage in the [REDACTED].

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

56. On [REDACTED] executed another memorandum on behalf of [REDACTED], set forth in the figure below, which authorized the establishment and maintenance of operational reserves at commercial facilities. This second approval memorandum specifically stipulated that the payment for the reserves was to be based on [REDACTED] certification, provided that the certification was supported by a written confirmation, to be validated by [REDACTED], from the respective vendors that a given quantity of fuel was physically stored at the storage facilities of [REDACTED] on behalf of these vendors.

REDACTED

Figure: [REDACTED] memorandum to [REDACTED] *et al.* ([REDACTED])

57. On [REDACTED], subsequent to [REDACTED] approval, [REDACTED] released two separate advance payments to [REDACTED]—totaling US\$2,910,040—to purchase 3,000,000 liters of Jet A-1 fuel to be stored in [REDACTED] and 500,000 liters of diesel fuel to be stored in [REDACTED] for future delivery to [REDACTED]. Of these 3,000,000 liters of Jet A-1 fuel for [REDACTED], 2,500,000 liters were to be held in [REDACTED] for delivery to [REDACTED] on call by [REDACTED] and 500,000 liters were to be delivered directly to [REDACTED].

VIII. THE TASK FORCE'S ANALYSIS

A. LACK OF AGREEMENT ON PROCUREMENT PLAN

58. The evidence indicates that [REDACTED] senior management, through [REDACTED], determined to acquire and make advance payments for strategic fuel reserves despite the fact that the [REDACTED] disagreed with this approach.

59. The review of the relevant documentation in connection to the strategic fuel reserves indicates that [REDACTED], in consultation with his supervisors at [REDACTED], planned to acquire and to purchase the strategic fuel reserves under the pre-existing fuel contracts of [REDACTED], and without a competitive bidding exercise. In addition, [REDACTED] senior management considered and concurred that the acquisition and advance payment to [REDACTED] for the reserves did not require a new procurement exercise when the reserves were purchased under the existing fuel contracts of [REDACTED] because (i) the value of the reserves did not exceed the NTE amounts of the pre-existing fuel contracts already approved by the LCC and HCC; and (ii) the quantities of the reserves were planned to be drawn down against the agreed-upon quantities of the existing contracts of [REDACTED] for the financial year [REDACTED].

60. Further, there was no consensus amongst the successive [REDACTED] and [REDACTED] (who communicated with [REDACTED] and the [REDACTED]) as to the best way to document the transaction for the acquisition of the strategic fuel reserves. This lack of consensus appears to have led [REDACTED] to forgo involving either the

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

[REDACTED] or the [REDACTED] in the process of acquiring the fuel reserves. When asked for the reason as to why he did not involve the [REDACTED] in the procurement process to acquire the fuel reserves, [REDACTED] explained that the purchase of the fuel reserves was done against the approved contracts within the approved NTE amounts and in accordance with the terms of payments of the existing fuel contracts. [REDACTED] explanation was supported by [REDACTED], who approved the acquisition of the fuel reserves and emphasized in his hand written approval notes that the NTE amounts of the existing fuel contracts for [REDACTED] should not be exceeded. For these reasons, both [REDACTED] stressed that a separate solicitation exercise for the reserves was not required because the purchase of reserves did not increase the NTE amounts of the existing contracts of [REDACTED] by twenty percent (the threshold amount for which a separate solicitation exercise is required).

61. Indeed, from a formal point of view, the payment for the reserves did not violate the twenty percent or US\$200,000 threshold stipulated in Section 12.1.1.(1)(b) of the Procurement Manual since the purchase of the reserves did not increase the NTE amount of the existing fuel contracts for [REDACTED]. Despite this rationale, it is evident that the delivery and payment terms of the existing fuel contracts for the fuel reserves differed from those under the existing contracts with [REDACTED], thereby creating a material change to the contracts, which, in turn, warranted either formal amendments to the existing contracts with [REDACTED] or a new solicitation exercise.

62. The differences between the terms of the existing contracts and those for the acquisition of the fuel reserves, as set forth in Table 1 below, stemmed from the fact that the fuel procured under the existing contracts was to be delivered into planes and predetermined locations, whereas the fuel acquired as reserves was to be put into storage tanks and delivered on demand by [REDACTED]. In addition, there were differences with the circumstances regarding payment for the fuel procured under the existing contracts, as compared to those for fuel for the strategic fuel reserves. With regard to fuel procured under existing contracts, payments were to be made *after* the fuel had been delivered and the delivery certificates (or [REDACTED] receipts) had been issued and signed by [REDACTED] and the vendor. By contrast, with regard to fuel procured for the reserves, [REDACTED] made advance payments to [REDACTED] based on certification—and not [REDACTED] receipts—that the requisite quantity of fuel [REDACTED] requested as reserves would be available at [REDACTED] storage facilities.

63. The significant differences in payment and delivery terms for the reserves, as compared to the terms under the existing contracts with [REDACTED], constituted a material change to the existing contracts for [REDACTED]. Due to the differences in delivery and payment terms, [REDACTED] senior management should have obtained [REDACTED] and [REDACTED] approval to procure the reserves, and conducted a new solicitation or formally amended the terms of the existing contracts in order to ensure transparency in the procurement of these fuel reserves. Nevertheless, the Task Force's investigation did not identify any documentation, including [REDACTED] and [REDACTED] minutes, indicating that the acquisition and advance payments of these fuel reserves were ever presented or considered by the [REDACTED] or the [REDACTED] during the financial year [REDACTED].

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

64. In addition to not having presented the acquisition of the fuel reserves to either the [REDACTED] or [REDACTED], [REDACTED] senior management did not obtain the appropriate documentation to record the procurement of the reserves, and, instead, opted to record the acquisition of the fuel reserves under the terms of the existing fuel contracts of [REDACTED], as well as referencing the [REDACTED] Meeting that approved these contracts, although neither the existing fuel contracts, nor the [REDACTED] Meeting minutes makes any reference to the acquisition of or advance payment for fuel reserves for [REDACTED].

65. It should be noted that the 1998 and 2004 versions of the Procurement Manual did not provide guidance as to the appropriate procedure in a situation where the [REDACTED], [REDACTED], and [REDACTED] at a mission disagree as to the best method to procure commodities and services required. Similarly, the current version of the Procurement Manual does not appear to contain guidance on this issue.

B. LINKING THE FUEL RESERVES TO EXISTING FUEL CONTRACTS FOR [REDACTED], MATERIAL CHANGES TO THE CONTRACTS, AND LACK OF REVIEW BY [REDACTED]

66. Prior to the approval by [REDACTED] senior management of the advance payments to [REDACTED], respectively—[REDACTED] had requested that these companies stock the fuel reserves (Jet A-1 and diesel) with a quantity of fuel equivalent to US\$5,498,649 through four Task Orders, all dated [REDACTED]. In these Orders, [REDACTED] specified that the fuel reserves were to be available in storage facilities by [REDACTED] for use upon request by [REDACTED]. These Task Orders, which were signed by [REDACTED], as well as by [REDACTED], set the price of the reserves as the unit price per liter that was proposed by [REDACTED] under the previous contracts with [REDACTED] namely RFP no. [REDACTED], dated [REDACTED], which in turn resulted in contract no. [REDACTED], and contract no. [REDACTED].

67. An analysis of electronic Purchase Order no. [REDACTED], set forth in the figures below, reflects that these purchase orders were issued to obligate funds for the acquisition and advance payment of the reserves. These purchase orders also referenced the [REDACTED] Meeting Minutes no. [REDACTED] and the existing contracts for [REDACTED], although, as noted above, there is no mention of the acquisition of and advance payment for these reserves in either the aforementioned [REDACTED] Meeting minutes or the contracts with [REDACTED].

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]
STRICTLY CONFIDENTIAL

REDACTED

Figure: Purchase Order No. [REDACTED] is cross-referenced to [REDACTED] Meeting Minutes [REDACTED] and contract no. [REDACTED]

REDACTED

Figure: Purchase Order No. [REDACTED] is cross-referenced to [REDACTED] Meeting Minutes [REDACTED] and contract no. [REDACTED]

REDACTED

Figure: Purchase Order No. [REDACTED] is cross-referenced to [REDACTED] Meeting Minutes [REDACTED] and contract no. [REDACTED]

68. These documents—the RFP no. [REDACTED], [REDACTED] Minutes, existing contracts for [REDACTED], and the Purchase Orders—should not have been used as references for the strategic fuel reserves as these documents do not include any mention of these fuel reserves, and the referencing of these documents created the appearance that the reserves were formally procured under the existing contracts for [REDACTED].

69. The contractual delivery and payment terms for each of the existing fuel contracts are presented in the figures set forth below.

REDACTED

Figure: Contract no. [REDACTED]

REDACTED

Figure: Contract no. [REDACTED]

70. Specifically, as demonstrated by the figures set forth above, the delivery and payment terms of the existing contracts with [REDACTED] required that fuel be supplied into planes and at locations against [REDACTED] reports in accordance with Article 8 of the original contracts. Under Article 8 of the original contracts, in order to receive payment, [REDACTED] would have to prepare monthly payment claims with [REDACTED] reports for [REDACTED]. However, this requirement, as stipulated in Article 8 of the original contracts, differed from the actual arrangement for payment with regard to the fuel reserves, which was in the form of a one-time advance payment to [REDACTED] that was made prior to those companies having delivered the requisite amount of fuel into the [REDACTED] storage facility.

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

71. The differences between the terms of the original contracts for [REDACTED] and those of the informal arrangement in connection to the fuel reserves are set forth below in Table 1.

Table 1: Material Differences Between Fuel Contracts For [REDACTED] and Strategic Fuel Reserves

REDACTED

72. The comparisons in the table set forth above demonstrates that the differences in the procurement, delivery, and payment terms for the strategic fuel reserves were reasonably sufficient as to constitute material changes to the terms of the existing fuel contracts for [REDACTED]. In turn, since the differences in the procurement, delivery, and payment terms with regard to the strategic fuel reserves constituted material changes to the existing fuel contracts of [REDACTED], [REDACTED] senior management should have acquired the strategic fuel reserves through either a new solicitation or by formally amending the existing fuel contracts with [REDACTED]. Thus, the acquisition of the fuel reserves could have been formally regularized either through presentation to an oversight committee—i.e., the [REDACTED] and [REDACTED]—or through an amendment to the existing fuel contracts with [REDACTED].

73. Taken together, the evidence considered in its totality is sufficient to reasonably conclude that referencing the terms of the then existing fuel contracts for [REDACTED] as the terms of the reserves was improper, as this acquisition was not formally regularized through the [REDACTED] and [REDACTED] process.

74. On [REDACTED], the Task Force interviewed [REDACTED] who joined the Organization in [REDACTED]. He is currently the [REDACTED] and is responsible for supervising [REDACTED] activities in [REDACTED] and in field services. [REDACTED] was briefed on the chronology of events leading to and the acquisition of and advance payment for [REDACTED] strategic fuel reserves during the financial year [REDACTED]. [REDACTED] also pointed out that, since the RFP for the original fuel contracts did not mention the need for strategic fuel reserves, the acquisition of these reserves sufficiently altered the nature of the original bid so as to have warranted a new solicitation.

75. Regarding the advance payments made by [REDACTED] opined that even though the Organization's financial rules allow advance payment to be made based on the current market conditions, the amount of US\$5.5 million was substantial enough so as to trigger the need for the acquisition to have been presented to the [REDACTED] and [REDACTED] for approval or re-bid, irrespective of the fact that the acquisition of the fuel reserves did not exceed the NTE amounts of the existing contracts by twenty percent.

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

C. ADVANCE PAYMENTS FOR FUEL RESERVES: ANALYSIS UNDER THE PROCUREMENT MANUAL AND FINANCIAL REGULATIONS AND RULES

76. The 2004 Procurement Manual and the United Nations Financial Regulations and Rules governed the acquisition and advance payment of the strategic fuel reserves in this case. In accordance with the Procurement Manual, the [REDACTED] are responsible for the development of procurement plans and for cooperating with the [REDACTED] in making these plans available in a timely manner, and the overall responsibility for the acquisition of products and services rests with the respective heads of offices and missions. In this context, the Procurement Manual focuses on a situation where an agreement exists between the [REDACTED] and the [REDACTED] in their separate roles when developing the procurement plans. However, neither the 2004 nor current version of the Procurement Manual provides guidance for those circumstances in which the [REDACTED] and [REDACTED] disagree as to the best method to procure products, as was the case in the acquisition of the strategic fuel reserves.

77. By quoting Section 3.3.1 of the Field Finance Procedure Guidelines to justify the acquisition of the fuel reserves, [REDACTED] applied Rule 105.19(a) to make advance payments prior to delivery of the fuel reserves. Rule 105.19(a) requires that “whenever an advance payment is agreed to, the reasons therefor[e] shall be recorded,” but it is not specific as to what type of record or document is sufficient to be a record for advance payment under this provision for goods not received by the Organization.

78. By contrast, Regulation 5.8(b) of the United Nations Financial Regulations and Rules provides precise and clear guidance on the type of documents that should be used to pay for goods and services procured and received by the Organization that “[t]he Secretary-General shall cause all payments to be made on the basis of supporting vouchers and other documents which ensure that the services or goods have been received and that payments have not previously been made.”

79. Unlike Regulation 5.8(b), Section 3.3.1 of the Field Finance Procedure Guidelines as read with Rule 105.19(a) does not provide clear guidance regarding the type of documentation Missions should use to record advance payments made for goods and services not yet delivered, such as was the case with regard to [REDACTED] reserves. In addition, Rule 105.19(a) does not stipulate the limit on the amount of advance payment that missions are authorized to make in situations where the [REDACTED] or [REDACTED] authorizes such advance payments, even without the approval of the oversight committees.

80. Accordingly, Financial Rule 105.19(a), as applied in conjunction with Section 3.3.1 of the Field Finance Guidelines Procedures, should be reviewed to ensure that they are clear with respect to the issue of advance payments and the documentation required for processing them.

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

D. RISK AWARENESS ON THE PART OF [REDACTED]

81. It is evident that [REDACTED] did not have its own independent fuel storage facilities to store several million liters of fuel needed for the strategic reserves, and therefore arranged to store large quantities of fuel in storage tanks of its vendors, which were controlled and managed by [REDACTED]—the only shareholding company operating the fuel storage facilities on behalf of all the oil companies in the [REDACTED]. Under the arrangement with [REDACTED] relied upon the written confirmations which [REDACTED] periodically provided to determine the quantities of the fuel in the storage tanks for each company at any given time. As such, [REDACTED] was forced to rely upon [REDACTED] written confirmations that the fuel reserves were indeed available in the [REDACTED] storage facilities. Under this arrangement, [REDACTED] routinely obtained confirmations through [REDACTED] with regard to the availability of the fuel reserves, as was stipulated in the [REDACTED] memorandum from [REDACTED] which outlined the conditions for the acquisition and advance payment of the fuel reserves.

82. Irrespective of this arrangement, the documents related to the acquisition of the reserves were silent as to the requirement to post performance bonds. The posting of a performance bond in general is governed by Section 9.9.13 of the 2004 Procurement Manual, which requires the procurement officer to “ensure adequate safeguards are in place to protect the interest of the Organization throughout the term of the contractual obligation . . . [t]he decision to require such a bond shall be based on factors such as the contractor’s reputation and experience, as well as the cost of the bond weighed against the perceived potential risk to the UN should the contractor fail to perform the contract satisfactorily.” Based on this, both [REDACTED] posted a performance bond with [REDACTED] with regard to their existing respective contracts with [REDACTED]. However, no evidence was found that any performance bonds were posted in connection to the acquisition of the reserves.

83. In his Task Force interview, [REDACTED] offered that it had been unnecessary to request performance bonds for the fuel reserves from [REDACTED] because at any given time in the financial year [REDACTED] owed the fuel vendors between US\$5 and US\$10 million for the fuel already supplied under the then existing contracts with [REDACTED]. Specifically, [REDACTED] owed its fuel vendor approximately US\$10 million for fuel it would have consumed, but for which it had not rendered payment. [REDACTED] confirmed [REDACTED] view that at any given time [REDACTED] owed its fuel vendors (including [REDACTED]) two to three times the value of the strategic fuel reserves due to the fact that the Mission operated on a forty-five day cycle of processing payments.

84. [REDACTED] confirmed that [REDACTED] had discussed with them the case of the reserves and that they were satisfied with the arrangements put into place leading to the acquisition of and advance payment for the strategic fuel reserves, and failed to mention the need for performance bonds. When shown the memorandum of [REDACTED], signed by [REDACTED] confirmed that she was “very much aware of it [i.e., the memorandum],” and the memorandum was “exactly what [REDACTED]

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

showed her.” [REDACTED] did not mention the date [REDACTED] showed her this memorandum, but stated that when [REDACTED] approved the purchase of the reserves he understood that they were being acquired under the existing fuel contracts with [REDACTED] and [REDACTED] and that no [REDACTED] approval was necessary because the dollar value of the reserves did not increase the value of the existing contracts for [REDACTED] by twenty percent. [REDACTED] confirmed that the advance payments for the reserves were based on [REDACTED] written approval, which he said was in accordance with Section 3.3.1 of the Field Finance Procedure Guidelines. Analysis of the fuel reserves documents reveals that [REDACTED] did not release the money to [REDACTED] until after he had obtained written approval from [REDACTED], which he, in turn, used as official justification for payment of these reserves in the Organization’s financial books.

85. The Task Force did not identify any evidence that the Organization suffered any financial loss due to the acquisition of the fuel reserves and advance payments [REDACTED] made to [REDACTED]. During the financial year [REDACTED] successfully offset any outstanding balance of the undelivered fuel reserves against the unpaid invoices of the existing fuel contracts for [REDACTED].

IX. FINDINGS AND CONCLUSIONS

86. The Task Force finds that [REDACTED] [REDACTED] failed to present the case for fuel reserves to the oversight committees and to either execute contract amendments or conduct a competitive bidding exercise for the acquisition and advance payment of the reserves. Further, by referencing the terms of the reserves to those of the existing fuel contracts, [REDACTED] [REDACTED] created an appearance that the purchase of the fuel reserves was formally authorized under the existing contracts for [REDACTED] when this was, in fact, not the case.

[REDACTED] As the only available fuel storage facilities in the [REDACTED] are those controlled and managed by [REDACTED] it was not possible for [REDACTED] to store its required reserves in its own storage facilities. As such, [REDACTED] had no alternative but to accept and rely upon [REDACTED] confirmations with regard to whether fuel was, in fact, stored there by [REDACTED] on behalf of the Mission, irrespective of the fact that [REDACTED] had no contractual relationship with [REDACTED]. Therefore, it was reasonable that prior to making the advance payment for the fuel reserves [REDACTED] obtained [REDACTED] written confirmation that the fuel stored in [REDACTED] storage tanks in [REDACTED] and [REDACTED] belonged to [REDACTED], and that the quantity of the fuel stored was adequate so as to meet the requirements of [REDACTED].

88. Pursuant to [REDACTED] written confirmations, [REDACTED] [REDACTED] understood that they were purchasing the strategic fuel reserves as part of the existing contractual agreements [REDACTED] had with [REDACTED]. Despite the fact that the existing contractual agreements, as well as the original RFPs, did not include any reference to the acquisition of fuel reserves, Section 3.3.1 of the Field Finance Procedure Guidelines, as read with Financial Rule 105.19, allowed [REDACTED] to have made advance

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

payment for products it required with the approval of the [REDACTED] or [REDACTED]. Based on this provision, and the written approval of the [REDACTED], the advance payment for the fuel reserves did not contradict UN financial rules.

89. The Task Force found that [REDACTED] [REDACTED], as a group, decided on and approved the acquisition and advance payments for the strategic fuel reserves without carrying out a new procurement exercise, executing contract amendments, or seeking review by the [REDACTED] and [REDACTED]. Considering the overall circumstances in this case, [REDACTED] [REDACTED], collectively—rather than as individual members—shared joint responsibility for [REDACTED] failure to properly process and document the acquisition of the strategic fuel reserves.

90. By virtue of its function to ensure that fuel and other supplies are available to the peacekeeping operations, the [REDACTED] is vested with the authority to regularly issue requisitions and Task Orders in compliance with existing contracts. Thus, the allegation that the Task Orders were issued by the [REDACTED] without contracting authority and against the advice of authorized offices is unjustified, as issuing such Task Orders fell within the scope of the organizational functions of the [REDACTED].

91. The Task Force did not identify evidence showing that the Organization suffered any direct financial losses due to [REDACTED] acquisition and advance payment of the strategic fuel reserves during the financial year [REDACTED]. However, because of [REDACTED] non-compliance with established procurement rules and procedures with regard to the acquisition of the strategic fuel reserves, there was potential for undue exposure to financial losses in [REDACTED].

92. Although certain [REDACTED] staff and representatives of [REDACTED] experienced difficulties with regard to the timely distribution of fuel to certain locations in the [REDACTED], the Task Force cannot independently confirm these alleged infrastructure and logistical challenges.

93. No evidence of fraud, corruption, or individual acts of misconduct in connection to the acquisition and management of [REDACTED] strategic fuel reserves has been identified. Further, the investigation did not find evidence showing that [REDACTED] [REDACTED] violated the United Nations Procurement Manual, the Financial Rules and Regulations, or the Department of Peacekeeping Operation's Field Finance Procedure Guidelines with regard to the acquisition of and advance payment for these reserves.

94. Regrettably, the documentation concerning the acquisition of the strategic fuel reserves was fragmented and difficult to piece together. This circumstance caused a delay in this Report and hindered the investigation.

REPORT ON THE PURCHASE OF FUEL RESERVES AT [REDACTED]

STRICTLY CONFIDENTIAL

X. RECOMMENDATIONS**A. RECOMMENDATION PTF-R007/08/1**

95. The Task Force recommends that the [REDACTED], take appropriate measures to ensure that all material changes to fuel contracts (including changes to the contract value and delivery terms) in [REDACTED] and other peacekeeping missions are processed and approved in compliance with all relevant procedures—including review and approval of the [REDACTED] and [REDACTED]. The Task Force recommends that these measures include provision of procurement training courses to [REDACTED] [REDACTED], as well as [REDACTED].

B. RECOMMENDATION PTF-R007/08/2

96. The Task Force recommends that the [REDACTED], in coordination with the [REDACTED], develop procurement guidelines for the acquisition, storage, and maintenance of fuel reserves for the peacekeeping operations of the United Nations Missions.

C. RECOMMENDATION PTF-R007/08/3

97. The Task Force recommends that the [REDACTED], in coordination with the [REDACTED], review and update United Nations Financial Rule 105.19(a), as applied in conjunction with Section 3.3.1 of the Field Finance Guidelines Procedures, to ensure that these provisions are clear on the type of documents required to record advance payments for goods and services not yet delivered to the Organization. The Task Force is of the opinion that instead of merely stating “the reasons therefore shall be recorded,” Financial Rule 105.19(a) should specify the types of documents required for the initiation and processing of advance payments in order to avoid different and inconsistent interpretations.