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NOTE VERBALE DATED 2 NOVEMBER 1990 FROM THE PERMANENT
REPRESENTATIVE OF NEW ZEALAND TO THE UNITED NATIONS
ADDRESSED TO THE SECRETARY-GENERAL

The Permanent Representative of New Zealand to the United Nations presents his compliments to the Secretary-General of the United Nations and has the honour to attach, at the request of the Government of the Cook Islands, a communication concerning the implementation of sanctions under Security Council resolution 661 (1990).

Annex

Note verbale dated 8 October 1990 from the Ministry of Foreign
Affairs of the Cook Islands addressed to the Secretary-General

The Ministry of Foreign Affairs of the Government of the Cook Islands presents its compliments to the Secretary-General of the United Nations and has the honour to refer to recent United Nations Security Council decisions relating to action to be taken with respect to Iraq, in particular resolution 661 (1990).

While the Cook Islands is not a member of the United Nations, the Ministry of Foreign Affairs wishes to inform the Secretary-General that the Government of the Cook Islands has of its volition, consonant with and in support of the relevant Security Council resolution, enacted the United Nations Sanctions (Iraq and Kuwait) Regulations 1990, a copy of which is enclosed herewith for the reference of the Secretary-General.

Enclosure

The United Nations Sanctions (Iraq and Kuwait) Regulations 1990

ORDER IN EXECUTIVE COUNCIL

At Avarua, Rarotonga this 2nd day of October 1990.

Present:

HIS EXCELLENCY THE QUEEN'S REPRESENTATIVE
IN EXECUTIVE COUNCIL

PURSUANT to the United Nations Act 1946, as applied in the Cook Islands, His Excellency the Queen's Representative, acting by and with the advice and consent of the Executive Council, and for the purpose of giving effect to a resolution of the Security Council of the United Nations, adopted pursuant to the United Nations Charter on the 6th day of August 1990, to apply in respect of Iraq and Kuwait the measures set out in that resolution.

ANALYSIS

1. Title
2. Interpretation

Prohibited imports

3. Importation of goods from Iraq or Kuwait prohibited
4. Application of Customs Act 1913 to prohibited imports
5. Detention of and payment for prohibited imports

Prohibited exports

6. Exportation of goods to Iraq or Kuwait prohibited
7. Application of Customs Act 1913 to prohibited exports
8. Detention of prohibited exports
9. Loading of prohibited exports onto ships or aircraft prohibited
10. Power to withhold clearance of ship or aircraft

Prohibited transactions in relation to exports

11. Prohibited transactions in relation to exports from Iraq or Kuwait

12. Prohibition on promotion of exportation or trans-shipment of goods from Iraq or Kuwait

Prohibited transactions in relation to imports

13. Prohibited transactions in relation to imports into Iraq or Kuwait
14. Prohibition on promotion of importation of goods into Iraq or Kuwait

Prohibitions in relation to money, securities and assets

15. Prohibition in relation to transfer or delivery of money or securities
16. Prohibition on dealings in assets, money or securities in the Cook Islands

Prohibition on carriage of goods

17. Prohibition on carriage of goods to or from Iraq or Kuwait
18. Liability of owner, charterer, master or pilot in command
19. Prohibition in relation to registration of ships under the Shipping Registry Act 1985

Miscellaneous provisions

20. Offences
21. Consent of Attorney-General to proceedings in certain cases
22. Customs Act 1913 not affected

REGULATIONS

1. Title: These regulations may be cited as the United Nations Sanctions (Iraq and Kuwait) Regulations 1990.

2. Interpretation:

(1) In these regulations, unless the context otherwise requires:

"Cook Islander" means:

(a) A person belonging to the part of the Polynesian race indigenous to the Cook Islands and includes any person descended from a Cook Islander;

(b) A permanent resident of the Cook Islands within the meaning of section 2 of the Entry, Residence and Departure Act 1971-72;

(c) Any person who holds a Residence Permit within the meaning of section 2 of the Entry, Residence and Departure Act 1971-72;

"Collector" and "Comptroller" have the same meaning as in the Customs Act 1913 as applied in the Cook Islands;

"Importer" has the same meaning as in the Customs Act 1913 as applied in the Cook Islands;

"Money" includes:

(a) The bank notes and other currency, postal notes, and money orders of the Cook Islands or any other country; and

(b) Promissory notes and bills of exchange; and

(c) Any credit in an account with any person, whether that account is held in the Cook Islands or outside the Cook Islands.

"Cook Islands aircraft" means any aircraft that is registered or required to be registered in the Cook Islands under the Civil Aviation Act 1964 as applied in the Cook Islands.

"Cook Islands ship" means a ship registered in the Cook Islands, or recognized by the law of the Cook Islands as a ship belonging to the Cook Islands;

"Securities":

(a) Includes shares, stock, bonds, debentures, debenture stock, mortgages, liens, treasury bills, coupons or warrants representing dividends or interest, and life or endowment insurance policies, in whatever currency the securities are expressed and whether they are situated in the Cook Islands or elsewhere; and

(b) Also includes any document or means whereby the right to the ownership or provision of any money or security; or any interest therein, may be exercised; but

(c) Does not include promissory notes or bills of exchange.

(2) Any reference in these regulations to the transfer of any security includes a reference to a transfer of the security by way of loan, mortgage, pledge, or bailment, whether in respect of a legal or an equitable interest.

Prohibited imports

3. Importation of goods from Iraq or Kuwait prohibited:

(1) The importation into the Cook Islands of any goods being the produce or manufacture of Iraq or Kuwait is hereby prohibited.

(2) Subsection (1) of this section shall not apply with respect to any goods in respect of which the Minister of Customs is satisfied that they had been exported from Iraq or Kuwait on or before the 6th day of August 1990.

4. Application of Customs Act 1913 to prohibited imports: All the provisions of the Customs Act 1913 as applied in the Cook Islands with respect to prohibited imports (except the provisions as to monetary penalties in section 46 (5) of the Customs Act 1913) shall extend and apply with respect to goods whose importation is prohibited by section 3 of these regulations, in all respects as if the importation of the goods were prohibited under section 46 of the Customs Act 1913 as applied in the Cook Islands.

5. Detention of and payment for prohibited imports:

(1) If the Collector has reason to suspect that any goods imported into the Cook Islands are goods whose importation is prohibited by section 3 of these regulations, he or she may detain the goods.

(2) The importer of any such goods for which payment has not been made shall pay the purchase price of the goods into a Trust Bank Account operated under part IX of the Public Money and Stores Act 1987 by the Customs Department.

(3) Where any such goods have been imported into the Cook Islands before the commencement of these regulations, and payment for the goods has not been made or has not been fully made, all money payable by the importer in respect of the goods shall be paid into the account referred to in subsection (2) of this section, and not otherwise.

(4) All money in the said account shall be dealt with in such manner as the Minister of Finance may direct.

(5) Money paid into the said account shall not be money deposited for the purposes of section 260 of the Customs Act 1913 as applied in the Cook Islands.

(6) If any dispute arises as to the purchase price of any such goods imported into the Cook Islands or as to the date of payment thereof, the Comptroller may determine the matter, and the decision of the Comptroller shall be final.

Prohibited exports

6. Exportation of goods to Iraq or Kuwait prohibited: Except with the consent of the Minister of Foreign Affairs, the exportation from the Cook Islands to Iraq or Kuwait, whether directly or indirectly, of any goods is hereby prohibited.

7. Application of Customs Act 1913 to prohibited exports: All the provisions of the Customs Act 1913 as applied in the Cook Islands with respect to prohibited exports shall extend and apply with respect to goods whose exportation is prohibited by section 6 of these regulations, in all respects as if the exportation of the goods were prohibited under section 47 of the Customs Act 1913 as applied in the Cook Islands.

8. Detention of prohibited exports: If a collector has reason to suspect that any goods being exported are goods whose exportation is prohibited by section 6 of these regulations, that collector may detain the goods.

9. Loading of prohibited exports onto ships or aircraft prohibited: The master of a ship or the pilot in command of an aircraft shall not permit to be laden in the ship or aircraft any goods whose exportation is prohibited by section 6 of these regulations, knowing that the goods are intended to be exported in contravention of that regulation.

10. Power to withhold clearance of ship or aircraft: A collector may withhold the clearance of any ship or aircraft so long as there are on board the ship or aircraft any goods known to that collector to be goods whose exportation is prohibited by section 6 of these regulations.

Prohibited transactions in relation to exports

11. Prohibited transactions in relation to exports from Iraq or Kuwait:

(1) No person shall in the Cook Islands, and no Cook Islander shall in any place outside the Cook Islands, enter into or be concerned in any sale, transfer, carriage, or delivery of or other dealing with any goods, knowing that they are being or have been or are intended to be exported from Iraq or Kuwait.

(2) Notwithstanding anything in subsection (1) of this section, it shall, in any prosecution for an offence against that subclause, be a defence to prove that the goods were exported from Iraq or Kuwait on or before the 6th day of August 1990.

12. Prohibition on promotion of exportation or trans-shipment of goods from Iraq or Kuwait: No person shall in the Cook Islands, and no Cook Islander shall in any place outside the Cook Islands, do any act knowing that it promotes or is calculated to promote the exportation from Iraq or Kuwait of any goods or the trans-shipment of any goods exported from Iraq or Kuwait.

Prohibited transactions in relation to imports

13. Prohibited transactions in relation to imports into Iraq or Kuwait: Except with the consent of the Minister of Foreign Affairs, no person shall in the Cook Islands, and no Cook Islander shall in any place outside the Cook Islands, enter into or be concerned in any sale, transfer, carriage, or delivery of or other dealing with any goods, knowing that:

(a) They are intended to be imported into Iraq or Kuwait; or

(b) They are to be supplied or delivered to or to the order of any person in Iraq or Kuwait; or

(c) They will be used for the purposes of any business carried on in or operated from Iraq or Kuwait.

14. Prohibition on promotion of importation of goods into Iraq or Kuwait:
Except with the consent of the Minister of Foreign Affairs, no person shall do any act knowing that it promotes or is calculated to promote the importation into Iraq or Kuwait of any goods.

Prohibitions in relation to money, securities and assets

15. Prohibition in relation to transfer or delivery of money or securities:
Except with the consent of the Minister of Finance, no person shall in the Cook Islands, and no Cook Islander shall in any place outside the Cook Islands, send, transfer, or deliver, or cause to be sent, transferred, or delivered, whether directly or indirectly, any money or securities:

- (a) To the Government of Iraq; or
- (b) To the benefit of the Government of Iraq; or
- (c) To any commercial undertaking, industrial undertaking, or public utility undertaking in Iraq or Kuwait; or
- (d) To the benefit of any commercial undertaking, industrial undertaking, or public utility undertaking in Iraq or Kuwait; or
- (e) To the benefit of any person in Iraq or Kuwait; or
- (f) To the benefit of any business carried on in or operated from Iraq or Kuwait.

16. Prohibition on dealings in assets, money, or securities in the Cook Islands: Except with the consent of the Minister of Finance, no person shall knowingly transfer, pay for, sell, assign, dispose of, or otherwise deal with any assets, money, or securities held in the Cook Islands:

- (a) By the Government of Iraq or the Government of Kuwait; or
- (b) By any agencies or bodies controlled by the Government of Iraq or the Government of Kuwait.

Prohibition on carriage of goods

17. Prohibition on carriage of goods to or from Iraq or Kuwait:

- (1) This section applies to:
 - (a) Any Cook Islands ship;
 - (b) Any Cook Islands aircraft;

(c) Any other ship or aircraft that is, for the time being, chartered to any person being a Cook Islander or a body incorporated or constituted under the law of the Cook Islands.

(2) Without prejudice to the generality of the foregoing provisions of these regulations, no ship or aircraft to which this section applies shall be used for the carriage of any goods:

(a) If the goods are being or have been exported from Iraq or Kuwait; or

(b) If the carriage is, or forms part of, carriage from any place outside Iraq or Kuwait to any destination in Iraq or Kuwait or to any person for the purposes of any business carried on in or operated from Iraq or Kuwait.

(3) Nothing in subsection (2) (a) of this section shall apply in any case where it is proved that the goods were exported from Iraq or Kuwait on or before the 6th day of August 1990.

(4) Nothing in this section shall apply to any carriage of goods in respect of which the consent of the Minister of Foreign Affairs has been given under any other provision of these regulations.

18. Liability of owner, charterer, master, or pilot in command:

(1) If any ship or aircraft is used in contravention of section 17 (2) (a) of these regulations, then:

(a) In the case of a Cook Islands ship or aircraft, the owner and the master of the ship or, as the case may be, the owner and the pilot in command of the aircraft; or

(b) In the case of any other ship or aircraft, the charterer of the ship or aircraft and, if the master of the ship or pilot in command of the aircraft is a Cook Islander, such master or pilot in command,

shall each be guilty of an offence against these regulations, unless he or she proves that he or she did not know and had no reason to suppose that the goods were being or had been exported from Iraq or Kuwait.

(2) If any ship or aircraft is used in contravention of section 17 (2) (b) of these regulations, then:

(a) In the case of a Cook Islands ship or aircraft the owner and the master of the ship or, as the case may be, the owner and the pilot in command of the aircraft; or

(b) In the case of any other ship or aircraft, the charterer of the ship or aircraft and, if the master of the ship or pilot in command of the aircraft is a Cook Islander, such master or pilot in command,

shall each be guilty of an offence against these regulations, unless he or she proves that he or she did not know and had no reason to suppose that the carriage of goods was, or formed part of, carriage from any place outside Iraq or Kuwait to any destination therein or to any person for the purposes of any business carried on in or operated from Iraq or Kuwait.

(3) In this section, the terms "owner" and "charterer", in relation to a ship, include any person acting as the agent of the owner or as the case may be, the agent of the charterer.

19. Prohibition in relation to registrations of ships under the Shipping Registry Act 1985: No person shall in the Cook Islands, and no Cook Islander shall in any place outside the Cook Islands, cause the registration of any ship under the Shipping Registry Act 1985 whether directly or indirectly for:

(a) The Government of Iraq; or

(b) The benefit of the Government of Iraq; or

(c) Any commercial undertaking, industrial undertaking, or public utility undertaking in Iraq or Kuwait; or

(d) The benefit of any commercial undertaking, industrial undertaking, or public utility undertaking in Iraq or Kuwait; or

(e) The benefit of any person in Iraq or Kuwait; or

(f) The benefit of any business carried on in or operated from Iraq or Kuwait.

Miscellaneous provisions

20. Offences: Every person commits an offence against these regulations and shall be liable accordingly under section 3 of the United Nations Act 1946 as applied in the Cook Islands, who acts in contravention of or fails to comply in any respect with any of the provisions of these regulations.

21. Consent of Attorney-General to proceedings in certain cases: Proceedings for the trial and punishment of any person who is charged with having committed outside the Cook Islands any offence against these regulations shall not be instituted in any Court except with the consent of the Attorney-General and on his certificate that it is expedient that the proceedings be instituted.

22. Customs Act 1913 not affected: Nothing in these regulations shall limit or affect the operation of the Customs Act 1913 as applied in the Cook Islands.

Acting Clerk of the Executive Council

These Regulations are administered in the Ministry of Foreign Affairs.

BY AUTHORITY:

T. KAPI, Government Printer, Rarotonga, Cook Islands - 1990.
