

[38.] Consequently BNP had a conflict of interest. On the one hand it had to serve the interest of the UN to promote transparency of transactions. On the other hand it had to serve the interests of private clients and maintain the confidentiality of their business and financing arrangements. BNP had "unique access" to information relating to purchases of oil by shell companies, which was often accompanied by the assignment of rights and resale of oil. Typically a large corporate entity such as Glencore would finance letters of credit in the name of a shell company and would request the bank not to disclose its participation in the transaction. This would not be called to the attention of the UN. This deficiency applied to the financing of the Lexoil Contract which is dealt with below.

Fraud and perjury on the part of Hamphill

[81.] Hemphill addressed a series of documents to the Mission on behalf of the “Falcon Trading Group” during 2001, 2002 and 2003. He represented that this entity was registered in South Africa as a company known as the Falcon Trading Group, with its principal place of business situated at 117 Eleventh Street, Parkmore, South Africa (“the Parkmore address”). Some of these documents are identified and elaborated upon below.

[82.] It is apposite to mention that Hemphill may have committed perjury in his founding affidavit in the High Court application. In paragraph 27 thereof he stated that-

“Summons No. 13 relates to me in my capacity as a director of a company described as ‘Falcon Trading Group Limited’. I am not a director of a company having this name, and am unaware of the existence of such a company. However, I am a director of a company known as ‘Falcon Commodity Trading (Pty) Limited’ which has been cited as the third applicant in this application”.

[83.] Falcon Commodity Trading (Pty) Ltd was registered on 8 April 2002. The registered address of this enterprise is given as 34 Monkor Road, Randburg Ridge, Randburg. **It is not the company that Hemphill**

purported to represent when he made representations to the Mission.

[84.] If Hemphill was unaware of the existence of a South African company known as Falcon Trading Group when he addressed the aforementioned series of documents to the Mission he perpetrated a fraud on South Africa's diplomatic representatives to the UN. However, the documents contradict his averment.

[85.] Hemphill not only misled the Mission as to the true identity of Falcon, but when he did so he knew that, in all likelihood, the person behind Falcon (Al Khafaji) would pay "kickbacks" in Falcon's business dealings with Iraq.

[86.] By representing to the Mission that the application for registration of Falcon was being made on behalf of a South African company (i.e. a legal person having South African nationality), Hemphill induced the Mission to process his application for registration of Falcon; and to associate the Republic of South Africa with Falcon's operations under the Programme. The process of applying for registration under the Programme was concluded via the missions of member states who were bound by Resolutions 661 and 986. These resolutions had not only imposed sanctions and created the Programme, but they also specifically prohibited direct payments to

