



Security Council

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Comprehensive report requested in a letter dated 26 March 2008 from the President of the Security Council to the Secretary-General

I. Introduction

1. The present report is submitted in response to a letter dated 26 March 2008 (S/2008/206) from the President of the Security Council, in which the Council requested a comprehensive report 12 months after the appointment of the new High-level Coordinator, to include an update on progress during that period, and an assessment of the progress that would be achieved, including the conditions that would be necessary and a timescale for the completion of the mandate of the Coordinator.

2. I appointed Ambassador Gennady Tarasov of the Russian Federation as the High-level Coordinator in April 2008. He succeeded the late Ambassador Yuli Vorontsov and took up his functions on 24 April. The Security Council outlined the Coordinator's mandate in paragraph 14 of its resolution 1284 (1999) and requested me to report every four months on the compliance by Iraq with its obligations regarding the repatriation or return of all Kuwaiti and third-country nationals, or their remains, and every six months on the return of all Kuwaiti property, including archives, seized by Iraq. Since June 2006, the frequency of my reports on the compliance by Iraq with its obligations regarding the repatriation or return of all Kuwaiti and third-country nationals, or their remains, has been reduced to every six months and has also covered the return of Kuwaiti property, including archives. My twenty-seventh report (S/2008/761) was submitted in December 2008.

3. In the context of the present report, it is useful to recall the recommendations of the Amorim panel on prisoners of war and Kuwaiti property, which were brought to the attention of the Security Council in my report dated 26 April 2000 (S/2000/347, para. 7):

“The Amorim panel reaffirmed the humanitarian character of the prisoner-of-war and missing-persons issue. The fate of the persons unaccounted for and the suffering of their respective families should not be influenced by political considerations. The panel recommended that any procedure to be established in that regard in the future should take into account ‘(a) that the purpose is to ensure that the Council be informed of the issue (not to trigger a political discussion or to affect the humanitarian treatment of the issue); (b) it should be a motivational factor for cooperation and a positive



inducement for progress and understanding (therefore, progress between Iraq, Kuwait and Saudi Arabia in this humanitarian issue could play an important role in the process of confidence-building and lead to an improvement in the overall political atmosphere); and (c) the need not to impinge on the work of the [International Committee of the Red Cross] or to undermine the functioning of the Tripartite Commission. The procedure should, therefore, be discreet, have as its aim to foster dialogue and confidence-building and advance the ultimate objective of informing the families of the fate of the missing persons. Success of this exercise is directly dependent on the cooperation of all parties involved.”

4. The High-level Coordinator, in exercising his mandate, has been guided by these recommendations, bearing in mind that “the ultimate goal ... is to assist in closing the largest possible number of files” (S/2000/347, para. 12).

II. Repatriation or return of all Kuwaiti and third-country nationals or their remains

A. Update on progress 12 months after the appointment of the new High-level Coordinator

5. As at April 2008, the number of Kuwaiti and third-country nationals whose mortal remains had been identified by Kuwait was 235. The security situation in recent years has not allowed for Kuwaiti specialized teams to carry out exhumation work at burial sites in Iraq. All identifications to date have been from the skeletal material that was brought to Kuwait in 2004. Since April 2008, one additional person has been identified, thus bringing the total number of closed files to 236. Nobody was found alive. The closure of the files ends years of anguish and uncertainty for the families of the identified victims.

B. Assessment of the progress that might be achieved

6. The number of Kuwaiti and third-country nationals whose remains have not been identified stands at 369 (out of a total of 605). All are believed to have been killed in 1990 or 1991 by the regime of Saddam Hussein. After the removal of Saddam’s regime, it became known that the killings, often by a bullet in the back of the head, had taken place in remote places at Samawah, Karbala, Amarah, Ramadi, Nasiriyah and other locations in Iraq. While it is likely that further identifications are possible based on the skeletal material brought to Kuwait in 2004 (approximately 340 sets of human bones), it appears that the majority of the human remains are still in Iraq. They are believed to be clustered in mass burial sites in several Iraqi locations and often mixed with the remains of other victims of the former Iraqi regime.

7. In order to close the files of the 369 missing Kuwaiti and third-country nationals, their mortal remains need to be (a) found; (b) exhumed; (c) transported to Kuwait; and (d) identified. The procedure involves soil removal, clean-up and taking samples of the skeletal material to confirm that the bodies are those of Kuwaiti and third-country nationals who are listed as missing. The identification is

affected by the location, the chemical composition of the soil and the quality and quantity of skeletal material. In some cases, DNA analysis cannot produce a definite answer. Kuwait has returned to Iraq mortal remains that did not match the DNA profiles in the list of missing persons.

8. Ideally, the mortal remains of all missing Kuwaitis and third-country nationals should be repatriated by Iraq to Kuwait, as provided for in paragraph 14 of Security Council resolution 1284 (1999), so that all files can be closed. However, it is unlikely that this could be achieved owing to the constraints outlined above and the fact that almost 20 years have elapsed since the tragedy occurred.

9. The Tripartite Commission chaired by the International Committee of the Red Cross remains the primary mechanism for dealing with the issue of missing persons. The continued close cooperation of all its members is a prerequisite to achieving positive results in settling this long-standing humanitarian issue.

III. Return of all Kuwaiti property, including archives

A. Update on progress 12 months after the appointment of the new High-level Coordinator

10. The Kuwaiti national archives have not been found. No credible information regarding their whereabouts has emerged. It is not known whether they were destroyed, moved outside of Iraq or remain somewhere in the country.

11. On 21 January 2009, I requested the Governments of Bahrain, Iran (Islamic Republic of), Iraq, Jordan, Qatar, Saudi Arabia, the Syrian Arab Republic, Turkey, the United Arab Emirates, the United Kingdom of Great Britain and Northern Ireland and the United States of America (requested on 26 January), and the Secretaries General of the Gulf Cooperation Council, the League of Arab States, and the Organization of the Islamic Conference to provide me with any information or suggestions that could help to locate the missing Kuwaiti national archives.

12. On 8 February 2009, the Secretary General of the League of Arab States informed me, inter alia, that he was conducting consultations with both Kuwait and Iraq to monitor the latest developments and address proposals that might help to settle the matter. On 16 March 2009, the Islamic Republic of Iran advised me, through its Permanent Mission to the United Nations, that it has no information whatsoever regarding the location and whereabouts of the missing Kuwaiti State and historical documents. On 17 March 2009, the Secretary of State of the United States informed me that, although the United States has no information at this time, there was hope that the greatly improved environment in Iraq would increase opportunities to investigate the whereabouts of these documents. On 19 March 2009, the United Kingdom informed me, through its Permanent Mission to the United Nations, that it would continue to follow the issue in the Security Council and as a member of the Tripartite Commission and its Technical Subcommittee, but that it had no information or suggestions to offer (see annex I).

13. In another development, on 2 March 2009 Iraq returned to Kuwait several boxes of audio and video tape recordings belonging to the Ministry of Information. The transfer was witnessed by the High-level Coordinator. It was a welcome demonstration of the goodwill of the Government of Iraq and confirmation that

Kuwait's property can still be found in Iraq. The record of the handover is attached as annex II.

14. The High-level Coordinator has been informed that recent positive efforts are under way to resolve the remaining issues related to the Kuwaiti Airways spare parts. I am convinced that the representatives of Kuwait and Iraq will arrive at constructive arrangements to bring this issue to a successful conclusion.

B. Assessment of the progress that might be achieved

15. During the reporting period, Kuwait stressed the importance of recovering its national archives, the official records of the country, especially documents belonging to the offices of the Amiri Diwan, the Council of Ministers and the Ministry of Foreign Affairs. It seems that the only measure of progress here is whether the documents are found and returned to Kuwait or, at a minimum, their fate is credibly clarified. Only Kuwait can determine the value of any document(s) that may be discovered.

IV. Conditions that may be necessary for the completion of the mandate

16. There appears to be a broad convergence of views on the basic conditions conducive to the successful realization of this essentially humanitarian mandate:

(a) Cooperation between Iraq and Kuwait. Advancement in closing the files of the missing persons and clarifying the fate of the archives will contribute to the further improvement of bilateral relations;

(b) A stable security situation in Iraq that allows for the resumption and conduct of field operations (search, assessment and exhumation activities). The security conditions on the ground in each case should determine if security protection is required and, if so, its composition and size;

(c) Determination of all the parties concerned to make their best efforts in the search for missing persons and clarifying the fate, or whereabouts, of the Kuwaiti national archives;

(d) The existence of an effective functional mechanism that would set clear benchmarks for achieving progress. The scope of the Tripartite Commission and its Technical Subcommittee, which is wider than the objectives of paragraph 14 of Security Council resolution 1284 (1999), offers a practical framework where such a mechanism could be developed or strengthened. Plans of action (that identify the means of and timetables for conducting field operations) adopted by the Tripartite Commission and its Technical Subcommittee and their strict implementation could provide the necessary basis for successfully finding and returning the mortal remains of missing persons;

(e) The continued support of the international community and the Security Council for the objectives outlined in paragraph 14 of Council resolution 1284 (1999) and efforts to realize them in good faith are crucial for further progress.

17. The Permanent Representative of Kuwait to the United Nations, in a letter dated 9 March 2009, asked me to include in the present report a number of suggestions, which, in the view of his Government, might accelerate the process of determining the fate of the missing persons. These concerned, inter alia, the “activation” of the work of the Tripartite Commission and its Technical Subcommittee; granting necessary legal authorizations enabling the resumption of operations at the mass grave sites inside Iraq; providing information on witnesses; and Kuwait’s readiness to dispatch its technical team to Iraq (see annex III).

18. As indicated in my twenty-seventh report, the ability of the Iraqi Ministry of Human Rights to make progress in the search for missing persons is constrained because of lack of capacity. In this regard, a capacity-building project has been developed in the context of the mandate of the United Nations Assistance Mission for Iraq (UNAMI) on human rights and in cooperation with the Iraqi authorities. The preparation of this project is nearing its final stage as funds have been approved and the personnel who will receive training have been identified.

V. Timescale for the completion of the mandate

19. On 21 January 2009, I solicited the views of the Governments of Kuwait and Iraq on the questions raised in the letter of the Security Council dated 26 March 2008, including the possible timescale for the completion of the mandate. The Deputy Prime Minister and Minister for Foreign Affairs of Kuwait, Mohammad Al-Sabah Al-Salem Al-Sabah, in his reply dated 10 February 2009 regretted that for several years the files had witnessed no perceptible progress, especially given their highly sensitive humanitarian and social dimensions. He expressed hope that the United Nations would encourage Iraq to continue implementing all Security Council resolutions issued under the item concerning the situation between Iraq and Kuwait. He was confident that putting an end to all the outstanding issues, as rapidly as possible, would create a positive atmosphere conducive to greater progress towards excellent relations between the two countries “based on the resolutions of international legitimacy as represented by the United Nations”. The Minister expressed support for the High-level Coordinator’s efforts and pledged full cooperation with his mission (see annex IV). The Deputy Prime Minister and Minister for Foreign Affairs of Kuwait reiterated this position in a letter dated 23 March 2009 addressed to the President of the Security Council (S/2009/178).

20. The Iraqi Government’s position is outlined in a letter from the Minister for Foreign Affairs of Iraq, Hoshyar Zebari, to the President of the Security Council dated 10 March 2009 (S/2009/143). Among other things, the Minister stated that Iraq had complied with all its obligations under relevant Security Council resolutions and that only three files remained, one being Kuwaiti missing persons and property, which, with bilateral cooperation, could be dealt with and closed. Iraq would therefore like to see the High-level Coordinator’s mandate terminated and hoped that the present report would be the last submitted to the Security Council on the subject. He also affirmed that the ending of the mandate would not in any way affect the continuing cooperation of Iraq with Kuwait on a bilateral level and in the framework of the Tripartite Commission on successfully resolving the remaining issues.

21. It is realistic to believe that tangible progress in closing the files of the missing persons and of the missing Kuwaiti property, including archives, would lead to the conclusion that, in principle, the objectives of the Coordinator's mandate had been attained so that it could be phased out. However, while the mandate should not go on indefinitely, it is difficult to indicate an optimal timescale for its completion until tangible progress is made. My opinion is that Iraq and Kuwait would eventually need to agree on a mutually acceptable arrangement for resolving the issue and bring it to the Security Council.

VI. Observations

22. Noting with satisfaction the ongoing improvement in the bilateral relations between Iraq and Kuwait, attested to by official public declarations on both sides, I again stress the need to translate political statements of goodwill into concrete actions to speed up progress on the ground and thus contribute to the implementation of the mandate.

23. Given the facts and considerations outlined above, as well as the reported stance of the Governments of Kuwait and Iraq, I believe that **a confidence and cooperation-building period** lasting until June 2010 should be introduced to further encourage the parties to achieve visible and significant progress and to strengthen the patterns of their practical cooperation. I strongly believe that every effort should be made during this period by all concerned parties in the search for missing persons and Kuwaiti property, including the archives. The Security Council may of course request a review of the progress made at any time during these months, including when I submit the report requested by the Security Council in its resolution 1859 (2008). At the end of this period, the Security Council may wish to consider this matter and determine the future course of action.

24. While the final decision rests with the Security Council, it is my view that tangible progress on these issues will constitute a significant step towards an overall normalization of good-neighbourly relations between Iraq and Kuwait and contribute to enhancing regional stability and cooperation.

Annex I**Communications received in response to the request by the Secretary-General in January 2009 for information on the missing Kuwaiti national archives****Letter dated 8 February 2009 from the Secretary-General of the League of Arab States addressed to the Secretary-General**

[Original: Arabic]

I was grateful to receive your letter dated 21 January 2009 regarding the missing Kuwaiti national archives and how they and the historical documents they contain might be returned to the State of Kuwait. I should like to inform you that I am conducting consultations with both the State of Kuwait and Iraq to monitor the latest developments and concerning any proposals which they feel might help to settle this matter. I wish to note that the League of Arab States has previously cooperated with the United Nations High-level Coordinator on the issue of the repatriation or return of all Kuwaiti and third-country nationals or their remains and the return of Kuwaiti property, and stands ready to resume such cooperation.

You will be apprised of any information obtained on this matter by the League of Arab States, and of any measures proposed to address this issue. We have every hope that recent improvements in Iraqi-Kuwaiti relations will contribute to the settlement of outstanding issues between the two countries.

(Signed) Amre **Moussa**
Secretary-General of the League of Arab States

Letter dated 16 March 2009 from the Chargé d'affaires a.i. of the Permanent Mission of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General

I have the honour to refer to your letter dated 21 January 2009 addressed to H.E. Mr. Manouchehr Mottaki, Minister for Foreign Affairs of the Islamic Republic of Iran, concerning paragraph 14 of Security Council resolution 1284 (1999).

The said letter has been submitted to its high destination and based on the information received from Tehran, and upon instructions from my Government in this regard, I wish to inform you that the Islamic Republic of Iran has no information whatsoever regarding the location and whereabouts of the missing Kuwaiti State and historical documents. Nor has it any idea or information about their situation.

(Signed) Eshagh **Al Habib**
Ambassador
Chargé d'affaires a.i.

Letter dated 17 March 2009 from the Secretary of State of the United States of America addressed to the Secretary-General

Thank you for your letter noting the status of efforts to locate the missing Kuwaiti archives and expressing concern over the lack of progress in this regard.

The United States shares your concern regarding the location and repatriation of these documents and fully supports the work of Ambassador Tarasov in this effort, and more generally, Ambassador Tarasov's role as High-level Coordinator for missing Kuwaiti and third-country nationals and missing Kuwaiti property. His work, and that of his predecessor Yuri Vorontsov, has, indeed, been commendable.

Regrettably, the United States has no information at this time regarding the whereabouts of these documents. It is our hope that the greatly improved environment in Iraq, which the United Nations Assistance Mission for Iraq helped to bring about through its work on elections preparation and political reconciliation, will increase opportunities to investigate the whereabouts of these documents.

The United States looks forward to the Ambassador's comprehensive report this April and assisting, if possible, in the documents' recovery.

(Signed) Hillary **Rodham Clinton**

Letter dated 19 March 2009 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the Secretary-General

I have the honour to refer to your letter of 21 January to Foreign Secretary David Miliband, M.P.

We share your concern at the absence of progress in finding or determining the fate of the Kuwaiti national archive. Unfortunately our Government has no information or suggestions to offer. We will continue to follow this issue in the Security Council and as a member of the Tripartite Commission and its Technical Subcommittee.

(Signed) John **Sawers**

Annex II**Protocol of receipt of Kuwaiti belongings from the Republic of Iraq consisting of video and audio tape recordings belonging to the Ministry of Information**

[Original: Arabic]

On 2 March 2009, in accordance with relevant United Nations resolutions, the State of Kuwait received from the Republic of Iraq nine boxes containing all of the video (television) and audio (radio) tape recordings (4,539 tapes) belonging to the Kuwaiti Ministry of Information that had been seized by the former Iraqi regime during its occupation of Kuwait in 1990.

Under the supervision of Gennady Tarasov, the High-level Coordinator for compliance by Iraq with its obligations regarding the repatriation or return of all Kuwaiti and third-country nationals or their remains, as well as the return of all Kuwaiti property, including archives seized by Iraq, the items were received at the headquarters of the Ministry of Information and in the presence of officials from the Ministries of Information and Foreign Affairs and two representatives of the Embassy of the Republic of Iraq to the State of Kuwait.

For the Republic of Iraq

(Signed) Fadil Hamad **Khdhayyir**
Chargé d'affaires, Embassy of the Republic of Iraq
to the State of Kuwait

(Signed) Ammar Majid **Jihad**
Ministry for Foreign Affairs

For the State of Kuwait

(Signed) Mansur Ayyad **Al-Utaybi**
Director, Department of International Organizations,
Ministry for Foreign Affairs

For the United Nations

(Signed) Gennady **Tarasov**
High-level Coordinator

Annex III

Letter dated 9 March 2009 from the Permanent Representative of Kuwait addressed to the Secretary-General

It is my pleasure to refer to your letter of 22 February 2009, addressed to H.E. the Deputy Prime Minister and Minister for Foreign Affairs of the State of Kuwait, Sheikh Dr. Mohammad Sabah Al Salem Al Sabah, concerning the mandate of the High-level Coordinator for missing Kuwaiti and third-country nationals and missing Kuwaiti property.

In this regard, I am pleased to convey to you the following suggestions and views of the Kuwaiti Government to be included in the comprehensive report that Your Excellency will submit to the Security Council in the coming month of April.

1. The need to continue the work of both the Trilateral and Technical Committee, until they finish all the missions that they are entrusted with, considering the humanitarian character of these two committees, which are presided over by the International Committee of the Red Cross, as well as the international legitimacy they derive from relevant Security Council resolutions, in particular resolution 1284 (1999). Also, considering the results achieved by the two committees until this moment and the relationship of the member States that comprise the two committees with the events dealing with the humanitarian issues they undertake.

2. Emphasize the need of the Republic of Iraq to implement all the resolutions relevant to the issue of the captives since their rulings since 1990 and up till now were addressed to the Republic of Iraq, which is legally bound before the international community for their implementation.

3. Intensify the meetings of the Technical Committee to accelerate obtaining results as well as the compliance of its members with the meeting timetable.

4. The adoption by the Technical Subcommittee of a workplan that would increase the frequency of meetings in its agenda, as well as submitting every six months a report to the High-level Coordinator, which includes an assessment of its work and, in particular, its assessment of the efforts of each member State vis-à-vis the activities commissioned to these States in each meeting.

5. The need for the Republic of Iraq to start granting the necessary legal authorizations for movement in the field inside its territory in all the known sites for which the State of Kuwait had previously submitted information about their coordinates and locations through the International Committee of the Red Cross, so that they are ready for evaluation and excavation.

6. The Republic of Iraq should start accumulating information which will contribute to reaching the witnesses related to the sites of interment of Kuwaitis, whether in Iraq or in Kuwait, taking into consideration that these witnesses are Iraqi citizens with information that can lead to promptly determining the fate of the Kuwaiti captives.

7. Emphasize that the State of Kuwait is ready to dispatch its entire technical team to undertake the tasks of digging out mass graves in Iraq based upon the Iraqi assessment and through the International Committee of the Red Cross.

8. Emphasize that the State of Kuwait conducts DNA analysis for all the human remains brought from Iraq and that it has provided the results of these analyses.

9. Emphasize that the State of Kuwait has returned 40 human remains to Iraq, for which DNA analysis showed no match in the Kuwaiti and Saudi DNA database; furthermore, the State of Kuwait surrendered the remains of a number of missing Iraqis which were found in Kuwait.

10. The multinational force operating in Iraq must provide security for the mass grave sites in Iraq.

11. The Republic of Iraq must shoulder its responsibility of presenting all the known Iraqi witnesses.

12. The level of Iraqi representation in the Trilateral and Technical Subcommittee must be elevated to the highest levels, and should not be merely limited to representatives of the Human Rights Ministry.

The Government of Kuwait considers that if these suggestions are included in the report of the Secretary-General, they will have a positive impact on the activation of the work of all the sides in the Trilateral and Technical Committees, and therefore accelerate the process of determining the fate of the Kuwaiti captives within a framework of international legitimacy and in light of the relevant Security Council resolutions.

(Signed) Abdullah Ahmed **Al-Murad**
Ambassador
Permanent Representative

Letter dated 10 February 2009 from the Deputy Prime Minister and Minister for Foreign Affairs of Kuwait addressed to the Secretary-General

It was with the greatest of pleasure that I received your letter dated 21 January 2009, in which you referred to Security Council resolution 1284 (1999), paragraph 14, wherein the Council requests the Secretary-General to report to the Council every four months on compliance by Iraq with its obligations regarding the repatriation or return of all Kuwaiti and third-country nationals or their remains, to report every six months on the return of all Kuwaiti property, including archives, seized by Iraq, and to appoint a High-level Coordinator for these issues.

It goes without saying that we greatly appreciate the strenuous and tireless endeavours exerted by Mr. Gennady Tarasov, the High-level Coordinator on missing Kuwaiti and third-country nationals and property issues, in pursuing his mandate. We trust that those endeavours will be successful and assure you that the State of Kuwait will fully cooperate in that regard. Unfortunately, however, no perceptible progress has been made for many years in respect of those files. As you are aware, these issues have highly sensitive humanitarian and social dimensions. To date, the fate of only 236 missing persons has been uncovered and there is no sign of the national archives, which constitute the memory of the State, that were seized by the former Iraqi regime during its occupation of Kuwait.

While we appreciate the cooperation of the Government of Iraq in attempting to close those files, pursuant to Security Council resolution 1284 (1999), paragraph 14, we agree with you as to the importance of intensifying efforts and continuing action to that end, under the auspices of the United Nations, and of closing the files before the date determined for the submission to the Security Council of the comprehensive report, namely, April 2009.

We further welcome the offer made by the United Nations Assistance Mission for Iraq to provide the Iraqi Ministry of Human Rights with technical assistance and coordination with the International Committee of the Red Cross, with a view to making real progress with respect to the issue of the missing persons.

I should like to take this opportunity to express the hope that the United Nations will encourage Iraq to continue to implement all the Security Council resolutions adopted under the agenda item concerning the situation between Iraq and Kuwait, with a view to closing the files that have remained pending for so long. We are confident that bringing all those issues to a conclusion as rapidly as possible will create a positive atmosphere that is conducive to greater progress towards excellent relations based on the resolutions of international legitimacy as represented by the United Nations.

(Signed) Mohammad Al-Sabah Al-Salem **Al-Sabah**
Deputy Prime Minister and Minister for Foreign Affairs