



# Security Council

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## Report of the Secretary-General pursuant to paragraph 5 of resolution 1859 (2008)

### I. Introduction

1. In paragraph 5 of resolution 1859 (2008), the Security Council decided to review resolutions pertaining specifically to Iraq, beginning with resolution 661 (1990), and in that regard requested the Secretary-General to report, after consultations with Iraq, on facts relevant to consideration by the Council of actions necessary for Iraq to achieve international standing equal to that which it held prior to the adoption of such resolutions.

2. The present report provides the facts as requested by the Council. To prepare the report, the Secretariat reviewed the relevant resolutions pertaining to Iraq adopted by the Council over a period of 18 years, starting with resolution 661 (1990) of 6 August 1990. Ten different United Nations programmes, departments and offices, and international organizations, were involved in that review of the relevant facts and the preparation of the report. The Secretariat also consulted the Government of Iraq and other relevant stakeholders during the preparation of the report. Unless otherwise indicated, the mandates and requirements stemming from them that are addressed in this report are considered to be still operational.

### II. Overview of relevant facts

#### A. Compensation to be paid by Iraq as arising from section E of Security Council resolution 687 (1991)

3. The United Nations Compensation Commission is a subsidiary organ of the Security Council and was established by the Council in 1991 to process claims and pay compensation for direct loss, damage or injury to foreign Governments, nationals and corporations as a result of Iraq's unlawful invasion and occupation of Kuwait in 1990/91. The Compensation Commission currently comprises the Governing Council, with membership the same as that of the Security Council, and the secretariat headed by the Executive Head. As from 1 July 2007, the Commission's secretariat was downsized to a residual format in line with a decision taken by the Governing Council at its fifty-eighth session in December 2005.



4. Under resolution 705 (1991), as confirmed in resolution 986 (1995), the level of payments by Iraq to the Compensation Fund was determined at 30 per cent of all export sales of petroleum and petroleum products, as authorized under the relevant resolutions. The level of payments was later reduced to 25 per cent under resolution 1330 (2000). As matters stand, consistent with paragraph 21 of resolution 1483 (2003), 5 per cent of the proceeds of all export sales of petroleum, petroleum products and natural gas from Iraq are deposited into the Compensation Fund. By that resolution the Council provided that the percentage would remain at that level until the Government of Iraq and the Governing Council decide otherwise.

5. At its fifty-sixth session, in June 2005, the Governing Council completed the review of all claims received since the inception of the Compensation Commission in 1991. The Commission reviewed and resolved a total of 2.6 million claims with an asserted value of \$352 billion. Of the resolved claims, awards of approximately \$52.3 billion were approved in respect of some 1.5 million claims from individuals, businesses, Governments and international organizations. Payments against approved claims are made quarterly: the most recent payment was made on 29 April 2009. A total of \$27.1 billion has been paid by Iraq to date, with an outstanding payable balance of approximately \$25.2 billion.

6. With the exception of 10 awards payable to Kuwait in the order of \$25.2 billion, Iraq has fulfilled all its obligations related to payment of compensation to all individuals and companies of various nationalities and Governments that were affected by the occupation of Kuwait in 1990/91. Of the 10 outstanding awards payable to Kuwait, nine awards in the order of \$24 billion relate mainly to oil sector losses in Kuwait, including the cost of extinguishing the oilwell fires, and damage to government buildings and ministries. The other award, valued at \$1.2 billion, is an environmental claim by Kuwait to be paid through the Compensation Fund and is subject to the Follow-up Programme for Environmental Awards.

7. The Follow-up Programme was established by Governing Council decision 258 (2005) following requests from the Government of Iraq in December 2003 for a mechanism to monitor the financial and technical implementation of environmental remediation projects being undertaken with approximately \$4.3 billion in funds awarded by the Compensation Commission. The administrative costs of the Programme are paid by the participating Governments, namely the Islamic Republic of Iran, Jordan, Kuwait and Saudi Arabia. Because of the scale and complexity of the projects being monitored by the Programme under decision 258, the anticipated timeline for their completion ranges from 5 to 15 years — a time span that could outlive the claims-payment function of the Commission. The Governing Council has therefore started to consider future arrangements with regard to its review function under the Programme prior to the eventual disestablishment of the Commission. The Governing Council anticipates taking a decision on the future of the Programme by mid-2010.

8. In its decision 256 (2005), the Governing Council provided priority for payment to successful environmental claims and other claims with outstanding amounts less than \$500 million. Given the current level of export sales of petroleum, petroleum products and natural gas from Iraq and prevailing international market prices for those commodities and products, revenue to the Compensation Fund is currently approximately \$110 million per month. Assuming

that revenue to the Compensation Fund remains at or around this level, it is projected that payments of claims with priority of payment under the payment mechanism established by decision 256 (2005) will be completed by the second quarter of 2010. This will leave the aforementioned nine awards to be paid in the amount of approximately \$24 billion. One of the outstanding issues is the shortfall to the Compensation Fund as a result of oil barter and sales of oil and oil products outside the mechanism of the Development Fund for Iraq. At the sixty-seventh session of the Governing Council, held on 28 and 29 April 2009, the shortfall was noted to be \$141.5 million, pending release of the audit of the Development Fund for the year ending 31 December 2008. At the same session, the Governing Council also discussed the need to have proper arrangements in place after the expiry of the mandate of the Development Fund.

9. At its sixty-fourth session, in October 2007, the Governing Council considered a request made by the Government of Iraq to reduce the level of Iraq's contribution to the Compensation Fund. In its review of and conclusion on the issue, the Governing Council decided against any change in the level of Iraq's contribution, thus maintaining it at 5 per cent. In reaching that conclusion, the Governing Council further recalled that, in establishing the Follow-up Programme for Environmental Awards under decision 258 (2005), the Council had taken into consideration the request by the Government of Iraq that the Governing Council monitor the use of those awards and transparency in expenditures. The Governing Council noted that a change in the level of contribution could delay a number of projects that are part of the Programme, and thus delay implementation of the Programme as a whole.

10. In addition, the Governing Council, at its sixty-fifth and sixty-sixth sessions, in April and October 2008, noted the willingness of both the Government of Iraq and the Government of Kuwait to meet under the auspices of the Compensation Commission to discuss the approximately \$24 billion in unpaid awards that will remain outstanding after the payment of environmental awards and awards less than \$500 million. The Governing Council encouraged the Governments to commence consultations, and requested the Executive Head to attend and facilitate the meetings.

11. In a letter dated 7 December 2008 from the Prime Minister of Iraq addressed to the President of the Security Council, the Government of Iraq asked the Security Council to review its resolutions related to the payment of 5 per cent into the Compensation Fund with a view to reducing the percentage as much as possible, as the continued payments at that level created a financial burden for Iraq at a time when it was in dire need of those funds to rebuild its infrastructure. However, in a letter dated 10 March 2009 from the Prime Minister of Iraq to the President of the Security Council, the Government of Iraq acknowledged that payment of compensation is one of its outstanding obligations and indicated its willingness to engage in bilateral discussions with Kuwait to bring this mandate to a close. The Government of Iraq, citing the ongoing financial crisis and significant amounts paid to the Compensation Fund, requested that serious consideration be given to "reducing the level of deduction to 1 per cent of Iraqi oil revenues" if not "annulling" the payments altogether. At the time of the writing of this report, it is the understanding of the United Nations Secretariat that this remains the position of the Government of Iraq.

12. The Government of Kuwait, in a letter to the President of the Security Council dated 23 March 2009, emphasized its view that Iraq should fulfil its obligations to pay compensation and that 5 per cent of Iraq's oil proceeds should continue to be deposited into the Compensation Fund. Kuwait also confirmed its commitment to discussing the \$24 billion that will remain outstanding after payment of the environmental awards, but it maintained its position that this must be done under the auspices of the Compensation Commission.

13. The Governing Council held its most recent session on 28 and 29 April 2009 and noted its disappointment that the consultations between Iraq and Kuwait had yet to take place at that time. However, the Council expressed its cautious optimism for progress in the light of the statement made by the delegation of Kuwait, reiterating its continued willingness to enter into discussions with Iraq. The Governing Council also noted the statement made by the delegation of Iraq at the opening plenary meeting that the Government of Iraq had mandated a delegation headed by the Iraqi Vice-Minister for Foreign Affairs, Mohammed Hammoud Bedan, to commence negotiations with Kuwait under the auspices of the Compensation Commission.

14. The first consultations of delegations from Iraq and Kuwait were held in Amman on 19 and 20 May 2009, in the presence of the Executive Head of the Compensation Commission secretariat, who facilitated the meeting. Iraq's opening position was that the remaining \$24 billion obligation should be removed in its totality, a position that Kuwait did not consider a good starting point. The delegations had a preliminary discussion regarding possible alternatives which might involve investment of the remaining unpaid compensation in infrastructural and mutually beneficial projects in Iraq. Both delegations agreed that it was necessary and useful to continue the consultations and that the next meeting should be held after the submission to the Council of the report pursuant to paragraph 5 of resolution 1859 (2008). In that regard, I note the recent visit to Kuwait of the Speaker of Iraq's Parliament and the discussions he had with his counterpart on a possibility of converting the outstanding payments into investments. I strongly encourage continuation of active discussions on alternative solutions that would help Iraq to meet its reconstruction needs and be beneficial to the region as a whole.

## **B. Iraq-Kuwait Boundary Maintenance Project**

15. The Iraq-Kuwait Boundary Maintenance Project is a stand-alone project concerned with the maintenance of the physical representation of the international boundary between Iraq and Kuwait, as recommended by the United Nations Iraq-Kuwait Boundary Demarcation Commission and confirmed by the Security Council in resolution 833 (1993). Although mainly of a technical nature, the project has a larger purpose of confidence-building between two formerly warring neighbouring States. It also has a capacity-building aspect so that Iraq and Kuwait will be technically able to maintain their common border according to international standards in the future. The Department of Peacekeeping Operations is the lead Department for this project, in close collaboration with the Cartographic Section of the Department of Field Support.

16. Between 1991 and 1994, 106 boundary pillars and 28 intermediate markers were constructed along the border to indicate the land boundary between the two States. The United Nations Iraq-Kuwait Boundary Demarcation Commission

recommended that the Secretary-General establish a mechanism to ensure ongoing maintenance of the pillars and markers. The established United Nations mechanism for continuing maintenance was to remain in effect until other technical arrangements were made between Iraq and Kuwait for the purpose of maintaining the physical representation of their common boundary.

17. The Commission further recommended that the pillars be inspected and maintained annually and that Iraq and Kuwait share the costs of maintenance of the boundary. Until 2003, maintenance of the pillars, which included the repair and installation of additional intermediate pillars, was carried out by the United Nations Iraq-Kuwait Observation Mission (UNIKOM); after the withdrawal of the Mission in March 2003, that responsibility was assumed by the Department of Peacekeeping Operations through the Iraq-Kuwait Boundary Maintenance Project.

18. In February 2006, the United Nations team for the Iraq-Kuwait Boundary Maintenance Project undertook an assessment mission with the participation of Iraqi and Kuwaiti technical teams and financed through the joint Iraq-Kuwait Trust Fund for Border Issues, which is funded equally by the Governments of Iraq and Kuwait. A summary of the assessment mission's findings was presented to the Security Council during informal consultations on 17 April 2006 and the assessment mission's report was conveyed to the Permanent Missions of Iraq and Kuwait on 11 May 2006. The report provided the mission's findings on the condition of the physical representation of the boundary, presented recommendations for the boundary's maintenance, and described the work to be carried out in Phase II (Preparations for boundary maintenance) and Phase III (Field maintenance).

19. The maintenance work was originally scheduled to take place late in 2006. The Secretariat's preparatory work has been completed, but the field maintenance work has had to be postponed several times, first in 2007 and then again in 2008, mainly because several buildings along the boundary need to be removed, particularly at the town of Umm Qasr, between border pillars 104a and 106, where the required inter-visibility between boundary pillars is blocked, and the inhabitants of those buildings need to be resettled.

20. During meetings of the United Nations team for the project with Iraqi and Kuwaiti technical teams from 21 to 23 June 2007 in New York and from 21 to 23 October 2008 in Kuwait City, representatives of both States expressed their commitment to further implement the recommendations of the 2006 assessment report. The participants agreed that the final phase, Phase III, of the boundary maintenance project (field maintenance) would commence on 15 September 2009, provided that the Governments of Iraq and Kuwait confirmed to the Secretariat their agreement, which both Governments have since done in notes verbales dated 1 December 2008 and 5 January 2009, respectively. Also, in a note verbale dated 9 March 2009, the Government of Kuwait stated its readiness to provide access and security on the Kuwaiti side of the boundary. In a letter dated 10 March 2009 to the President of the Security Council, Iraq informed the Council that a small building at pillar 105 had been removed and that work had begun on the road parallel to the pillars on the Iraqi side of the boundary. The letter expressed hope that the final phase of the maintenance would be completed within the agreed timetable. However, in a note verbale dated 14 May 2009, the Government of Iraq requested postponement of the implementation of Phase III of the project until the

Government of Iraq had completed implementation of the recommendations of the 2006 assessment report, without specifying a new deadline.

21. The Secretariat continues the planning for the field maintenance work. Nonetheless, without confirmation from the Governments of both Iraq and Kuwait of the removal of the obstacles on the boundary and of access to all the boundary pillars, as well as of their readiness to proceed, it is difficult to establish a viable timetable for the field maintenance (Phase III of the project). The Department of Peacekeeping Operations sent notes verbales dated 9 June 2009 to both Governments in response to the note verbale received from Iraq dated 14 May. The notes verbales requested a response from both Iraq and Kuwait by 30 June agreeing to commence Phase III of the project by 30 October, or else to make an additional contribution of \$600,000 to sustain the project. Kuwait responded positively with two notes verbales dated 17 and 25 June, reiterating its agreement to commencing Phase III and also requesting that the Council be briefed on the reasons for the delay and to inform Kuwait of Iraq's response on whether the conditions would allow the work to commence in October 2009. To date, Iraq has not replied to the Secretariat's note verbale of 9 June 2009.

22. It should be noted that the delays in the implementation of the field maintenance work have made it necessary to request additional funds from the Governments of Iraq and Kuwait to complete the project and that the security for the field maintenance work will now become more complex. The United Nations team for the project will also need sufficient time to contact appropriate security forces with the 120-day notice they will require to put in place the necessary safety and security arrangements for the Boundary Maintenance Team on the Iraqi side of the border. In addition, the United Nations will need sufficient time to renew the United Nations procurement process for an engineering firm to be contracted in time for the field maintenance work to start as planned.

23. The final phase of the boundary maintenance project can be completed as soon as some minor conditions are met, including removal of a few buildings blocking inter-visibility between some of the pillars. Following that, it is expected that the Governments of Iraq and Kuwait should be in a position to establish an effective joint mechanism, such as a boundary commission, to carry out maintenance of the boundary bilaterally in the future. After several delays, I would like to urge the Government of Iraq to respond positively to the note verbale dated 9 June 2009 from the Secretariat regarding the final phase of the project. Timely and successful completion of this project will clearly demonstrate the changed nature of relations between the two States and pave the way for normal bilateral cooperation between them.

### **C. Repatriation or return of all Kuwaiti and third-country nationals or their remains and the return of all Kuwaiti property, including archives, seized by Iraq in 1990/91**

24. The Security Council requested in paragraph 14 of resolution 1284 (1999) that a high-level coordinator be appointed for issues regarding the repatriation or return by Iraq 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 late Ambassador Yuli Vorontsov served as the Coordinator from 2000 until December

2007. He was succeeded by Ambassador Gennady Tarasov in April 2008. In addition to the latest comprehensive report submitted in April 2009, 27 written reports have been submitted to the Security Council since 2000. The conditions conducive to the realization of the relevant mandate were outlined in paragraphs 16 to 18 of my report of 8 April 2009 (S/2009/190) submitted in compliance with a letter dated 26 March 2008 from the President of the Security Council to the Secretary-General.

25. Prior to March 2003, the previous regime in Iraq repeatedly denied holding any Kuwaiti or third-country nationals as prisoners of war. However, following the fall of that regime in Iraq in 2003, the remains of 236 out of 605 missing persons have been identified and their files have been closed. All identifications to date have been made from the skeletal remains that were brought to Kuwait in 2004. Since 2004, and until recently, the security situation in Iraq has prevented search and exhumation work at burial sites. Moreover, the identification of the remains of missing Kuwaiti and third-country nationals is further complicated by the need to distinguish them from the remains of tens of thousands of disappeared civilian Iraqi nationals, a task that will require genetic identification tools. Although there have been several handovers of property, including the handover of 24 boxes of old currency, stamps and travellers cheques on 5 July 2009, the State archives have not been found and their fate is not known at this time.

26. The position of Iraq regarding the mandate was outlined in a letter dated 10 March 2009 from the Minister for Foreign Affairs of Iraq, Hoshiyar Zebari, to the President of the Security Council (see S/2009/143). Among other things, the Minister stated that Iraq had exerted every possible effort towards bringing the humanitarian suffering to an end and that Iraq would like to see the High-level Coordinator's mandate terminated. According to the letter, ending the mandate would not in any way affect the continuing cooperation of Iraq with Kuwait on either the bilateral level and or in the framework of the Tripartite Commission.

27. In a communication to me dated 10 February 2009 and referred to in paragraph 19 of my report (S/2009/190), the Deputy Prime Minister and Minister for Foreign Affairs of Kuwait, Mohammad Al-Sabah Al-Salem Al-Sabah, 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. The Minister expressed support for the High-level Coordinator's efforts and pledged full cooperation with his mission.

28. In my report of April 2009, I recommended "a confidence and cooperation-building period" until June 2010 to further encourage the parties to achieve visible and significant progress and to strengthen the patterns of their practical cooperation. The report noted the project developed by the United Nations Assistance Mission for Iraq (UNAMI) to build capacity in the Iraqi Ministry of Human Rights to make progress in the search for missing persons, including thousands of Iraqi victims of the previous regime, which will boost the ongoing efforts of the Government of Iraq in that regard and may also benefit the recovery of missing Kuwaiti and third-country nationals. On 16 April 2009, the Security Council decided to extend the financing of the Coordinator's activities for a further six months, with the possibility of a further extension.

29. I recognize the efforts made after 2003 which resulted in the recovery and identification of 236 individuals and the return of some Kuwaiti property. I also recognize that it is possible that not all remains and properties will be found and that the search will eventually have to come to an end. I would like to encourage Iraq to achieve further progress on the ground. In that regard, I welcome the invitation recently extended by the Government of Iraq to the Head of the Kuwait National Committee for Missing Persons and Prisoner of War Affairs and his team to visit Baghdad and discuss possible means for reinforcing cooperation on this issue. The Government of Iraq informed the Security Council of this invitation in a letter to the President of the Council dated 16 July 2009 and I hope that this will result in strengthening practical cooperation with Kuwait so that the objectives of the High-level Coordinator's mandate can be attained.

#### **D. Disarmament**

30. Numerous Security Council resolutions from 1990 set out a number of Iraq's obligations in the disarmament area, in particular in relation to nuclear, chemical and biological weapons and ballistic missiles and adherence to specific international disarmament treaties.

31. For the purpose of this report, Iraq's disarmament obligations related to chemical and biological weapons and ballistic missiles could be grouped in the following three categories:

(a) Iraq's obligations to provide support to and cooperate with the United Nations Special Commission and the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC);

(b) Iraq's obligations to achieve specified goals, for example, the destruction, removal and rendering harmless, under international supervision, of prohibited items or the adherence to specified international disarmament agreements;

(c) Iraq's obligations for which implementation criteria were not defined by the Security Council, for example, prohibitions or limitations on specified activities in the biological area.

32. Most of Iraq's obligations under paragraph 31 (a) above cover activities related to the verification, monitoring and inspection rights of the Special Commission or UNMOVIC, including submissions by Iraq of various declarations, notifications, reports, requests to conduct certain activities, acceptance of inspection teams, provision of access, services and support and other undertakings to facilitate the implementation of the mandates of the Special Commission and UNMOVIC. The mandate of UNMOVIC under the relevant resolutions was terminated by the Security Council in its resolution 1762 (2007), adopted on 29 June 2007.

33. As for the obligations referred to in paragraph 31 (b) above, resolution 687 (1991) requires Iraq to destroy, remove or render harmless, under international supervision, proscribed items. At the time of the termination of their respective mandates, neither the Special Commission/UNMOVIC nor the International Atomic Energy Agency (IAEA) had provided a report that Iraq had completed all actions contemplated in relevant paragraphs of the resolution. However, by resolution 1762 (2007) the Council recognized that the continued operations of UNMOVIC and the

IAEA Iraq Nuclear Verification Office were no longer necessary to verify Iraqi compliance with its obligations under the relevant resolutions. In resolution 1762 (2007) the Council also noted a joint letter dated 28 June 2007, from the governments of the United States of America and the United Kingdom of Great Britain and Northern Ireland, annexed to the resolution, stating that all appropriate steps had been taken to secure, remove, disable, render harmless, eliminate or destroy (a) all of Iraq's known weapons of mass destruction and ballistic missiles with a range of greater than 150 kilometres and (b) all known elements of Iraq's programmes established to research, develop, design, manufacture, produce, support, assemble and employ such weapons and delivery systems, subsystems and components thereof. The Council in resolution 1762 (2007) further noted a letter dated 8 April 2007 from the Minister for Foreign Affairs of Iraq to the President of the Security Council, in which Iraq declared that it was joining the global democratic community in its support for the international non-proliferation regime.

34. As for other obligations referred to in paragraph 31 (b) above, Iraq was also required to adhere to a number of disarmament and non-proliferation treaties, including the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction; the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction; and an additional protocol to its safeguards agreement. In response to the requirement of resolution 1762 (2007), Iraq provided a report on the progress made in adhering to all applicable disarmament and non-proliferation treaties and related international agreements (S/2008/350, dated 29 May 2008). Iraq became a party to the Biological Weapons Convention on 19 June 1991 and a party to the Chemical Weapons Convention on 13 January 2009. Following Iraq's accession to the Chemical Weapons Convention, the secretariat of the Organization for the Prohibition of Chemical Weapons has processed and analysed Iraq's declarations and continues its work with Iraqi representatives with a view to due implementation of the Convention. At the fifty-seventh session of the Executive Council of the Organisation for the Prohibition of Chemical Weapons, held in The Hague from 14 to 17 July, the Director General of that Organization commended in his statement the forthcoming and cooperative attitude of the Iraqi authorities in that regard. Iraq's obligations under Security Council resolutions not to develop, construct or acquire chemical and biological weapons are similar to "general obligations" of a State party to the Chemical Weapons Convention or the Biological Weapons Convention, in particular with regard to the scope of prohibited activities. In the missile area, however, there is no multilateral, universally applicable agreement prohibiting Iraq from using, developing, producing or acquiring ballistic missiles with a range greater than 150 kilometres.

35. As for the obligations referred to in paragraph 31 (c) above, the Security Council established a number of obligations that prohibit or restrict Iraq from conducting specific activities. The Council has not defined implementation criteria for them or linked their validity to the existence of verification bodies. Under the plan for ongoing monitoring and verification of Iraq's compliance with relevant parts of section C of resolution 687 (1991), a specific prohibition is imposed on Iraq in regard to:

- "Conduct any activities in the field of micro-organisms and toxins except by civilian personnel not in the employ of any military organization. Such

activities shall be conducted openly; no classified or secret programmes or activities shall be permitted” (S/22871/Rev.1, para. 38 (b)).

- “Conduct activities on diseases other than those indigenous to or immediately expected to break out in its environment” (S/22871/Rev.1, para. 38 (c)).
- “Possess at any one time more than one facility having a laboratory (unit) meeting the criteria for a ‘maximum containment laboratory’ as specified in the 1983 World Health Organization *Laboratory Biosafety Manual*, such as those designated as biosafety level 4 (BL4) or P4 or equivalent standard. Iraq shall not possess at any one time more than two facilities having a laboratory (unit) meeting the criteria for a ‘containment laboratory’, such as those designated as BL3 or P3 or equivalent standard” (S/22871/Rev.1, para. 38 (e)).

36. Similarly, neither resolution 1762 (2007) nor any subsequent resolutions of the Council have specifically addressed the prohibition contained in paragraph 3 (f) of resolution 707 (1991) requiring that Iraq halt all nuclear activities of any kind, except for use of isotopes for medical, agricultural or industrial purposes, until the Council determines that Iraq is in full compliance with that resolution and with paragraphs 12 and 13 of resolution 687 (1991) and IAEA determines that Iraq is in full compliance with its safeguards agreement with the Agency.

37. For 2008, the IAEA secretariat found no indication of the diversion of declared nuclear material from peaceful nuclear activities in Iraq and, on this basis, the IAEA secretariat concluded for Iraq that, in 2008, declared nuclear material remained in peaceful activities. The safeguards conclusions for 2009 will be made available to the IAEA Board of Governors prior to its June 2010 meeting. The Government of Iraq signed an additional protocol to its comprehensive safeguards agreement with IAEA on 9 October 2008. Iraq has informed the United Nations that the ratification of that protocol is now pending before the Parliament of Iraq. Following the entry into force of the protocol and its full implementation, IAEA could provide credible assurance regarding the absence of undeclared nuclear material and activities in Iraq.

38. The Constitution of Iraq contains Iraq’s commitment to the non-proliferation, non-development, non-production and non-use of nuclear, chemical and biological weapons and associated equipment, material and technologies for use in the development, manufacture, production and use of such weapons, as well as delivery systems. I welcome Iraq’s efforts to accede to the international conventions and other instruments regarding weapons of mass destruction and related materials and technologies and encourage the Government of Iraq to continue this process. It is my hope that the Security Council will review Iraq’s outstanding disarmament obligations and restrictions under its relevant resolutions in view of these facts and help Iraq to close this difficult chapter of its history.

39. In connection with prohibitions on conventional weapons, the Security Council decided in paragraph 21 of resolution 1546 (2004) that the prohibitions related to the sale or supply to Iraq of arms and related materiel under previous resolutions shall not apply to arms and related materiel required by the Government of Iraq. The Council further stressed the importance for all States to abide strictly by those provisions and noted the significance of Iraq’s neighbours in that regard. The remaining prohibitions on the supply of arms to Iraq are not accompanied by a Security Council mechanism to oversee implementation of those particular

measures. However, the Council has called upon the Government of Iraq to ensure that appropriate implementation procedures are in place. Such procedures are essential for continued consolidation of the security situation in Iraq.

### **E. Development Fund for Iraq and the International Advisory and Monitoring Board**

40. The Development Fund for Iraq was established in 2003 for the purpose of depositing proceeds from all export sales of petroleum, petroleum products and natural gas from Iraq, previously frozen Iraqi financial assets transferred by all Member States, as well as transferred balances from the oil-for-food programme. The Security Council also decided in 2003 that petroleum, petroleum products and natural gas originating in Iraq, as well as proceeds from the sale of those products, and the other aforementioned assets transferred to the Development Fund, shall be immune from legal proceedings against them with the exception of liabilities connected to environmental damage claims. In 2004, the Security Council further specified that the privileges and immunities shall not apply to any final judgement arising out of a contractual obligation entered into by Iraq after 30 June 2004.

41. The International Advisory and Monitoring Board of the Development Fund for Iraq was also established in 2003 with the mandate to provide independent and international oversight and, through independent auditors, the audit of Iraqi oil operations and export revenues and of the use of the Fund's resources. The Board consists of the representatives of the Secretary-General of the United Nations, the Managing Director of the International Monetary Fund, the Director-General of the Arab Fund for Social and Economic Development and the President of the World Bank.

42. The mandate of the Advisory Board, as well as the privileges and immunities relating to petroleum and petroleum products and the proceeds deposited in the Development Fund for Iraq, were extended until 31 December 2009 under Security Council resolution 1859 (2008).

43. From its inception until 31 December 2008, the Development Fund for Iraq held the proceeds of oil and oil product export sales (\$165.1 billion) and transferred balances from the oil-for-food programme (\$10.4 billion) and other frozen Iraqi funds (\$1.5 billion). Since its inception, the Advisory Board has held 24 meetings; the next meeting is to be held in Vienna on 22 and 23 July 2009. The proceedings, relevant decisions and reports of the Advisory Board are publicly available at the website, [www.iamb.info](http://www.iamb.info).

44. Since 2004 a representative of the Government of Iraq has held a seat on the International Advisory and Monitoring Board and participated in all the meetings of the Board. In June 2006, the Chairman of the Board wrote to the Government of Iraq regarding the establishment of an Iraqi oversight body, to take over the responsibilities of the Board when appropriate. In October 2006, the Government of Iraq informed the Board of the decision of the Council of Ministers of Iraq to establish the Committee of Financial Experts, to be chaired by the President of Iraq's Supreme Board of Auditors. In April 2009, the Board wrote to the Government of Iraq to reiterate its view that the Committee of Financial Experts is ready to assume the oversight responsibilities and conduct competent and independent oversight of the Development Fund for Iraq.

45. In accordance with the requirements pursuant to resolution 1859 (2008), the United Nations Controller, as my Representative to the International Advisory and Monitoring Board, briefed the Security Council on the activities of the Development Fund for Iraq and the Board on 16 April 2009. A written report to the Council on the same subject, including on progress made in strengthening financial and administrative oversight of the Fund, is tentatively scheduled to be issued early in August 2009.

46. At the last meeting, held in Amman on 2 and 3 April 2009, the Board noted progress but also reiterated its concerns that more needed to be done to implement previous recommendations to strengthen the system of internal controls. In particular, this included the comprehensive implementation of a fully operational control and measurement system over the production, distribution and export sales of oil, a sound financial management system and effective measures to fight and prevent corruption.

47. I recognize the view of the International Advisory and Monitoring Board that the Iraqi Committee of Financial Experts is ready to assume the oversight responsibilities and conduct competent and independent oversight of the Fund. As the Security Council prepares to discuss this matter, including the mandates of the Fund and the Board at the end of 2009, it will be important to ensure that a mechanism for payments to the Compensation Fund be considered, should such a requirement still be in effect at that time.

## **F. Residual activities of the oil-for-food programme**

48. By paragraph 1 of resolution 986 (1995), the Council authorized States, notwithstanding the relevant provisions of resolution 661 (1990), to permit the import of petroleum and petroleum products originating in Iraq. Payment of purchases of Iraqi petroleum and petroleum products were to be deposited directly into an escrow account to be established by the Secretary-General (the Iraq Account) to meet the humanitarian needs of the Iraqi population until Iraq's fulfilment of the relevant Security Council resolutions. This arrangement later became known as the "oil-for-food programme".

49. Pursuant to the programme the Secretary-General was requested to use the funds deposited in the Iraq Account to finance humanitarian contracts provided that (a) each export of goods was at the request of the Government of Iraq, (b) the Government of Iraq effectively guaranteed their equitable distribution, and (c) the Secretary-General received authenticated confirmation that the exported goods concerned had arrived in Iraq.

50. Section 25 of the memorandum of understanding between the Secretariat of the United Nations and the Government of Iraq signed in 1996 on the implementation of Security Council resolution 986 (1995) provided therefore that the arrival of goods in Iraq purchased under the programme would be confirmed by independent inspection agents to be appointed by the Secretary-General and that no payments could be made until the independent inspection agents provided the Secretary-General with authenticated confirmation that the exported goods had arrived in Iraq. Sections 36 and 37 of the procedures to be employed by the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait in the discharge of its responsibilities as required by

paragraph 12 of resolution 986 (1995) established further that following confirmation of arrival the bank holding the Iraq Account (BNP Paribas) would effect payment under any letter of credit only if, among other things, the standardized confirmation of arrival had been provided.

51. The Security Council in resolution 1483 (2003) requested that the Secretary-General terminate and hand over the operational activities of the programme as well as the relevant documentation to the Coalition Provisional Authority by 21 November 2003. Nevertheless, following the adoption of Security Council resolution 1483 (2003), 3,009 contracts, with an approximate value of \$8 billion, were considered essential for the reconstruction and/or humanitarian needs of the Iraqi people and were, therefore, "prioritized". Thus, as from 22 November 2003, the United Nations retained the administration of the letters of credit associated with the aforementioned 3,009 contracts and the Coalition Provisional Authority took over the administration of the process for the issuance of confirmations of arrival from 22 November 2003 to 30 June 2004. On 1 July 2004, pursuant to Security Council resolution 1546 (2004), the responsibility for the administration of the process for the issuance of confirmations of arrival was transferred to the Interim Government of Iraq and on 8 October 2004 to the Government of Iraq.

52. As noted in the successive status reports the Secretary-General submitted to the Security Council on the programme, following the transfer of responsibilities for the issuance of confirmations of arrival to the Government of Iraq, progress in providing confirmations has been slow. Consequently, BNP Paribas has been unable to make payments to all suppliers that claim to have delivered goods in Iraq. The Secretary-General and the Security Council have repeatedly urged the responsible authorities of the Government of Iraq to process confirmations of arrival promptly, as appropriate, so that payments could be made to suppliers. In an effort to minimize the number of outstanding letters of credit, the Secretariat has engaged in a thorough examination of the files. Moreover, in my letter dated 7 December 2007 to the President of the Security Council (S/2007/725), I proposed the establishment of a Working Group composed of representatives of the Secretariat, the Government of Iraq and the Central Bank of Iraq. The last meeting of the Working Group was held in June 2008, as reported in the note accompanying my letter to the President of the Security Council dated 25 July 2008 (S/2008/492).

53. As a result of these efforts, as at 30 June 2009, the number of outstanding letters of credit has been reduced to 81, with an aggregate value of \$312 million. I welcome progress in reducing the number of letters of credit for which the confirmation of arrival is still pending. With only 81 letters of credit outstanding for payment, I urge the responsible authorities of the Government of Iraq to redouble their efforts and to process confirmations of arrival promptly, as appropriate, so that payments can be made to suppliers. In that regard, I look forward to an orderly and prompt conclusion of all residual activities under the programme and the transfer of remaining funds from the Iraq Account to the Development Fund for Iraq.

54. Pursuant to Security Council resolution 1483 (2003), it was established that unencumbered funds in the Iraq Account would be transferred to the Development Fund for Iraq. To date, the United Nations has transferred a total of \$10.42 billion to the Development Fund for Iraq. As at 30 June 2009, the Iraq Account contains \$915 million (\$197 million and €10 million held in the euro sub-account with an equivalent amount of \$718 million (at a rate of \$1.4064)). Of the total amount of

\$915 million, approximately \$312 million is currently held in the cash collateral portion of the account as encumbered funds to cover claims of delivery made by suppliers and the remaining amount of \$603 million is currently held in the non-collateral portion of the account as unencumbered funds corresponding to the following:

(a) \$187 million as a reserve for any unanticipated claims until such date as all unresolved issues relating to the programme are finally resolved pursuant to paragraph 16 of the note accompanying the former Secretary-General's letter to the President of the Security Council dated 10 July 2006 (S/2006/510);

(b) \$225 million originally held in the Iraq Account as collateral in respect of expired letters of credit which have not been transferred to the Development Fund for Iraq pending the resolution of claims of delivery from suppliers in those cases where the Government of Iraq has not issued authentication documents pursuant to the notes accompanying my letters to the President of the Security Council dated 25 July 2007 (S/2007/476), 7 December 2007 (S/2007/725) and 23 January 2008 (S/2008/41);

(c) \$146 million corresponding to recently cancelled letters of credit, interest earned on the investment of the funds and unrealized gains or losses from the fluctuations of the euro against the United States dollar.

55. In paragraph 18 of the note accompanying my letter to the President of the Security Council dated 25 July 2008 (S/2008/492), reference was made to certain alternatives for purposes of concluding all outstanding issues under the programme which had been considered by the Working Group at the meetings held in Amman in June 2008. The Working Group considered, among other things, the establishment of a dispute resolution mechanism — as described in my letter to the President of the Security Council dated 7 December 2007 (S/2007/725) — or a simplified version thereof.

56. In view of the progress described in my last status report to the President of the Security Council, dated 1 May 2009 (S/2009/230), including the considerable decrease in the number of outstanding letters of credit mentioned in paragraph 53 above, some of the alternatives considered by the Working Group at the time may no longer be appropriate. However, the Security Council may wish to consider other possibilities for the orderly and prompt conclusion of all residual activities under the programme at the appropriate time. Irrespective of the timing and manner selected by the Security Council for concluding all outstanding issues under the programme, it would be particularly important that the Council address the need for the Government of Iraq to provide a comprehensive indemnity with regard to all activities of the Organization, its representatives and agents in connection with the programme since its inception and with regard to the funds that have been transferred and will be transferred to the Development Fund for Iraq (see, in this regard, the Secretary-General's letter to the President of the Security Council dated 10 July 2006 (S/2006/510) and my letter to the President of the Security Council dated 25 July 2008 (S/2008/492)). The conclusion of the outstanding activities under the programme should also be subject to the availability of sufficient funds for the Organization to meet the costs and expenses that have been incurred or may be incurred in future in connection with the programme, including the costs and expenses associated with the winding-down of the programme and the costs and

expenses arising from the United Nations cooperation with Member States in respect of investigations and proceedings related to the programme.

### **G. Security Council Committee established pursuant to resolution 1518 (2003)**

57. The Security Council Committee was established pursuant to resolution 1518 (2003) on 24 November 2003 to continue to identify, in accordance with paragraphs 19 and 23 of resolution 1483 (2003), individuals and entities whose funds, other financial assets or economic resources should be frozen and transferred to the Development Fund for Iraq. According to paragraph 23 of resolution 1483 (2003), the freeze and transfer apply to funds, other financial assets or economic resources of individuals and entities associated with the former Iraqi regime, that is, funds, other financial assets or economic resources removed from Iraq or acquired by Saddam Hussein or other senior officials of the former Iraqi regime and their immediate family members, including entities owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction; as well as to funds, other financial assets or economic resources of the previous Government of Iraq or its state bodies, corporations, or agencies, located outside Iraq.

58. Although the Committee has not met since December 2005, it continues to consider through a no-objection procedure all relevant issues brought to its attention, including requests for the addition of names to and removal of names from its assets transfer list. In 2007, the Committee received communications from Iraq and other States containing requests to list five individuals and de-list three individuals, which are still under consideration by the Committee. In 2008, the Committee considered communications from the Focal Point for De-listing established pursuant to resolution 1730 (2006) and relevant States regarding requests for de-listing submitted by an individual and an entity. The Committee's deliberations were concluded with the individual and the entity remaining on the lists. The Committee continues to receive communications from States regarding the implementation of the above-mentioned measures.

59. As at 26 May 2009, the Committee's list of individuals identified pursuant to the relevant resolutions contains 89 names, and the list of entities contains 208 names.

### **H. Other relevant mandates**

60. In resolution 899 (1994), the Security Council addressed the matter of the Iraqi private citizens and their assets which remained on Kuwaiti territory following the demarcation of the international boundary between Iraq and Kuwait. The Council decided therein that the compensation payments to be made pursuant to the arrangements described in the Secretary-General's letter of 22 February 1994 (S/1994/240) may be remitted to the private citizens concerned in Iraq, notwithstanding the provisions of resolution 661 (1990). In accordance with an arrangement reached on 22 September 1993 between the United Nations and Kuwait, the latter paid in full into a trust fund created for the purpose of

compensation. As it was not possible to conclude payment arrangements under the previous Iraqi regime, the compensation amount remained in the trust fund.

61. On 28 March 2007, the Permanent Mission of Iraq informed the Secretariat that the Council of Ministers of Iraq had decided to establish a team from the relevant ministries headed by a representative of the Council of Ministers to distribute compensation to the Iraqi farmers concerned. In notes verbales dated 4 February and 26 March 2008, the Permanent Mission of Iraq requested that the total amount of compensation and the interest be deposited in the account of the Development Fund for Iraq at the Federal Reserve Bank of New York. The Department of Political Affairs is currently consulting the Office of the Legal Counsel on the appropriate course of action and will contact the Governments of Iraq and Kuwait. The concurrence of the Security Council on the proposed arrangement will be sought. I therefore hope that the issue will be settled in the near future.

62. The Security Council in resolution 1500 (2003) decided to establish the United Nations Assistance Mission for Iraq (UNAMI) to implement the mandate outlined in resolution 1483 (2003). The Mission's mandate was subsequently revised in resolutions 1511 (2003), 1546 (2004) and 1770 (2007); in the last two the Council requested that the United Nations implement its mandate in Iraq in close consultation with the Government of Iraq. Resolution 1830 (2008) extended the present UNAMI mandate until 6 August 2009. At the Security Council meeting held on 19 June 2009, members of the Council and Iraq expressed their appreciation for the continued role played by UNAMI.

63. In resolution 1483 (2003), the Security Council decided that all Member States should take appropriate steps to facilitate the safe return to Iraq of Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific and religious importance illegally removed from Iraq since the adoption of resolution 661 (1991), including by establishing a prohibition on trade in or transfer of such items or items suspected to be in that category. The Council also called upon the United Nations Educational, Scientific and Cultural Organization, INTERPOL and other international organizations to assist in the implementation of the above.

### **III. Observations**

64. The present report presents the facts relevant for the Council's consideration and appropriate decisions, as requested by the Council in paragraph 5 of resolution 1859 (2008). However, I also wish to submit several observations on the issues at hand.

65. Since the invasion of Kuwait by the regime of Saddam Hussein in 1990, the people of both Iraq and Kuwait have suffered two major wars and serious humanitarian, political, socio-economic and environmental consequences. After almost two decades, the impact of those events continues to be felt in Iraq and the region. Despite much progress, the situation there has yet to be normalized fully. Today, Iraq is gradually emerging from this period and I understand the desire of the people of Iraq for their country to regain its rightful place in the community of nations. The peace, stability and economic prosperity of the region are vital not only to the countries in the region but to the whole world.

66. This report identifies a number of the outstanding issues concerning relations between Iraq and Kuwait. In preparing this report, I have taken into account the views of both Governments and tried to reflect them in the report in order to enable the Security Council to take necessary decisions. I am pleased to note that the Governments of Iraq and Kuwait have been making progress towards the resolution of some of these issues despite the painful legacy of the past. Indeed, it is the responsibility of both countries to work together as neighbours to expeditiously resolve the remaining issues between them. For the aim is not just to achieve a closure and deal with deep wounds, but to create a solid basis for future generations of the region, a region that has been blessed with vast resources, much of which have been squandered in futile wars. A high degree of political will on both sides is still required to achieve this. On the basis of my meetings with the representatives of Iraq and Kuwait, I have every confidence that their respective Governments are fully committed to the path of peace and lasting reconciliation. The two States should consider innovative steps for resolving the outstanding issues between them in a spirit of generous compromise and understanding for each other's concerns. By doing so, they will mark the dawn of a new era in their relationship.

67. The outstanding issues under consideration in this report are by no means limited to those related to Iraq and Kuwait. The United Nations, and I personally, have been supportive of the efforts by the Government of Iraq to normalize the country's international standing in a number of ways — from assisting in capacity-building and debt reduction under the framework of the International Compact with Iraq to the United Nations assistance towards a regional dialogue. Iraq continues to bear the primary responsibility for the implementation of the relevant Security Council resolutions. However, the Security Council should also take into account the efforts and progress made by the Government of Iraq since 2003 in creating a stable nation, at peace with itself and its neighbours. It is important to recognize that the Iraq of today is very different from Iraq prior to 2003. It is my hope that the Security Council will consider this report with a view to taking appropriate decisions that would help Iraq to fulfil its outstanding obligations in a timely manner.

68. As the security situation in Iraq gradually improves, the focus in Iraq is rightly switching to the issues of service delivery, employment, reconstruction and development. The needs in Iraq are enormous and the Government of Iraq is faced with multiple priorities. I am grateful to all States that have already extended assistance to Iraq through debt reduction, direct aid, loans or grants, and encourage others to do the same as the outcome of these efforts will determine whether current gains in Iraq will translate into long-term stability. Iraq has an obligation to make contributions to the Compensation Fund under the relevant resolutions, contributions which it continues to make. At the same time, I have noted Iraq's request for the payment percentage to be lowered, if not eliminated altogether. In that regard, I strongly encourage Iraq and other stakeholders to actively discuss alternative solutions to the issue of outstanding compensation and debt payments, including through investments, in the mutual interest of Iraq's people and the region as a whole.

69. Through my regular reports to the Security Council, I have noted the progress achieved in Iraq since 2003. Gradually restoring Iraq to the international standing it enjoyed before 1990 is an extension of the same process. The United Nations and I personally remain ready to provide further assistance in this process, as requested by the Government of Iraq and as mandated by the Security Council.