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### REPORT OF THE SECRETARY-GENERAL ON THE RETURN OF KUWAITI PROPERTY SEIZED BY IRAQ

#### INTRODUCTION

1. The present report is submitted in pursuance of paragraph 2 (d) of Security Council resolution 686 (1991) of 2 March 1991, by which the Security Council demanded that Iraq immediately begin to return all Kuwaiti property seized by Iraq, the return to be completed in the shortest possible period; paragraph 15 of Security Council resolution 687 (1991) of 8 April 1991 by which the Council requested the Secretary-General to report to the Security Council on the steps taken to facilitate the return of all Kuwaiti property seized by Iraq, including a list of any property that Kuwait claims has not been returned or which has not been returned intact; and a letter from the President of the Security Council dated 25 January 1994 requesting a report on the return of all Kuwaiti property seized by Iraq.

#### I. ORGANIZATION

2. By his letter dated 19 March 1991 (S/22361), the President of the Security Council informed the Secretary-General that the members of the Security Council were of the view that the modalities for the return of property from Iraq in accordance with Security Council resolution 686 (1991) should be arranged through the Secretary-General's Office in consultation with the parties, and that that procedure also had the agreement of Iraq and Kuwait. In response, my predecessor informed the Security Council, in a letter to the President dated 26 March 1991 (S/22387), that he had designated Mr. J. Richard Foran, the Assistant Secretary-General, Office of General Services, Department of Administration and Management, as the official responsible for coordinating the return of property from Iraq to Kuwait. Following Mr. Foran's retirement from United Nations service, I designated Mr. Raymond Sommereyns, Director of the West Asia Division of the Department of Political Affairs, as Coordinator for the return of property.

3. The Coordinator has been assisted by a small group of United Nations staff members, including one who acts as his representative in the field. This core group has been augmented by staff members who have served for varying periods of time as members of the teams that facilitated the hand-over operations in Iraq and Kuwait.

4. The responsibility for returning the property rested with Iraq, while Kuwait was responsible for receiving it. The hand-over operations usually took place from Iraq to Kuwait with the United Nations acting as facilitator, registrar and certifier. At no time was the property in the custody of the United Nations.

5. The Government of Austria generously provided two senior experts from the National Bank of Austria, who acted as advisers on the return of property belonging to the Central Bank of Kuwait.

6. The operation has been financed with funds contributed to the escrow account established under the provisions of Security Council resolutions 706 (1991) and 778 (1992).

## II. ROLE OF THE COORDINATOR

7. The Coordinator has endeavoured to maintain a clear distinction between the mandate entrusted to him and that of the United Nations Compensation Commission.

8. The Coordinator's role has been one of receiving, registering and submitting to Iraq claims presented by Kuwait and facilitating the return of property which Iraq has declared that it has in its possession and is ready to return. Therefore, he has not considered it within the scope of his mandate to investigate or verify claims from Kuwait that specific property items were removed by Iraq or claims by Iraq that specific items were not removed or, if removed, were subsequently destroyed during the hostilities.

9. Members of the United Nations team registered the comments and remarks of the parties in cases where property items were returned in damaged condition. However, they were not involved in assessments as to the scope of the damage or where, when and how it might have occurred.

10. On some occasions, United Nations team members were shown pieces of property items by Iraqi authorities, which explained that they were pieces of items claimed by Kuwait that had been destroyed during the hostilities. With the exception of a few cases where the objects could be clearly identified by numbers or other distinctive markings, it was not possible to verify the authenticity of such information.

## III. MODALITIES

11. For want of a procedural precedent, the modalities required were developed specifically for this operation.

### A. Records

12. The need for a transparent and accurate system of record-keeping was recognized as an important element of a successful operation.

13. Initially, an attempt was made to create a computer programme that could be used uniformly for all commodities and that would provide information that would permit, inter alia, a comparison of claims received from Kuwait with deliveries made by Iraq. The system that was developed was used with some success during the first major hand-over operation, namely the return of the property of the Kuwait Central Bank which took place in Ar'ar, Saudi Arabia during the summer of 1991.

14. However, experience obtained in subsequent hand-over operations demonstrated that it would be difficult to develop a uniform system, since its successful use would require the receipt of data in a uniform manner for all commodities for which a claim was made. In many cases such information was difficult or impossible for Kuwait to provide, as most of its inventory records had been destroyed during the hostilities. On a number of occasions it was necessary to use lists provided by Iraq as the basis for recording the property being returned. Another obstacle was the fact that the lists submitted by the parties differed in format and detail. Records, therefore, had to be developed on a commodity-by-commodity basis, in a similar but not uniform way. This made it impossible to establish a detailed comparison between claims received and property returned.

15. The hand-over forms used in the operation were developed in consultation with the Office of the Legal Counsel. Subject to minor adjustments necessitated by the nature of a specific commodity, they have been used throughout the operation.

#### B. Procedures

16. After consultations with representatives of Iraq and Kuwait, the following procedural arrangements were agreed upon. With minor adjustments, they have been followed during the period of operations:

(a) A commodity-by-commodity approach would be followed;

(b) Kuwait would submit its claims to the Coordinator, who, after registering them, would forward them to Iraq for comments;

(c) When Iraq declared that property related to a specific claim, fully or in part, was in its possession and ready for delivery, the Coordinator, following consultation with the parties, would propose:

(i) The venue and time for the hand-over;

(ii) Procedures for delivery to the hand-over site, the on-site inspection, subsequent inspections at recognized technical institutions where that was deemed necessary, the recording procedure and arrangements for the final transportation of the property items to Kuwait;

(iii) Following approval of the suggested procedures by both parties, the final venue and date for the commencement of the hand-over transaction would be set;

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(d) At the time of delivery, members of a United Nations team would record the property delivered and prepare hand-over documents to be signed by the authorized representatives of both parties. These documents would reflect any comments and observations that the parties might wish to make relating to the property, such as its volume or state of repair. A United Nations team leader would then certify by signature that the hand-over had taken place in accordance with the agreed procedures;

(e) Custody of the property would remain with Iraq until the transfer document had been signed, at which time it would revert to Kuwait. At no time would the United Nations take custody of the property;

(f) For practical purposes, all procedures, both oral and in writing, would be carried out in the English language.

#### C. Venue

17. Hand-over operations were carried out at the following venues: a border station near the town of Ar'ar in Saudi Arabia, the use of which was generously provided by the Government of Saudi Arabia; Safwan, a town in southern Iraq; airfields in Iraq; locations in Baghdad; an airport in Amman generously made available by the Government of Jordan; and international waters of the Persian Gulf.

#### D. Transportation

18. Transportation of the property to the hand-over site has been the responsibility of Iraq, while responsibility for transportation from the hand-over site has rested with Kuwait.

19. The means of transportation have varied according to the type of property and its location. Aircraft that were deemed airworthy were handed over at Iraqi airports and airfields, from where they were flown to Kuwait. Sea-going vessels were towed by Iraqi tug-boats to a designated hand-over point in international waters in the Persian Gulf and from there to Kuwait by Kuwaiti tug-boats.

20. Many of the commodities were trucked by Iraq to sites in Ar'ar or Safwan, from where they were moved by vehicles provided by Kuwait. In a number of cases, however, sensitive items such as museum pieces and property belonging to the Kuwaiti Air Force were airlifted out of Iraq.

#### E. Inspection and examination

21. The responsibility for inspecting and examining the property items to be handed over has rested exclusively with Kuwait.

22. On most occasions, inspections took the form of a visual/technical examination at the hand-over site with the methods employed varying from commodity to commodity. For example, during the return of gold bars and museum

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objects, every item was carefully checked; while in the return of property belonging to a library, only items considered to be of special value or importance were checked individually with others being checked randomly. In some cases, only random checks were carried out, and the items were received and signed for based on the packing lists of each box, crate or container in which they arrived.

23. On a number of other occasions, the parties agreed that specific items such as sophisticated technical or electronic equipment would be subjected to inspections at specialized external institutions in addition to the on-site visual/technical examination that took place at the time of the hand-over. In such cases, the parties generally would agree that Kuwait was to submit the reports from those institutions within a given time frame for incorporation into the hand-over reports. It would also be agreed that the parties were to recognize those reports as the description of the property at the time of hand-over.

#### IV. SUMMARY OF THE HAND-OVER OPERATIONS

24. The decision of the Government of Iraq to return, pursuant to Security Council resolution 686 (1991), quantities of gold, Kuwaiti paper currency and civilian aircraft seized after 2 August 1990 was announced in identical letters dated 5 March 1991 (S/22330) from the Deputy Prime Minister of Iraq to the President of the Security Council and to my predecessor.

25. By letters addressed to the President of the Security Council on 14 March 1991 (S/22427) and to my predecessor on 20 March 1991 (S/22367), the Permanent Representative of Kuwait transmitted partial lists of Kuwaiti property belonging to libraries, the Central Bank of Kuwait, Kuwait Airways Corporation and the Ministry of Justice and Legal Affairs that had been seized by Iraq after 2 August 1990.

26. Following consultations with the parties in April and May 1991, it was agreed to give priority to the following categories: (a) gold, currency notes, commemorative and commercial coins and related items belonging to the Central Bank of Kuwait, (b) civilian aircraft and spare parts belonging to Kuwait Airways Corporation, (c) museum objects belonging to the Kuwait National Museum and (d) the Central Library of Kuwait.

27. At a later stage, arrangements were also made for the hand-over of properties belonging to the following Ministries of the Government of Kuwait: information, defence, transportation, oil, social affairs and labour, health, public works and communication. Properties belonging to the Kuwait News Agency, the Arab Institute for Planning and the Kuwait National Assembly were also handed over. While a number of claims were submitted, no private property has been returned to Kuwait as of this date.

28. A list of all the hand-over operations that have been carried out to date is contained in annex I.

29. The Coordinator is currently facilitating the return of a structurally damaged C-130 aircraft, which is to be disassembled at the Al-Suwaira airbase by aircraft engineers employed by a private company agreed upon by both parties. The aircraft will then be airlifted out of Iraq for assessment. Discussions are also under way for the return of the Free Art Studio Collection, 80 containers belonging to the Kuwait Airways Corporation and properties of the United Arab Maritime Navigation Company.

30. The Coordinator will continue to be available to the parties to facilitate the return of any other property for which Kuwait may wish to submit a claim. As required, this will be reflected in addenda to the present report.

#### V. OBSERVATIONS

31. Consultations with the parties prior to each hand-over operation required the Coordinator or his representative to act as mediator and communication link in the search for common ground that would lead to a solution acceptable to both sides. The lack of trust between the parties, the absence of a precedent for managing an operation of this kind and the long distances and less than satisfactory telecommunication and travel facilities all added to the complexity of the task. Fortunately, the Coordinator and his staff enjoyed the good will and cooperation of both Iraq and Kuwait throughout the operation.

32. On the whole, the hand-over operations were carried out without major complications, although some were time-consuming and presented considerable logistical problems. As an example, the hand-over of museum objects required two months to complete and entailed detailed inspections of each object as well as arrangements for the packing of some 60 tons of fragile items for transport over almost 100 kilometres of road from Baghdad to Habbaniya airfield, from where they were airlifted to Kuwait.

33. While it was not possible, for reasons already described, to develop a record system that would permit a comparison of deliveries made by Iraq with the claims that had been submitted by Kuwait, the records maintained by the Coordinator have a high degree of accuracy as to the property actually returned. This information will be augmented by Kuwait's list of property that has not been returned or which has not been returned intact, which will be submitted to the Security Council as an addendum to the present report in accordance with paragraph 15 of Security Council resolution 687 (1991).

34. The Coordinator's records of all commodities returned as well as the original hand-over documents will be available for inspection in the Department of Political Affairs.