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**HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS
AND REPRESENTATIVES**

The situation of human rights in Kuwait under Iraqi occupation

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the preliminary report on the situation of human rights in Kuwait under Iraqi occupation prepared by the Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1991/67 of 6 March 1991 and Economic and Social Council decision 1991/251 of 31 May 1991.

ANNEX

Preliminary report on the situation of human rights in Kuwait
under Iraqi occupation, prepared by Mr. Walter Kälin, Special
Rapporteur of the Commission on Human Rights in accordance
with Commission resolution 1991/67

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LETTER OF TRANSMITTAL

26 September 1991

Sir,

I should like to bring to your attention, attached herewith, my preliminary report on the situation of human rights in Kuwait under Iraqi occupation.

I prepared this report in my capacity as Special Rapporteur of the Commission on Human Rights in accordance with Commission resolution 1991/67. This resolution requested the Special Rapporteur "to examine the human rights violations committed in occupied Kuwait by the invading and occupying forces of Iraq" and to report to the Secretary-General as soon as possible and prepare a preliminary report for the General Assembly. The resolution further requested the Special Rapporteur to report to the Commission on Human Rights at its forty-eighth session.

The attached preliminary report presents the evaluation of my main findings regarding the violation of international human rights and their corresponding guarantees in international humanitarian law by Iraqi occupying forces in Kuwait. The relevant information for this report was mainly gathered during a first visit to Kuwait from 12 to 20 June 1991 and a second visit from 31 August to 6 September 1991.

Although preliminary in its nature, the attached report concludes with some recommendations regarding the fate of persons from Kuwait who are still missing. I should like to draw your attention to these recommendations and to invite you to take any necessary actions. I also would like to ask you to include this letter in my preliminary report to the General Assembly.

Yours sincerely,

Walter Kälin
Special Rapporteur on the
situation of human rights in
Kuwait under Iraqi occupation

His Excellency
Mr. Javier Pérez de Cuéllar
Secretary-General of the United Nations
New York

/...

I. INTRODUCTION

1. At its forty-seventh session the Commission on Human Rights adopted resolution 1991/67 of 6 March 1991, entitled the "Situation of human rights in Kuwait under Iraqi occupation". In that resolution, the Commission condemned the invasion and occupation of Kuwait on 2 August 1990 by military forces of Iraq and condemned "the Iraqi authorities and occupying forces for their grave violations of human rights against the Kuwaiti people and nationals of other States and in particular the acts of torture, arbitrary arrest, summary executions and disappearances in violation of the Charter of the United Nations, the International Covenants on Human Rights, and other relevant legal instruments". The Commission also expressed "its serious concern about the systematic destruction, dismantling and pillaging of the economic infrastructure of Kuwait, which seriously undermined the present and future enjoyment by the Kuwaiti people of their economic, social and cultural rights" and strongly condemned "the failure of Iraq to treat all prisoners of war and detained civilians in accordance with the international recognized principles of humanitarian law".

2. With resolution 1991/67 the Commission requested its Chairman, after consultation with the Bureau, to designate a Special Rapporteur "to examine the human rights violations committed in occupied Kuwait by the invading and occupying forces of Iraq". The Special Rapporteur was requested "to report as soon as possible to the General Assembly and the Commission on Human Rights at its forty-eighth session" and to prepare, as soon as possible, a preliminary report for transmittal to the Secretary-General.

3. At its first regular session of 1991, on 31 May, the Economic and Social Council adopted decision 1991/251 approving Commission resolution 1991/67.

4. The Chairman of the Commission on Human Rights, at its forty-seventh session, accordingly appointed Mr. Walter Kälin (Switzerland) as Special Rapporteur on the situation of human rights in Kuwait under Iraqi occupation.

5. This preliminary report is submitted to the Secretary-General of the United Nations for dissemination to all States Members of the United Nations in accordance with the provisions of paragraph 9 of Commission resolution 1991/67.

6. In section I, the present preliminary report describes the mandate of the Special Rapporteur and his activities, the events related to the invasion and occupation of Kuwait which may promote a better understanding of the situation of human rights during this period and the general legal framework upon which the Special Rapporteur based his report. Section II presents the evaluation of the main findings of the Special Rapporteur regarding the violation of international human rights and their corresponding guarantees in international humanitarian law. Section III discusses in more detail the ongoing problem of missing persons and section IV sets out some recommendations.

II. GENERAL BACKGROUND

A. The mandate of the Special Rapporteur and his activities

7. Commission resolution 1991/67 refers to human rights in a broad sense, mentioning civil and political rights as well as economic, social and cultural rights and principles of humanitarian law as embodied in the Charter of the United Nations, the International Covenants on Human Rights and other relevant legal instruments. Thus, the expression "human rights violations", in paragraph 9 of the resolution, determining the Special Rapporteur's mandate have to be understood in a broad sense so as to include all guarantees of international law for the protection of individuals relevant to the situation addressed by the mandate.

8. In other regards, the mandate of the Special Rapporteur, however, is limited. The clear wording of the resolution entitles the Special Rapporteur to examine human rights violations in Kuwait only if these were allegedly committed by Iraqi authorities. In this regard, it has to be noted that a draft resolution, 1/ containing proposed amendments to enlarge the scope of the Special Rapporteur's mandate so as to include the situation of human rights in Kuwait after the end of Iraqi occupation and to report on human rights violations allegedly committed by Kuwaiti authorities, was rejected by 32 votes to 2, with 5 abstentions. Therefore, the Special Rapporteur could not examine allegations which he received concerning arbitrary executions, enforced or involuntary disappearances, arbitrary arrests, unfair trials and large-scale expulsions and deportations of non-Kuwaitis which were reportedly committed in Kuwait after the withdrawal of Iraqi occupying forces. The Subcommission on Prevention of Discrimination and Protection of Minorities, by resolution 1991/7 adopted on 23 August 1991, 2/ expressed the hope that the Special Rapporteur would give due attention to alleged gross violations of human rights currently occurring in Kuwait and that he would inform the Commission of developments affecting the situation of human rights in Kuwait since the withdrawal of Iraqi forces. This resolution was carefully noted by the Special Rapporteur; however, taking into account the clear wording of the mandate adopted by the Commission on Human Rights, as well as the history of its adoption, he felt not entitled to include in this report observations concerning the present situation of human rights in Kuwait.

9. According to paragraph 9 of Commission resolution 1991/67 the Special Rapporteur is entitled only to examine human rights violations committed "in occupied Kuwait". However, the resolution also refers to "the abduction from Kuwait and the continued detention of prisoners of war and civilians" and asks for their immediate release (see preamble and para. 6). The Special Rapporteur, therefore, had to interpret this provision as meaning human rights violations having originated in occupied Kuwait; as a consequence, he also examined information concerning the fate of persons allegedly abducted from Kuwait by Iraqi forces during the occupation and detained in Iraq. It was furthermore agreed with the Special Rapporteur on the situation of human rights in Iraq that the question of such missing persons allegedly still detained in Iraq would be discussed in the present report.

10. The Special Rapporteur undertook a first visit to Kuwait from 12 to 20 June 1991 and a second visit from 31 August to 6 September 1991. During these visits he was received by the Ministers of Justice and the Interior, the Under-Secretaries for foreign affairs and for health and high officials of these respective ministries. He held talks with representatives of the Kuwaiti National Committee for Tracing POWs and Missing Persons, the Kuwaiti Red Crescent Society, the Kuwaiti Association for the Defence of Victims of War and the Kuwaiti Social Solidarity Fund for the Welfare of Martyrs and Prisoners of War, the University of Kuwait, the Kuwait Institute for Scientific Research and the Arab Bar Association. He also met with many other persons who remained in Kuwait during the occupation, including doctors, lawyers, religious leaders, members of the diplomatic community and journalists. In addition, the Special Rapporteur interviewed more than 80 victims or eye-witnesses of human rights violations allegedly committed by Iraqi occupying forces. He visited several sites relevant to his mandate, including former places of detention, looted and destroyed buildings, the principal cemetery, a camp for displaced persons at Abdali and burning oilfields. The Special Rapporteur further took note of the summary records of meetings of various United Nations bodies (including the Commission on Human Rights, the Subcommission on Prevention of Discrimination and Protection of Minorities and the Human Rights Committee) in which the human rights situation in Kuwait under Iraqi occupation has been discussed, and of reports provided to him by relevant specialized United Nations agencies, including UNICEF, WHO and UNEP. He also took into account statistical information on the registration and the repatriation of persons from Iraq to Kuwait provided to him by the International Committee of the Red Cross as well as reports prepared by non-governmental organizations.

B. Events relevant to the human rights situation in occupied Kuwait

11. On 17 July 1990, President Saddam Hussein, in a speech, accused the Kuwaiti royal family of damaging the Iraqi economy and thus forcing down the price of oil by exceeding its OPEC production quota. He also accused Kuwait of taking Iraqi crude oil worth 2.4 billion dollars from the Rumaila oilfield and stated that Iraq should be granted a 12 billion dollar write-off in war loans owed to Kuwait. On 31 July 1990, negotiations between representatives of Iraq and Kuwait were held in Jeddah; an agreement, however, was not reached.

12. On 2 August 1991, Iraqi forces invaded Kuwait. Iraq claimed that Kuwait had been "an integral part of Iraq until the First World War", and stated that it was reasserting its sovereignty over Kuwait which had been severed by the British colonial administration. Immediately following the invasion, Iraq set up a nine-man "Provisional Free Kuwait Government" headed by Colonel Ala Hussein Ali. On 8 August, the transitional Government was dismissed and Iraq claimed the annexation of Kuwait. On 28 August, it was announced that Kuwait's border area with Iraq was incorporated as an extension of the Province of Basra. The rest of Kuwait was declared to be the nineteenth Province of Iraq.

13. In September and October, Iraqi authorities issued several regulations aimed at the "Iraqization" of Kuwait: the Kuwaiti dinar which had earlier been declared at parity with the Iraqi dinar was abolished at the end of September. In October, Kuwaiti citizens were obliged to exchange their Kuwaiti identity papers and passports for Iraqi documents. Kuwaiti car-licence plates had to be replaced by Iraqi ones identifying Kuwait as an Iraqi province. Street names specific to Kuwait were changed.

14. Between 2 August 1990 and 29 November 1990, the United Nations Security Council adopted 12 resolutions concerning the occupation of Kuwait by Iraq (resolutions 660, 661, 662, 664, 665, 666, 667, 669, 670, 674, 677 and 678). Resolution 662 (1990) declared the annexation of Kuwait as null and void under international law; resolution 667 (1990) condemned all acts of aggression against foreign embassies and their nationals in Kuwait and called for the liberation of all foreign hostages; resolution 674 (1990) reminded Iraq of its responsibility under international law for all damages, losses or injuries suffered by Kuwait or third countries as a result of its illegal occupation of Kuwait; and resolution 678 (1990) authorized, as of 15 January 1991, the use of all means necessary to force compliance with these resolutions and to restore peace and security to the region.

15. On 16 January 1991, the coalition forces comprised of 26 States launched pre-emptive air strikes against Iraq. On 26 February 1991, Iraq began a complete and unconditional retreat from Kuwait.

16. During the whole period of Iraqi occupation of Kuwait, the Iraqi Government failed to respond to humanitarian appeals launched by various intergovernmental and non-governmental organizations, on behalf of victims of human rights violations, allegedly committed by Iraqi forces in Iraq and Kuwait.

17. The period between 2 August and 26 February 1991 can, for the purposes of analysing the human rights situation in Kuwait under Iraqi occupation, be divided into three periods each of which shows a different pattern of human rights violations: (a) the period of the invasion starting on 2 August and lasting only a few days until armed resistance by Kuwaiti armed forces ended and Iraqi occupying forces were installed; (b) The period of the ongoing occupation, i.e. the time between the middle of August and the middle of February 1991 which is characterized by continued active and passive resistance by citizens and residents of Kuwait aimed at combating and frustrating Iraq's policy of occupation and annexation of Kuwait, on the one hand, and the policy of the occupying forces, on the other hand, to break this resistance by different means including systematic human rights violations; in this period, organized dismantling of health services, educational and scientific institutions and other organizations took place; and (c) the period, starting on 19 February 1991, before the retreat began on 19 February 1991 when Iraqi occupying forces started mass arbitrary detentions and deportations to Iraq mainly of male Kuwaitis; during this period, important parts of the infrastructure of Kuwait were intentionally destroyed. The analysis undertaken throughout this report is based on these three

periods: the invasion, the ongoing occupation and the mass arrests starting on 19 February 1991.

C. Legal framework

18. The law applicable to the assessment of human rights violations committed by Iraqi occupying forces in Kuwait is comprised of guarantees both of international customary law and of treaty law binding upon Iraq.

19. Among the customary-law rules are those basic tenets of the 1948 Universal Declaration of Human Rights which have now gained world-wide customary acceptance as well as the guarantees of article 3 common to the four 1949 Geneva Conventions which, according to the International Court of Justice, reflect "elementary considerations of humanity" and therefore apply not only to conflicts of a non-international character but, as an expression of customary law, also to events of international armed conflicts (Nicaragua v. USA, Merits, ICJ Reports 1986, p. 114, para. 218). Common article 3 prohibits "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; ... taking of hostages; outrages upon personal dignity, in particular, humiliating and degrading treatment; [and] ... the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples".

20. The Covenants on Social, Economic and Cultural Rights and on Civil and Political Rights of 1966 codify and expand the guarantees of the Universal Declaration of Human Rights. Iraq became party to both covenants on 25 January 1971 and, therefore, was bound by them when it invaded and occupied Kuwait. In reference to the scope of application, the International Covenant on Economic, Social and Cultural Rights, unlike the Covenant on Civil and Political Rights, contains no limitations regarding jurisdiction or territoriality. The Covenant on Civil and Political Rights states in article 2 the obligation of each State Party "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant ...". Because of the illegal character of the invasion and annexation of Kuwait under international law (see Security Council resolutions 660 and 661) Kuwait never was "within the territory" of Iraq. However, according to the Human Rights Committee, established pursuant to part IV of the Covenant on Civil and Political Rights, the extraterritorial application of this Covenant is not barred when the alleged violations take place on foreign territory, provided that the perpetrator of the violations acting on foreign soil is an agent of the State Party concerned. 3/ The Committee, as the competent interpretive body of the terms and application of the Covenant, has in these cases established strong precedents for the extraterritorial applicability of the Covenant. The facts of the cases analysed by the Committee to establish this precedence are not distinguishable in essence from the case of human rights violations committed by Iraqi forces during the occupation of Kuwait - whether against Iraqi nationals or nationals

of other countries under Iraqi (de facto) jurisdiction. Thus, application of the Covenant to the situation of human rights in Kuwait under Iraqi occupation is in accordance with established precedence.

21. On 14 February 1956, Iraq became a State Party to the Geneva Conventions of 1949 undertaking to ensure respect for the present Conventions in all circumstances. Kuwait has been a State Party since 2 September 1967. All States members of the coalition forces are States Parties to the Conventions. The Geneva Conventions of 1949, according to common article 2, "shall apply to all cases of declared war or any other armed conflict which may arise between two or more High Contracting Parties, even if the state of war is not recognized by one of them". They "shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if said occupation meets with no armed resistance". Thus, Iraq was obligated to observe these laws of war during the invasion and occupation of Kuwait. Particularly relevant are the Third Geneva Convention of 1949 relative to the Treatment of Prisoners of War and the Fourth Geneva Convention of 1949 relative to the Protection of Civilian Persons in Time of War. The applicability of the Fourth Convention was explicitly recognized by Security Council resolution 674 (1990) and General Assembly resolution 45/170.

III. THE SITUATION OF HUMAN RIGHTS AND THE CORRESPONDING GUARANTEES OF INTERNATIONAL HUMANITARIAN LAW IN KUWAIT UNDER IRAQI OCCUPATION

A. Situation of civil and political rights

1. Prohibition of arbitrary arrest, detention and deportation

(a) Detention of prisoners of war

22. During the invasion of Kuwait and the first days following it, large numbers of members of Kuwaiti armed forces who were either Kuwaiti citizens or stateless residents of Kuwait (bedoun) were taken prisoners of war. They all were transferred to Iraq and detained there throughout the occupation. Other members of the Kuwaiti armed forces who were captured later during the period of occupation were interrogated in Kuwait and then transferred to Iraq where they were detained in camps reserved by Iraqi authorities for prisoners of war.

23. Among the camps reserved for prisoners of war were Al-Rasheed camp in Baghdad, Baqouba camp and camps in Ramadi, Takriti and Mossul. According to reports of former detainees, camp conditions were, especially during the first weeks, harsh because of lack of food and medical care. However, at least during the last months of 1990, prisoners of war were allowed to be visited by relatives and they consequently were able to receive money and food from them.

(b) Detention of civilians and their deportation to Iraq

24. Between the second half of August 1990 and the middle of February 1991, large numbers of civilians were arrested and detained by Iraqi occupying forces. Most of these persons were Kuwaiti citizens or stateless persons (bedoun) but they also comprised long-term residents from other Arab countries including persons of Palestinian origin, Egyptians, Jordanians, Saudis and Syrians. Three categories can be distinguished: (i) persons arrested when intelligence and army personnel came to their homes looking for them: such arrests were often carried out by members of Iraqi Intelligence. Most of the arrested civilians interviewed by the Special Rapporteur reported being arrested under such conditions; (ii) persons arrested at checkpoints set up by Iraqi occupying forces or on the street, after being identified as wanted persons; (iii) persons arrested pursuant to systematic searches of houses within certain districts of Kuwait City or other towns, especially when leaflets, communication equipment or weapons were found.

25. The following reasons for these arrests were reported: (i) belonging to Kuwaiti army and police forces or holding important posts in the Kuwaiti administration; (ii) being engaged in armed activities of the resistance; (iii) possessing arms or ammunition; or (iv) being involved with non-violent resistance activities including expressing opposition to the invasion and occupation or writing graffiti on walls or possessing and distributing tracts and leaflets.

26. In other cases persons who were just relatives or friends of suspects were detained together with the suspects or in lieu of them.

27. According to the testimony received by the Special Rapporteur, detained persons, in most cases, were first brought to sites set up as detention centres such as police stations, school buildings or abandoned houses taken over by Iraqi occupying forces. There they underwent a first interrogation. Some were released after a few days, sometimes after they or their relatives paid bribes. Most were then transferred to more permanent prisons and detention centres in Kuwait where interrogations continued. Interrogations focused on the activities either of the arrested persons or of their friends and relatives. Detainees were told to collaborate with the Iraqi occupying forces and to provide information. Often interrogations were accompanied by torture. Some detainees were then released, often after signing a pledge of allegiance to the Iraqi Government. Many of these persons also reported that in order to gain release their families were forced to pay bribes. In other cases detainees were executed after being tortured. Those who were neither released nor executed were normally deported to Iraq where they were transferred to large prisons or camps for detainees.

28. Interviewed persons consistently reported that those arrested did not have access to lawyers and were not allowed to contact their families, their lawyers or humanitarian organizations either in Kuwait or after deportation to Iraq. Former detainees also consistently reported harsh conditions of detention, especially during the first days and weeks, although conditions in

Iraq continued to be difficult. Cells were often overcrowded and detainees suffered from a lack of water, food and sanitation. Lack of medical care was also reported. It was alleged that, at least in some cases, these necessities were intentionally withheld.

(c) Mass arrests and deportations to Iraq after 19 February 1991

29. A special category of arrested and deported civilians consisted of male Kuwaiti citizens who were apprehended during mass arrests carried out by Iraqi occupying forces on 19 February and the following final days of the occupation. They were normally carried out at checkpoints or in front of mosques. Most of them were deported to Iraq where they were held in large camps. Consistently, former detainees mentioned harsh living conditions in overcrowded camps and reported having suffered from severe food deprivation, dirty drinking water, bad sanitary conditions and lack of proper medical care. There were also reports that detainees were beaten and abused by guards.

(d) Detention and deportation of foreigners

30. Before 2 August 1991, more than 1.3 million non-Kuwaitis were residing in Kuwait, including more than 9,000 citizens of the OECD countries. Persons belonging to that last category were ordered to report to Iraqi authorities on 16 August 1990. Subsequently they were, as has been extensively reported by governmental as well as non-governmental sources, deported to Iraq and obliged to remain there; some were detained at strategic sites and thus used as "human shields". The last of them left Iraq only in early December 1990. The number of citizens of OECD countries who were deported from Kuwait to Iraq and were not allowed to leave Iraq amounted, according to several reports, to several hundred, including women and children. No specific statistics were made available to the Special Rapporteur.

31. Other foreigners of Western origin went into hiding in Kuwait or lived there under false identity. Some of them were arrested and maltreated, among them a British instructor interviewed by the Special Rapporteur who reported having been subjected, inter alia, to mock executions after being arrested in January 1991.

32. One special situation was that of some of the diplomatic and consular staff present in Kuwait at the time of the invasion. After, in violation of the relevant rules of international law, Iraq had ordered all embassies to close until 24 August 1990, members of diplomatic and consular missions of States supporting the coalition forces who did not leave were confined to embassy compounds until 16 December 1990.

(e) Quantitative aspects

33. According to figures provided by the International Committee of the Red Cross (ICRC) to the Special Rapporteur, a total of 4,219 prisoners of war have so far been registered; 4,178 prisoners of war, most of whom were arrested at the time of the invasion, were repatriated from Iraq to Kuwait in March and

early April 1991; 41 additional prisoners of war returned to Kuwait between 28 April and 11 September 1991. The actual number of prisoners of war might be somewhat higher because at least some of the still missing persons (see *infra*, para. 96) could belong to this category.

34. It was not possible for the Special Rapporteur to determine the number of civilian persons who were arrested during the period of the ongoing occupation. However, ICRC has registered and repatriated 935 civilian internees who were detained in Iraq in March 1991. The actual number of persons arrested during the period of occupation is, however, much higher because this figure does not include those released from detention sites in Kuwait and Iraq before 26 February 1991, nor those still detained in Kuwait on that date. It should be noted that reports concerning short-term detentions were numerous. These reports are corroborated by the fact that the number of detention sites throughout Kuwait during the Iraqi occupation was high (more details will be made available in the Special Rapporteur's final report to the Commission on Human Rights), allowing for the short-term detention of large waves of persons at any given time. For this reason, the Special Rapporteur cannot report on exact numbers, but the number of civilians arrested during the period of occupation probably amounted to several thousands. It can be estimated that more than 1,000 of them were deported to Iraq.

35. The 1,174 Kuwaiti men apprehended during the mass arrests in February 1991 and deported to Iraq were repatriated from Basra in an operation which was organized without the participation of ICRC on 7 March 1991, but this number does not include all the victims of the mass arrests of 19 February 1991 and the following days. According to information received by the Special Rapporteur from former detainees and other sources, an unknown number of them returned on their own from detention sites in southern Iraq. Other men arrested on the same occasion were transferred to detention sites in central or northern Iraq and were repatriated together with civilian internees who had been deported to Iraq on earlier dates (see the preceding para. 34). Furthermore, some of them may still be among the missing persons. The Special Rapporteur is of the opinion that at least 2,000 male Kuwaiti citizens were arrested on 19 February 1991 and the following days and deported to Iraq.

(f) Legal assessment

36. The information made available to the Special Rapporteur allows drawing the conclusion that Iraq has not only violated the provisions concerning the prohibition of arbitrary arrest, detention and deportation laid down in article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights but also other obligations.

37. Under the Third Geneva Convention, the Detaining Power is allowed to subject prisoners of war to internment and to transfer them as prisoners of war to its own territory for the purposes of providing adequate detention (article 21). Thus the detention of members of the Kuwaiti armed forces in Iraqi camps was not prohibited. However, there are strong reasons to believe

that the treatment of such prisoners of war repeatedly violated the obligations of the Convention regarding conditions of detention.

38. The Fourth Geneva Convention, under certain restrictive conditions, entitles an Occupying Power to intern protected civilians. However, the mass, arbitrary or prolonged detention of civilians in many cases was not justified even in terms of military necessity, particularly in the light of articles 41 to 43, 68 and 78 of the Fourth Convention. In a large majority of cases detentions were carried out in total violation of the procedural rights set out in these articles. The deportation of civilians to Iraq clearly violated the prohibition of article 48 of the Convention to transfer and deport civilians from the occupied territory to the territory of the Occupying Power. Using civilians from Western countries who had resided in Kuwait as human shields at strategic sites in Iraq constituted a severe violation of article 28.

39. Confining diplomatic and consular staff to the compounds of their embassies not only violated the 1961 Vienna Convention on Diplomatic Relations and other relevant provisions of international law but also basic principles of human rights. The International Court of Justice held, in a comparable context, that "wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible ... with the fundamental principles enunciated in the Universal Declaration of Human Rights" (USA v. Iran, Merits, ICJ Reports 1980, p. 42, para. 91).

2. Prohibition of torture and cruel, inhuman and degrading treatment

(a) Patterns

40. According to several reports, at least some members of the Kuwaiti armed forces were tortured in Kuwait after they were captured as prisoners of war, but the information available does not indicate that such incidents were of a systematic nature. All prisoners of war were then taken to camps in Iraq where the conditions of detention were often reported to be harsh: prisoners were verbally abused and sometimes degraded, and suffered from the lack of food and poor hygienic conditions. However, with a few exceptions, incidents of systematic torture in the context of interrogations were not reported.

41. It appears from the testimony received by the Special Rapporteur that most victims of torture were arrested during the period of the ongoing occupation, i.e. between the second half of August 1990 and the first half of February 1991. Of those tortured most were suspected by Iraqi occupying forces of being members of the Kuwaiti resistance. Some persons were tortured because they had expressed their opinions, e.g. by distributing leaflets. Most of these cases followed the same pattern:

- (i) After apprehension, these persons were normally first brought to a police station or another building set up as a detention site. There, arrested persons underwent a first interrogation during which most of them, reportedly, were heavily beaten or even severely tortured;
- (ii) Detainees were then transferred to a prison or special interrogation centre in Kuwait where most of them underwent further interrogation. These interrogations, allegedly, were routinely accompanied by more heavy beatings or severe torture over a period of several days or even weeks. Among the larger detention centres in Kuwait, where apprehended persons were brought for systematic interrogation and torture, are the juvenile prison (Sijn Al Adath) in Firdous, Nayef Palace (city governorate) in central Kuwait, Al-Mashatel experimental farm in Rabiah and the building of the Iraqi Embassy;
- (iii) Some detainees remained at these places for prolonged periods, some were released and others were taken to prisons and detention camps in Iraq. Especially for those who had not admitted guilt or refused to give the information requested from them, torture was said to have continued even after deportation to Iraq. Persons deported to Iraq reported, inter alia, frequent cases of torture at Basra State security prison and Abu Ghraib and Samawah prisons.

42. Persons arrested during the mass arrests starting on 19 February 1991 reported that they were beaten and suffered from harsh conditions of detention. There were, however, only sporadic reports of interrogations accompanied by torture.

(b) Methods

43. According to testimony received by the Special Rapporteur from victims and eye-witnesses, as well as photographic evidence and expert medical opinions, the reported methods of torture were manifold. The most common method was said to have been heavy beatings on all parts of the body; instruments used included sticks, metal rods, clubs, whips, rifle butts and steel cables. In some cases beatings of this kind caused severe injuries including broken bones. Often beatings included falaga, i.e. prolonged beating on the soles of the feet. The use of electroshocks was frequent. Another frequent form of torture was suspending detainees, sometimes for prolonged periods, by the feet, the arms, the chest or the waist; they were often beaten while suspended. There is evidence of numerous cases of burning of various parts of the body, normally with cigarettes but sometimes also with high-voltage electricity, boiling water or domestic appliances. The pulling out of nails was, allegedly, another form of torture repeatedly used. Other methods included sexual torture. Several ex-detainees interviewed by the Special Rapporteur reported the rape of females and males, sometimes in front of other detainees. Among those executed many bodies demonstrate severe mutilations; according to photographic evidence the torture included gouging

of eyes and cutting-off of ears and tongues. This evidence also suggests that in some cases acid was used to torture and perhaps to execute persons.

44. There were also many accounts of psychological torture, including threats to torture or rape relatives, forcing persons to watch the execution or torture of other detainees or even of relatives, coerced participation in Russian roulette, and mock executions or threats of execution.

45. Reportedly, prison conditions not constituting torture often amounted to cruel, inhuman and degrading treatment. Former detainees consistently reported the lack of food and water or the deprivation of toilet and washing facilities; there were also many accounts of deprivation of medical treatment.

(c) Assessment

46. The available information shows a pattern of widespread and systematic violations, by Iraqi occupying forces, of the prohibition of torture and cruel, inhuman and degrading treatment as embodied, inter alia, in article 5 of the Universal Declaration of Human Rights, article 7 of the Covenant on Civil and Political Rights and the corresponding provisions of the Geneva Conventions. Whereas torture of prisoners of war, captured at the time of the invasion, and of male Kuwaiti citizens apprehended during the mass arrests in February 1991, appears to have been less frequent, it can be assumed that torture was systematically used during interrogations of those arrested during the period of occupation. The most brutal forms of torture were reported in cases of persons suspected of belonging to the resistance.

47. Conditions of detention both in Kuwait and Iraq often amounted to cruel, inhuman and degrading treatment.

48. In numerous cases, torture and inhuman, cruel or degrading treatment resulted in permanent physical or mental damage. Medical and psychiatric reports made available to the Special Rapporteur show that former victims of torture still suffer, inter alia, from partial paralysis, pains, severe forms of depression, sleep disturbances and nightmares, severe anxiety, partial amnesia and inability to concentrate often requiring medical and psychological care. The long-term consequences of rape in the cultural context of Kuwait must also be highlighted.

3. Right to life and prohibition of arbitrary and summary execution

(a) Executions

49. Casualties were apparently numerous when Kuwait exercised its inherent right of self-defence in accordance with Article 51 of the Charter. Regardless of the illegal character of the invasion and occupation of Kuwait by Iraq, casualties during combat and other armed actions do not as such, according to present international law, amount to human rights violations.

/...

The Special Rapporteur, however, received many reports of violations of the right to life in situations hors de combat and in the context of detentions during the period of occupation.

50. The Special Rapporteur received some information concerning arbitrary executions of persons who were captured as prisoners of war at the time of the invasion and shot when they refused to answer questions. However, reports of this kind were few and the available information does not allow drawing the conclusion that such actions were systematic.

51. Cases of arbitrary executions were reported to have most frequently occurred in the context of arrests and searches during the ongoing occupation. Most persons who were executed during that time were reported to have been active members of the resistance; such persons were especially at risk, regardless of their nationality. Executed persons also included some medical personnel and religious leaders who might also have been suspected of supporting the resistance.

52. Starting in September 1991, bodies of persons who had been arrested earlier by Iraqi occupying forces were delivered to several Kuwaiti hospitals or were found lying in the streets or other places and were subsequently brought by residents of Kuwait to hospitals or the offices of the Kuwaiti Red Crescent Society. This has been confirmed by several doctors who at that time were working at different hospitals.

53. Other persons, after they had been detained for some time, were brought to their family home and, as was reported to the Special Rapporteur by several eye-witnesses of such events, shot by Iraqi occupying forces in front of their relatives including mothers, wives and minor children. A first wave of such executions started in September 1990 and lasted several weeks. Executions in front of families also took place in January and February 1991.

54. The bodies of executed persons were also often left on streets and other public places. Repeatedly Iraqi occupying forces ordered that corpses of executed persons were to be left in public places for several days.

(b) The death penalty

55. The available information makes it highly unlikely that many persons whose execution had been ordered had any sort of trial. However, there was a limited number of reports about some kind of trial taking place before - what interviewed persons described as - a "committee court" consisting of three members in civilian clothes. In the few cases where reports about trials resulting in the death penalty were available, procedural rights of the accused were said to have been seriously curtailed. In one case, the accused reported that he was only permitted to answer questions asked by the court but could not defend himself. In another case an Iraqi defence counsel was present but he did not say anything. Both victims had been tortured during the pre-trial period and they had neither an opportunity to present witnesses nor the possibility to appeal against the conviction.

56. Another category of death sentences is constituted by those carried out on the basis of decrees issued in August 1990 by Iraq's Revolutionary Command Council reportedly introducing the death penalty for the hoarding of food for commercial purposes, for looting and for harbouring Western nationals. Some executions for looting were officially confirmed by Iraqi authorities or reported by Iraqi television or newspapers; among the executed persons were Iraqi, Kuwaiti, Egyptian and Syrian nationals. It is impossible to determine whether these death sentences were imposed after fair trial.

(c) Deaths occurring during detention in Iraq

57. Some reports indicate that deaths occurred on several occasions during detention of prisoners of war or of deported civilians in Iraq which were due to the conditions of detention or to maltreatment by guards. The exact number of deaths during detention in Iraq cannot be determined because Iraq failed to register and report such cases and because it is still unknown how many persons remain in Iraqi detention.

(d) Violations of the right to life in the context of violations of the freedom of expression

58. The right to life was also said to have been violated when citizens and residents of Kuwait peacefully expressed their political opinion. A widely reported incident, for instance, happened on 8 August 1990 near Mubarak Hospital in Jabriyah when two persons were killed by Iraqi occupying forces, and others, including children, sustained severe injuries while participating in a peaceful demonstration. According to some reports, during the same period several young men were arbitrarily executed when apprehended while writing or spraying anti-Iraqi slogans on walls. At the end of September 1990, for instance, one of the witnesses interviewed by the Special Rapporteur saw the bodies of two teenage boys lying on a street in Mishrif. Reportedly they had been executed in front of their families for this reason.

(e) Assessment

59. Reports and other information available to the Special Rapporteur demonstrate a pattern of deliberate and grave violation of the right to life, as set out under article 3 of the Universal Declaration of Human Rights and article 6 of the International Covenant on Civil and Political Rights, and the corresponding guarantees under the law of armed conflicts. Even taking into account that losses of life during Kuwait's occupation by Iraq are partially due to the situation of armed conflict, there is ample evidence of widespread arbitrary and summary executions. It was reported by eye-witnesses that persons were often executed after being tortured and that this often reportedly happened without trial. Where trials took place they did not correspond to the relevant fundamental guarantees of fair trial, including those applicable in times of war. Executions in public or in front of families or the exposure of dead bodies in public were carried out for the purpose of spreading terror among the civilian population. In other cases deaths were due to poor conditions in places of detention both in Kuwait and Iraq, including the brutal behaviour of guards and lack of proper medical care.

60. On the basis of the information available to the Special Rapporteur it is not possible to determine the number of persons who had been killed or executed in violation of the right to life under human rights law and the corresponding guarantees of the law of armed conflicts. On the one hand, in some cases the specific circumstances leading to death are not known. On the other hand, Iraq, in violation of its obligations under article 101 of the Third Geneva Convention and article 75 of the Fourth, did not report death sentences imposed on prisoners of war and detained civilians nor did it issue death certificates for persons deceased while in detention as is required by article 120 of the Third Geneva Convention and article 129 of the Fourth. Therefore, it is impossible to determine how many of the still missing persons were killed by Iraqi forces.

61. However, some evidence concerning the total amount of the number of citizens and residents of Kuwait who were killed during the time of occupation is now available, pending verification of the fate of the still missing persons. A list established by the Kuwaiti National Committee for Tracing POWs and Missing Persons contains 130 names and addresses of executed persons. A list of killed persons whose names were reported to the Kuwaiti Association for the Defence of Victims of War by the families of the victims contains 314 names, of whom 81 were reported to have been executed. The Kuwaiti Social Solidarity Fund for the Welfare of Martyrs and Prisoners of War provided to the Special Rapporteur the names of approximately 340 deceased persons whose cases had been registered by members of their families; an estimated 20 per cent of them had been executed. In addition, the Special Rapporteur received 107 photographs of allegedly executed persons, most of whom have not been identified thus far.

62. The Special Rapporteur concludes that hundreds of persons lost their lives as a consequence of executions and other activities by Iraqi occupying forces in violation of the right to life protected by article 6 of the International Covenant on Civil and Political Rights and the corresponding guarantees under the law of armed conflict, including common article 3 of the four 1949 Geneva Conventions. This number may be considerably higher if it turns out that some of the still missing persons reported to have been arrested by Iraqi forces and detained in Iraq have been executed.

4. Special protection of children and women

(a) Children and minors

63. Children and minors under the age of 18 also became victims of human rights violations committed by Iraqi occupying forces. Teenagers were arrested and, as reported by several interviewees, sometimes even tortured. Some minors were deported to Iraq and young children were detained together with their mothers at least for periods of several days or even weeks. On the list of missing persons established by the Kuwaiti National Committee for Tracing POWs and Missing Persons are the names of 131 children under the age of 12.

64. Other minors were allegedly executed, mainly because they had sprayed anti-Iraqi slogans on walls during the first few weeks after the invasion. (For deaths of premature infants reportedly taken from incubators and other infant-mortality statistics, see infra para. 83.)

65. Numerous children suffered traumatic effects from events related to human rights violations. A preliminary study, conducted by a UNICEF mission to Kuwait from 1 to 4 March 1991 (Dr. James Garbarino), indicated that more than 60 per cent of interviewed children reported such experiences as having seen bodies hanging from lamp posts, lying in the streets or having witnessed the arrest of close relatives. Some children's parents and other close relatives were reportedly either killed or are still missing. Because of the long-term psychological effects from such experiences, UNICEF is planning a programme for the treatment of such children in collaboration with the Kuwaiti Ministry of Health.

66. It can be concluded that a considerable number of children and minors became victims of serious human rights violations committed by Iraqi occupying forces, including arbitrary arrest, deportation, torture and cruel, inhuman and degrading treatment as well as violations of the right to life. In addition, many children suffered from "measures of intimidation or from acts of terrorism" directed against the civilian population as prohibited by article 33 of the Fourth Geneva Convention.

(b) Women

67. Among the detained, deported or tortured are considerable numbers of women, some of whom were interviewed by the Special Rapporteur. Most were suspected of participating in the resistance. Others were killed when demonstrators were attacked by Iraqi occupying forces. Although less frequently than men, women too became victims of some of the most serious human rights violations.

68. In addition, women suffered especially from rape. According to the information received and the interviews conducted by the Special Rapporteur the following categories of rape cases can be distinguished: (i) rape of foreign women by Iraqi soldiers during the first two weeks of the occupation, most of whom were young women of Asian origin; (ii) rape of women during house searches by Iraqi army personnel, sometimes in front of close relatives; (iii) rape of women reportedly abducted for that purpose from checkpoints or from the street; (iv) rape of women used as a method of torture. Some male detainees also reported that during torture sessions they were forced to watch women being raped by Iraqi military personnel.

7. The available information does not allow for a quantitative assessment of rape cases. However, several doctors from Kuwaiti hospitals told the Special Rapporteur that they had examined and treated, before and after the country's liberation, considerable numbers of victims of rape by Iraqis, among them numerous women who reported pregnancy as a result.

70. Rapes committed by members of Iraqi occupying forces during the exercise of official tasks and functions, especially in the context of house searches or interrogations in detention, can be considered to constitute torture and cruel, inhuman or degrading treatment. In other cases, where members of Iraqi armed forces committed rapes outside of their official functions, Iraq violated its duty, under article 27 of the Fourth Geneva Convention, to protect women "against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault".

5. Other rights

71. Information on the situation of other human rights, including denial of the freedom to leave one's country and to return and the freedom of religion, of expression and of assembly, will be discussed in the final report to be submitted by the Special Rapporteur to the Commission on Human Rights.

B. Situation of economic, social and cultural rights

1. The right to enjoy the highest attainable standard of health

72. The Special Rapporteur received extensive allegations concerning the right to health, most of them related to the fact that the level of health care, which was comparable to that of the most highly industrialized countries, was severely reduced as a consequence of the occupation. This reduction was caused by (i) the departure of large numbers of health professionals, especially of nurses and doctors; (ii) the closing, dismantling and pillaging of health facilities; and (iii) the denial of access to hospitals. These factors lead, inter alia, to a sharp increase of mortality in health-care institutions.

73. In addition, concern was expressed during the visits of the Special Rapporteur to Kuwait that the environmental consequences of burning oilfields and polluted sea water might cause, in a long-term perspective, serious consequences for the health of the population of Kuwait including that of future generations.

(a) Intimidation of health professionals

74. The invasion and occupation of Kuwait caused the departure of large numbers of health professionals most of whom were foreign nationals. According to a WHO report, the number of health professionals shrank to about 20 per cent of its previous level.

75. Whereas some of these persons left Kuwait voluntarily, intimidation of medical personnel by Iraqi occupying forces contributed considerably to the reduction of staff. Nurses, in particular, were threatened and it was reported that several had been raped by Iraqi forces. Allegedly such

incidents happened, for example, at the nurses hostel on the Al-Sabah complex, leading to the exodus of large numbers of Asian nurses. One doctor from the cancer centre at Al-Sabah medical complex was allegedly summarily executed by Iraqi military. The Special Rapporteur was informed that, after this incident, more than 50 per cent of the remaining staff left. One medical worker of foreign nationality from the Ibn Sina Hospital is reportedly still missing. Another staff member was allegedly shot and left paraplegic. Nine staff members from this same hospital were allegedly detained, including one Palestinian who was reportedly tortured for two days before being released. The Special Rapporteur was also informed that at Mubarak hospital, among other reasons, the arrest of three nurses in early October 1990, who were subsequently detained for three days because they had demonstrated against the occupation, led to a heavy exodus of nurses. Thus, out of 538 nurses present at the time of the invasion on 2 August 1990 only about 100 remained in November; in January 1991 the number fell to approximately 70.

(b) Closing, dismantling and pillaging of health facilities

76. Before the invasion of Kuwait by Iraqi forces, six regional and nine specialized hospitals as well as 72 health centres were operating throughout the country. After the withdrawal of Iraqi forces, according to a WHO report, one regional hospital was closed due to a shortage of nursing personnel, electricity and water. The others operated at 10 to 20 per cent of their original capacity. Only eleven of the 72 health centres remained operational, but with reduced staff.

77. Some health services were dismantled and technical equipment was transferred to Iraq by order of the occupation authorities. Among them was the pillaged organ-transplant centre, which was shown to the Special Rapporteur, during his first visit. Other examples are the large number of dental chairs and ambulances transferred to Iraq.

(c) Denial of access to hospitals

78. Access to those health-care services still operating was not systematically denied by Iraqi occupying forces. However, several restrictions made access very difficult, at least for some persons. The Special Rapporteur was informed that, in the autumn of 1990 when the population of Kuwait had to exchange Kuwaiti identity documents for Iraqi documents, during a period of several days access to medical facilities was denied to persons who refused to comply with this order. Restrictions on prescription drugs were imposed by Iraqi orders making access to these drugs very difficult, if not impossible, creating particular hardship for chronic-care patients.

79. Curfew hours also limited access to medical facilities, as did a generalized fear to transit the city. There were allegations that ambulance drivers were repeatedly harassed and shot at during curfew hours.

80. Selectivity as regards who was to receive treatment was reported. It was alleged that medical staff was forced to treat Iraqi armed forces and forbidden to treat Kuwaiti soldiers or members of the resistance.

(d) Consequences

81. All these factors, especially the departure of doctors and nurses but also the removal of equipment and the repeated cutting-off of supplies and electric power, caused a reduction in sanitary conditions and nutritional care. These were indicated as major factors contributing to deaths particularly of infants, the aged and mentally or physically handicapped patients.

82. According to statistics made available to the Special Rapporteur, death rates increased considerably for patients from 0 to 50 years. Infection, dehydration and uncontrolled diabetes and hypertension were the leading causes of death in several previously modern, well-equipped hospitals including the Maternity Hospital, Al-Razi, Ibn Sina, Al-Farwania, the Psychiatric Hospital and the Social Rehabilitation Centre.

83. In reports published during the period of ongoing occupation, allegations were made that members of Iraqi occupying forces had killed premature babies by taking them out of incubators. As regards incubator-infant mortality, reports received by the Special Rapporteur during his visits in Kuwait were consistent in stating that from 75 to 125 infants, most of them born at Al-Sabah Maternity Hospital, had died during the month of September 1991 and were buried in Al-Riqqa cemetery. However, the Special Rapporteur received conflicting information concerning the causes of these deaths. There were some allegations that members of the Iraqi occupying forces had removed at least some of these babies from incubators. The Special Rapporteur, however, was not able to interview any eye-witnesses. Others claimed that Iraqi occupying forces had ordered the closing of one of two wards with incubators at the Maternity Hospital and that incubators were taken away but brought back later. According to other information, the deaths of premature infants were mainly due to a lack of staff and the repeated cutting-off of water and electricity which made it impossible to provide the premature babies with proper intensive care. The divergence of information provided to the Special Rapporteur does not allow drawing any final conclusions concerning the deaths of these infants. Exhumation and autopsy of their bodies by a forensic team might help to elucidate their fate.

(e) Assessment

84. Even taking into account the fact that less medical care was needed during the period of occupation because large numbers of the population had left Kuwait, as well as the difficulties of the situation after the beginning of aerial bombardments, it can be concluded from the available information that the right of everyone to enjoy the highest attainable standard of health, as guaranteed by article 12 of the Covenant on Economic, Social and Cultural Rights and the corresponding guarantees of the Fourth Geneva Convention,

particularly articles 55 to 59, were seriously curtailed in several respects by the occupying forces.

85. An analysis of the consequences of environmental damage caused by burning oil wells and polluted sea-water and their impact on the right to health will be provided by the Special Rapporteur in his final report to be submitted to the Commission on Human Rights for consideration in February 1992.

2. Prohibition of destruction, dismantling and pillaging of infrastructure and property

86. The Special Rapporteur received much information on the destruction, dismantling and pillaging of infrastructure and of public and private property. Such actions are prohibited by article 33 of the Fourth Geneva Convention and other relevant instruments. Details of the Special Rapporteur's findings will be discussed in his final report. For the purposes of this preliminary report it might be sufficient to describe the most important categories.

87. Written orders were given by the highest Iraqi authorities to, inter alia, confiscate and transfer all movable property to Iraq and to dismantle and transfer immovable property belonging to any member of the Al-Sabah family. Orders were also given to transfer property to Iraq, including libraries and research-data from educational and scientific institutions, technical equipment from hospitals and manuscripts and works of art from cultural institutions including museums. The Special Rapporteur received allegations that in some cases teams of specialists from Iraq dismantled technical and other equipment according to lists and orders emanating from the high command.

88. On several occasions houses of arrested persons were looted or even destroyed for the purpose of reprisals.

89. According to allegations, pillaging often took place during systematic searches of houses and city districts.

90. The Special Rapporteur received official Iraqi documents found after Iraqi withdrawal attesting to the fact that police and traffic control units robbed shops by closing off roads and firing shots to clear the streets until the robberies were over but, according to other official Iraqi documents also received by the Special Rapporteur, these actions were taken independently by members of the occupying forces and were repudiated by the Security High Command.

91. During the period of the ongoing occupation, houses, apartments, offices, shops, warehouses and similar places which were untended because their owners had left the country or were in hiding, were looted by individuals both from among Iraqi occupying forces and from the civilian population residing in Kuwait.

92. Before their retreat, Iraqi occupying forces systematically destroyed public and private buildings such as offices or large hotels, industrial installations including those of Kuwait's oil industry and installations such as electrical power plants.

93. Finally, reports were received describing the pillaging by Iraqi forces of persons leaving Kuwait during the occupation. Persons were allegedly systematically stripped of all possessions at the border. Among them were many foreign nationals including women, particularly from Asian countries.

3. Other rights

94. The situation of other economic, social and cultural rights including the right to food and the right to education will be discussed in the final report of the Special Rapporteur to be submitted to the Commission on Human Rights for consideration in February 1992.

IV. THE PROBLEM OF MISSING PERSONS

A. Evaluation of facts

1. Figures

95. An original list established in March 1991 contained more than 11,700 names ^{4/}. After the large-scale repatriations of prisoners of war and civilian internees in late March and early April 1991 and the unregistered reunion of families who had been separated during the period of occupation, the number of missing persons decreased considerably. During his first visit in June the Special Rapporteur was informed that, as of June, more than 3,800 persons were still missing.

96. During his second visit, the Special Rapporteur received from the Ministry of Justice a computerized list, dated 5 August 1991, which was prepared by the Kuwaiti National Committee for Tracing POWs and Missing Persons (formerly the Kuwaiti Human Rights Committee). This list contains the names, years of birth and nationality of 2,472 missing persons. According to this document, these persons include 1,835 Kuwaiti citizens, 442 stateless residents of Kuwait (bedoun), 2 nationals of the United Arab Emirates, 66 Saudis, 35 Egyptians, 18 Syrians, 17 stateless persons, 14 Lebanese, 13 Indians, 12 Iranians, 7 Filipinos, 4 Pakistanis, 3 Bahrainis, 2 Omanis, 1 Somalian and 1 Sri Lankan.

97. The decrease from the number given in June (3,800) to that received during the second visit in early September (2,472) can be explained only to a very limited extent by the return or reappearance of formerly missing persons. The reduction is partially due to the fact that some duplicated names were omitted in the meantime. The principal reason, however, is the fact that, according to information provided by representatives of the

Ministry of Justice, approximately 1,000 individuals were omitted from the list because their cases were no longer considered to be of concern to the Government of Kuwait. These cases include primarily: (i) stateless residents of Kuwait (bedoun) who had not been employed by the Government of Kuwait; (ii) Jordanian citizens including those of Palestinian origin; and (iii) other Palestinians. This means that the number of actually missing persons is higher than that on the list established by the Kuwaiti National Committee for Tracing POWs and Missing Persons and might be close to 3,500.

98. At a meeting convened during the Special Rapporteur's first visit by the Kuwaiti Ministry of Foreign Affairs and chaired by the dean of the diplomatic community, several ambassadors from Asian countries mentioned that large numbers of their citizens living in Kuwait at the time of the invasion were still missing. The Special Rapporteur, however, was not provided with any detailed and specific information on these cases.

99. Finally it should be noted that, between early April and 18 August 1991, ICRC registered in Iraq 3,506 names of civilians, civilian internees and prisoners of war who wish to return to Kuwait. Thus far, from among these persons, 41 prisoners of war, 53 civilian internees and 112 civilians were authorized by Kuwaiti authorities to return. During his second visit to Kuwait, the Special Rapporteur was informed by representatives of the Kuwaiti Ministry of Justice that, in considering the 2,472 persons on the list established by the Kuwaiti National Committee for Tracing POWs and Missing Persons and the 3,506 names provided by ICRC, there are few overlappings of names of persons. In commenting upon the list provided by ICRC, the representatives of the Ministry of Justice claimed that about 2,900 persons out of the 3,506 names belonged to families of stateless persons (bedoun) who voluntarily went to Iraq during the period of occupation because they had close ties to that country, and that among the other 600 persons on the list provided by ICRC only some might have been detained by Iraqi occupying forces.

2. Evaluation of the list established by the Kuwaiti National Committee for Tracing POWs and Missing Persons

100. The list of 5 August 1991 containing 2,472 names of missing persons, prepared by the Kuwaiti National Committee for Tracing POWs and Missing Persons, was established on the basis of information provided by relatives. This registration started shortly after the Iraqi withdrawal from Kuwait and a special centre was set up for that purpose. During his first visit to Kuwait the registration was still proceeding and the Special Rapporteur therefore visited the registration centre on several occasions. There he not only revealed information on the details of the registration procedures, e.g. the requirements for registering relatives to provide some kind of evidence regarding the identity of the missing person concerned, but he also witnessed how the registration proceeded and how the information was processed. Therefore, there are no indications that the list contains any names of persons other than those actually registered by their relatives.

101. When relatives registered someone as missing they were asked why these persons did not return. Their answers were divided into four categories and these categories are identified by the last digit of the registration number given for each individual: digit 1 means that the persons had been registered as killed; digit 2 designates those who were reported to have been arrested by Iraqi occupying forces; digit 3 stands for persons who were thought to have been outside Kuwait during the occupation or at the moment of the outbreak of armed conflict on 16 January 1991 and who neither returned nor contacted their families as at the time of registration; and digit 4 is used for all persons who have disappeared for reasons unknown to their relatives. Whereas those reportedly dead were also included in former lists, they are omitted from the list of 5 August 1991. This list contains 800 names belonging to category 2; 457 to category 3; and 1,215 to category 4.

102. The Special Rapporteur met many people who knew of missing persons in their extended families, among their friends or in their neighbourhoods. He conducted thorough interviews with some relatives of the 800 missing persons belonging to category 2 (those reportedly arrested by Iraqi forces) who reported having witnessed the arrest or detention of their missing relatives by Iraqi occupying forces.

B. Assessment

103. There is no doubt that many persons are still missing in Kuwait. The question, however, arises whether all these persons are still, as has been claimed, detained in Iraq. For the following reasons the available information does not permit this conclusion. It is unlikely that all or even most of the 457 persons belonging to category 3 on the list established by the Kuwaiti National Committee for Tracing POWs and Missing Persons, i.e. those who were reported to be abroad and blocked from re-entry into Kuwait at the time of the last contact with their families are detained in Iraq. In addition, some of the 1,215 missing persons of category 4 (unknown circumstances of disappearance) might have been killed on Kuwaiti territory as a consequence of fighting at the time of the invasions, in the context of actions conducted by members of Kuwaiti resistance during the occupation, as a consequence of the armed conflict after 16 January 1991, or of the security problems in Kuwait City during the period after 26 February 1991.

104. There are strong reasons to believe that many of the missing persons were arrested and detained by Iraqi occupying forces. On the list established by the Kuwaiti National Committee, 800 of the 2,472 registered persons belong to category 2 (persons reportedly arrested) and, as has been mentioned, the Special Rapporteur himself interviewed relatives who reported that they had witnessed the arrest or even the detention of some still missing persons. It also cannot be excluded that, of the 1,215 persons belonging to category 4 (disappearances for unknown reasons), some were actually arrested by Iraqi occupying forces.

105. The fate of these persons is very difficult to assess. It is possible that persons deported from Kuwait to Iraq are still detained. Kuwaiti authorities informed the Special Rapporteur that they had submitted to ICRC approximately 400 names of persons who allegedly had been seen in detention by prisoners of war and civilian internees who had been repatriated from Iraq, but that ICRC had been unable to trace them. However, at least some of those who had been arrested by Iraqi occupying forces might be dead now; and some of these detainees may have since been executed or otherwise killed in detention by Iraqi forces either on Kuwaiti or Iraqi territory. The Special Rapporteur was informed that the Kuwaiti National Committee is in possession of approximately 100 photographs of unidentified persons who allegedly had been killed. (It is planned to open a centre where these photographs will be made available for families seeking missing relatives. There is a chance that at least some of them will be identified as persons who are still missing.) In addition, some of those missing might have died during detention due to health problems. Such incidents have been reported to the Special Rapporteur by former detainees who spent some time in Iraqi prisons and detention camps; however, neither the Government of Kuwait nor ICRC have been informed of such cases by Iraqi authorities. Finally, it cannot be entirely excluded that some detainees were killed during aerial bombardments or during the insurrection in southern Iraq. Some of the former detainees who were deported to Iraq told the Special Rapporteur that they knew about such incidents; such information, however, was not specific and thus could not be verified.

106. Iraq, according to the applicable rules of international law, must account for those who were actually arrested by its forces. If Iraq were still to be holding prisoners of war and civilian internees - a premise which Iraqi authorities deny - several basic human rights as embodied in the International Covenant on Civil and Political Rights would be violated. In any case, Iraq has failed:

- (i) To inform families about the whereabouts of persons arrested in Kuwait, or to give arrested persons the right to contact their families. An exception was, however, made for prisoners of war captured during the invasion who could be visited in the POW camps in Iraq;
- (ii) To inform about death sentences imposed on prisoners of war and civilian detainees as is required by article 107 of the Third Geneva Convention and article 74 of the Fourth;
- (iii) To issue death certificates for deceased prisoners of war and civilian internees and to provide information as to their graves in accordance with articles 120 and 127 of the Third Geneva Convention and articles 129 and 130 of the Fourth.

V. RECOMMENDATIONS

107. The final report of the Special Rapporteur to be submitted to the Commission on Human Rights for consideration in February 1992 will contain specific conclusions and recommendations which, inter alia, will deal with questions of responsibility and compensation.
108. However, the Special Rapporteur considers some recommendations concerning the fate of missing persons already appropriate at the time of finalizing this preliminary report.
109. The Special Rapporteur recommends that the competent organs of the United Nations should:
- (i) Urge the Government of Iraq to provide information on all persons deported from Kuwait between 2 August 1990 and 26 February 1991 who may still be detained and to release, in accordance with its obligations under article 118 of the Third Geneva Convention and article 134 of the Fourth Geneva Convention, these persons without delay;
 - (ii) Urge Governments concerned to allow for the repatriation of any persons to the country of their former habitual residence;
 - (iii) Urge the Government of Iraq to provide, in accordance with its obligations under articles 120 and 127 of the Third Geneva Convention, and articles 129 and 130 of the Fourth, detailed information on persons arrested in Kuwait between 2 August 1990 and 26 February 1991 who died during or after that period while in detention as well as on the site of their graves;
 - (iv) Urge the Government of Iraq to provide, in accordance with its obligations under article 107 of the Third Geneva Convention, and article 74 of the Fourth, detailed information on all executions of persons arrested in Kuwait between 2 August 1990 and 26 February 1991 carried out in Kuwait or Iraq during or after that period and to provide information about the site of their bodies;
 - (v) Invite the Government of Iraq to search, in a humanitarian spirit, for the persons still missing and cooperate with international humanitarian organisations, such as the International Committee of the Red Cross, in this regard;
 - (vi) Invite the Government of Kuwait to take all measures within its capacity and to cooperate with international organizations to identify all remaining unidentified persons killed in Kuwait, for the purpose of clarifying these cases of missing persons for their relatives.

Notes

1/ E/CN.4/1991/L.90.

2/ E/CN.4/Sub.2/1991.

3/ See Communication No. 52/1979, *López Burgos v. Uruguay*, para. 12.3, and Communication No. 56/1979, *Libran Celiberti v. Uruguay*, para. 10.3, both adopted on 29 July 1981, A/36/40, pp. 176 and 185, with concurring opinion.

4/ See the interim report of the United Nations mission to Kuwait led by Ambassador Farah, S/22536, para. 29.
