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REPORT AND RECOMMENDATIONS MADE BY THE “D1” PANEL OF COMMISSIONERS
CONCERNING PART TWO OF THE SEVENTEENTH INSTALMENT OF INDIVIDUAL
CLAIMS FOR DAMAGES ABOVE USD 100,000 (CATEGORY “D” CLAIMS)

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Introduction

1. This is the nineteenth report to the Governing Council of the United Nations Compensation Commission (the “Commission”) submitted pursuant to article 38(e) of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the “Rules”) by the “D1” Panel of Commissioners (the “Panel”), being one of two Panels appointed to review individual claims for damages above 100,000 United States dollars (USD) (category “D” claims). This report contains the determinations and recommendations of the Panel in respect of part two of the seventeenth instalment, submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules on 24 September 2002.
2. The seventeenth instalment initially comprised 708 claims. A total of 29 claims have been added to the instalment since the Panel commenced its review of the claims. Nine of these additional claims are related to claims already in the seventeenth instalment and two were transferred from part two of the nineteenth instalment as they were ready for reporting at the time of signature of this report. The remaining 18 claims were deferred from previous instalments pending the receipt of additional information from the claimants. Fourteen of the 29 additional claims were included in the Panel’s report in respect of part one of the seventeenth instalment¹ and the remaining fifteen claims² are included in this report. Of the 708 claims that originally comprised the seventeenth instalment, 1 claim has been resolved in part two of the fifteenth instalment³ and 49 claims have been deferred out of the instalment because they require further review by the Panel or because they include claims for losses sustained by Kuwaiti companies and will be resolved pursuant to Governing Council decision 123 (S/AC.26/Dec.123 (2001)).⁴ Taking into account all of the claims added to or deferred from the seventeenth instalment, the Panel has resolved a total of 687 claims (382 claims in part one and 305 claims in part two). The 687 claims include three claims that were withdrawn by the claimants during the course of the Panel’s review of the seventeenth instalment.
3. Three claims⁵ reviewed by the Panel in the seventeenth instalment include business losses suffered by Kuwaiti companies that will be severed and transferred to the “E4” Panels of Commissioners for review as “overlapping claims” or “stand alone claims” in accordance with Governing Council decision 123. In this report, the Panel is therefore making recommendations only with respect to the personal losses asserted in these claims.
4. The Panel began its review of the seventeenth instalment on 25 September 2002. In addition to communications among the Commissioners and with the secretariat, the Panel held meetings at the Commission’s headquarters in Geneva on the following dates: 23-25 September, 7-9 November and 11-13 December 2002; 27-29 January, 31 March - 2 April, 21-23 May, 9-11 July, 11-13 August and 22-24 September 2003. The September 2002, March-April and September 2003 meetings included joint meetings with the “D2” Panel of Commissioners to discuss issues of relevance to both Panels.
5. The seventeenth instalment comprises all loss types that can be claimed in category “D”, with a large number of claims containing D4 (personal property) losses, D7 (real property) losses and D8/D9 (individual business) losses.⁶ With respect to the application claims⁷ included in part two of the

seventeenth instalment, there were no new factual, legal or valuation issues that have not been addressed in the Panel's previous reports. Part two of the seventeenth instalment includes 10 claims for high value personal property items that have been designated as "unusually large or complex" within the meaning of article 38(d) of the Rules. The facts of these claims and the Panel's findings and recommendations are set out at paragraphs 17-95 below.

6. The following table sets out the number of claims by submitting entity resolved in the seventeenth instalment.

Table 1. Summary of claims by submitting entity (parts one and two of the seventeenth instalment)

<u>Submitting entity</u>	<u>Number of claims originally submitted to the Panel</u>	<u>Number of claims added to the instalment</u>	<u>Total number of claims submitted to the Panel</u>	<u>Number of claims deferred or transferred out of the instalment</u>	<u>Number of claims resolved by the Panel in part one</u>	<u>Number of claims resolved by the Panel in part two</u>	<u>Number of claims withdrawn</u>	<u>Total number of claims resolved by the Panel</u>
Egypt	3	-	3	2	1	-	-	1
India	37	3	40	3	17	20	-	37
Israel	2	1	3	1	1	1	-	2
Jordan	172	6	178	18	97	63	-	160
Kuwait	381	10	391	17	231	143	-	374
Lebanon	7	-	7	-	6	1	-	7
Pakistan	37	1	38	4	11	23	1	34
Saudi Arabia	65	2	67	4	15	48	2	63
Thailand	-	1	1	-	-	1	-	1
Turkey	1	-	1	-	-	1	-	1
United Kingdom	1	-	1	-	1	-	-	1
United States	1	1	2	1	1	-	-	1
Yemen	1	4	5	-	1	4	-	5
<u>Total</u>	708	29	737	50	382	305	3	687

I. BACKGROUND

A. Background information

7. In reviewing the claims in part two of the seventeenth instalment, the Panel has taken into account the factual background relating to Iraq's invasion and occupation of Kuwait, as set out in detail in its reports on part one and part two of the first instalment of category "D" claims.⁸

8. The Panel has also taken into consideration other relevant material, including information accompanying the submission of these claims provided by the Executive Secretary pursuant to article 32 of the Rules. In addition, the Panel has considered information and views presented by Iraq and other Governments in response to the reports submitted to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules.

B. General legal framework

9. The general legal framework for the resolution of category "D" claims is set out in chapter V of the Panel's First "D" Report.⁹

C. Applicable evidentiary standard

10. The evidentiary standard to be applied in reviewing category "D" claims has been addressed by the Panel in previous reports.¹⁰ As with earlier instalments, the Panel has reviewed the claims in part two of the seventeenth instalment in accordance with article 35 of the Rules, and made its recommendations by assessing documentary and other appropriate evidence, as well as by balancing the interests of claimants who had to flee a war zone with the interests of Iraq, which is liable only for any direct loss, damage or injury as a result of its invasion and occupation of Kuwait.

II. "UNUSUALLY LARGE OR COMPLEX" CLAIMS

A. Introduction

11. The Panel obtained assistance from expert consultants with regard to the valuation of certain items of personal property in 10 claims. The items were either of high value or of an unusual nature ("Valuation Items"). Almost all of the items were taken from the claimants' homes, which were targeted by the Iraqis either because the occupants were listed in the Iraqi Revolutionary Command Council Decree dated 18 August 1990, which is one of a number of decrees that identified certain members of the Kuwaiti ruling family and other prominent Kuwaitis, and called for the destruction and confiscation of their property¹¹ or because their properties were in strategic locations within Kuwait. Eight of these claimants with "unusually large or complex" claims were interviewed during a technical mission to Kuwait undertaken at the Panel's direction by the secretariat and the expert consultants in November 2002 and a ninth claimant was interviewed in Geneva in March 2003.

12. Notable aspects of these 10 "unusually large or complex" claims and the Panel's findings and recommendations on the Valuation Items are set out below.

B. UNCC claim No. 3008788

13. The claimant seeks compensation for a total claimed amount of USD 1,108,820.48 for D4 (personal property) losses in the amount of USD 647,637.09, D4 (motor vehicle) losses in the amount of USD 242,366.78, and D7 (real property) repair costs and loss of rental income in the amount of USD 218,816.61.

14. Three Persian carpets with an asserted value of USD 216,262.98, which formed part of the claim for personal property items that were in the claimant's house, were treated as Valuation Items.

(a) Ownership of the Valuation Items

15. The claimant provided details of the items and a statement from the suppliers, confirming that he purchased the three carpets and their purchase price.

16. On the basis of the evidence provided, the Panel finds that the claimant owned the Valuation Items.

(b) Loss and causation with respect to the Valuation Items

17. The claimant provided a personal statement describing how Iraqi soldiers occupied the house, which was located on the beach and a witness statement from a former guard at the house stating that Iraqi soldiers drove him out of the villa. In addition, the claimant submitted a copy of a letter from the Iraqi Presidency Headquarters, which stated that the claimant's house was taken as command headquarters for military divisions.

18. The family had been out of Kuwait at the time of Iraq's invasion and returned after liberation to find that the structure of the house had been destroyed and all the contents looted.

19. On the basis of all of the evidence, the Panel finds that the claimant suffered the loss of the Valuation Items as a direct result of Iraq's invasion and occupation of Kuwait.

(c) Recommended award for all losses

20. Taking into account the report of the expert consultants regarding the Valuation Items and the evidence submitted by the claimant in support of all losses claimed, and having applied the category "D" methodologies to those aspects of the claim not involving Valuation Items, the Panel recommends that the claimant be awarded USD 855,561.54 for all claimed losses, of which USD 135,000 is for the Valuation Items.

C. UNCC claim No. 3006314

21. The claimant seeks compensation in the total amount of USD 1,618,944.82 for D4 (personal property) losses in the amount of USD 1,421,775.78, D7 (real property) repair costs and loss of rental income in the amount of USD 180,282.01, as well as claim preparation costs in the amount of USD 16,887.02.

22. The claim for personal property includes a gentleman's gold watch inlaid with diamonds weighing 55 carats with an asserted value of USD 298,748.79 that was treated as a Valuation Item. The watch had been kept in a safe at the claimant's home.

(a) Ownership of the Valuation Item

23. The claimant provided a detailed personal statement describing the watch and a customs certificate, which stated that the claimant had imported the watch from France.

24. On the basis of the evidence provided, the Panel finds that the claimant owned the watch.

(b) Loss and causation with respect to the Valuation Item

25. The claimant was listed among the Al-Sabah family members and ex-ministers of the Government of Kuwait in the Iraqi Revolutionary Command Council Decree. The claimant provided a personal statement, witness statements and copies of official Iraqi military documents confirming that his house was occupied by Iraqi officials.

26. The claimant has explained that he was at his beach chalet at the time of the invasion and that it was too dangerous for him to return to his house. He further explained that his personal safe where the watch had been kept in his home had been forced open and that all the contents were missing after liberation. He also submitted a photograph of the broken safe.

27. On the basis of all of the evidence, the Panel finds that the claimant lost the watch as a direct result of Iraq's invasion and occupation of Kuwait.

(c) Recommended award for all losses

28. Taking into account the report of the expert consultants regarding the Valuation Item and the evidence submitted by the claimant in support of all losses claimed, and having applied the category "D" methodologies to the other aspects of the claim, the Panel recommends that the claimant be awarded USD 1,260,200.92 for all claimed losses, of which USD 150,000 is for the Valuation Item.

D. UNCC Claim No. 3005328

29. The claimant seeks compensation in the total amount of USD 4,945,820.46 for D4 (personal property) losses in the amount of USD 4,490,580.84, D4 (motor vehicle) losses in the amount of USD 36,487.89, D7 (real property) repair costs and loss of rental income in the amount of USD 418,751.73.

30. Twenty Persian carpets with an asserted value of USD 1,838,720 and silverware with an asserted value of USD 298,240 within the D4 (personal property) claim were treated as Valuation Items.

(a) Ownership of the Valuation Items

31. The claimant provided a full description of each carpet, including its size and cost per square metre and a sworn affidavit issued by a carpet expert in Kuwait who confirmed that he undertook a survey of the claimant's carpets for insurance purposes in 1988. The affidavit stated that the claimed amounts were fair and reasonable. In addition, the expert was interviewed during the technical mission to Kuwait and he confirmed that the claimant owned the carpets and corroborated the purchase prices stated.

32. A retail price catalogue provided by the silversmiths, from whom the claimant purchased the silverware, formed the basis of the claimed amount for the silverware. The claimant submitted a schedule giving the purchase date and the 1990 replacement price. She also submitted photographs showing certain pieces.

33. On the basis of all the evidence, the Panel finds that the claimant owned the Valuation Items.

(b) Loss and causation with respect to the Valuation Items

34. The claimant states that she was in London at the time of Iraq's invasion and occupation and that for the first few months she did not know anything about the state of her properties. She learned later from people leaving Kuwait that the Iraqi authorities had requisitioned her villa and that her servants had been forced to leave. The claimant returned to Kuwait on 24 August 1991 to find the contents of the villa missing. The claimant submitted as evidence statements from witnesses, who maintain that the contents were looted by Iraqi forces. In addition, photographs of the villa dating from before Iraq's invasion and a video of the damage sustained by the villa taken after liberation were submitted as evidence.

35. The Panel finds, on the basis of all of the evidence, that the claimant suffered the loss of the Valuation Items as a direct result of Iraq's invasion and occupation of Kuwait.

(c) Recommended award for all losses

36. Taking into account the report of the expert consultants regarding the Valuation Items and the evidence submitted by the claimant in support of all losses claimed, and having applied the category "D" methodologies to those aspects of the claim not involving Valuation Items, the Panel recommends that the claimant be awarded USD 2,547,813.18 for all claimed losses, of which USD 875,000 is for the Valuation Items.

E. UNCC claim No. 3005752

37. The claimant seeks compensation in the total amount of USD 1,696,406.57 for D4 (personal property) losses in the amount of USD 713,252.60, D4 (motor vehicle) losses in the amount of USD 20,761.25 and D7 (real property) repair costs and loss of rental income in the amount of USD 962,392.73.

38. Ten horses used for show jumping with an asserted value of USD 484,429.07 within the D4 (personal property) claim were treated as Valuation Items.

(a) Ownership of the Valuation Items

39. The claimant provided veterinary certificates and certification from the Hunting and Equestrian Club of Kuwait asserting the value of the horses as at the date of Iraq's invasion and occupation of Kuwait. In his personal statement, the claimant identified each horse individually and described them in detail.

40. He also submitted photographs and newspaper cuttings, which show that certain horses were of domestic and international renown. In addition, there is an independent affirmation of the historic cost for five of the 10 horses. During the technical mission to Kuwait, individuals from the Hunting and Equestrian Club corroborated the extent of the claimant's asserted losses.

41. On the basis of the evidence provided, the Panel finds that the claimant owned the Valuation Items.

(b) Loss and causation with respect to the Valuation Items

42. The claimant provided a personal statement and witness statements evidencing loss and causation of the Valuation Items. In his personal statement, he describes in detail how the Iraqi forces initially allowed the trainers, grooms and jockeys to take care of the horses at the Hunting and Equestrian Club, but after a few months the best horses were taken to Baghdad. Witness statements confirm that the best of the horses stabled at the Hunting and Equestrian Club were taken to Baghdad and the remainder were killed for food or used for target practice. After the liberation of Kuwait, the skeletons of the remaining horses were found in the stables at the Club.

43. The Panel finds, on the basis of all of the evidence, that the claimant has suffered the loss of the Valuation Items as a direct result of Iraq's invasion and occupation of Kuwait.

(c) Recommended award for all losses

44. Taking into account the report of the expert consultants regarding the Valuation Items and the evidence submitted by the claimant in support of all losses claimed, and having applied the category "D" methodologies to those aspects of the claim not involving Valuation Items, the Panel recommends that the claimant be awarded USD 1,054,309.36 for all claimed losses, of which USD 190,311 is for the Valuation Items.

F. UNCC claim No. 3006759

45. The claimant seeks compensation in the total amount of USD 3,211,328.72 for D4 (personal property) losses in the amount of USD 2,452,619.38 and D7 (real property) repair costs and loss of rental income in the amount of USD 758,709.34.

46. Included in the D4 (personal property) claim are Islamic artefacts and antiques with an asserted value of USD 1,153,061.59 that were treated as Valuation Items.

(a) Ownership of the Valuation Items

47. The claimant submitted a detailed inventory together with photographs of many of the items and invoices for items purchased in Kuwait. During the course of the technical mission to Kuwait, the supplier was interviewed and he confirmed that many of the items were purchased from him and were present in the claimant's collection at the time of Iraq's invasion of Kuwait.

48. The claimant purchased some Valuation Items in London and provided shipping invoices and certificates of value for those items.

49. On the basis of the evidence provided, the Panel finds that the claimant owned the Valuation Items.

(b) Loss and causation with respect to the Valuation Items

50. The claimant has provided personal and witness statements giving detailed descriptions of the circumstances under which the personal property items were lost during Iraq's invasion and occupation of Kuwait. The claimant submitted proof of the occupation of her home by Iraqis including photographs showing graffiti against the Al Sabah family.

51. Proof of shipment to and arrival in Kuwait before Iraq's invasion was provided for some but not all the Valuation Items purchased in London.

52. The Panel finds, on the basis of all the evidence, that the claimant has suffered the loss of the Valuation Items that were present in Kuwait at the time of Iraq's invasion as a direct result of Iraq's invasion and occupation of Kuwait, but has failed to prove the loss of those items for which there is insufficient proof of shipment to Kuwait before the invasion.

(c) Recommended award for all losses

53. Taking into account the report of the expert consultants regarding the Valuation Items and the evidence submitted by the claimant in support of all losses claimed, and having applied the category "D" methodologies to those aspects of the claim not involving Valuation Items, the Panel recommends that the claimant be awarded USD 2,178,216.24 for all claimed losses, of which USD 396,032 is for the Valuation Items.

G. UNCC claim No. 3008477

54. The claimant seeks compensation in the total amount of USD 3,117,474.05 for D4 (personal property) losses in the amount of USD 1,468,851.21, D4 (motor vehicle) losses in the amount of USD 17,034.60, D7 (real property) repair costs and loss of rental income in the amount of USD 1,624,667.82, as well as claim preparation costs in the amount of USD 6,920.42.

55. A nineteenth-century Egyptian brass candlestick that was kept in the claimant's house and seven horses that were at the claimant's stables in the Hunting and Equestrian Club of Kuwait, with a total asserted value of USD 484,429.07, within the D4 (personal property) claim were treated as Valuation Items

(a) Ownership of the Valuation Items

56. As proof of his ownership of the candlestick, the claimant provided a copy of a purchase invoice and three witness statements that specifically mention the item. This evidence was also verified during the technical mission to Kuwait.

57. In spite of the fact that all the registration documentation relating to the horses held at the Hunting and Equestrian Club of Kuwait had been destroyed during Iraq's occupation of Kuwait, the fact that the claimant owned horses of such calibre was confirmed during an interview with the General Manager of the Hunting and Equestrian Club. The claimant was able to provide a schedule detailing the dates of purchase, the estimated replacement values and fair market values along with brief descriptions for each of the horses. In addition to witness statements and photographs of the horses, the claimant also submitted copies of insurance documents for all of the horses, which were dated prior to 1990 and reflected similar values to those set out in the claimant's schedule.

58. On the basis of the evidence provided, the Panel finds that the claimant owned the Valuation Items.

(b) Loss and causation with respect to the Valuation Items

59. In a personal statement, the claimant set out the steps that he and his brother took in order to prevent losses to his villa including asking the servants to stay inside the house and providing them with extra food and water before securing the doors to the villa. However, when Iraqi forces came to the house, they forced their way in and physically assaulted the servants. The claimant provided statements from the servants who visited the villa and stables after liberation. The claimant has stated that he returned to the house after liberation and found that the structure of the villa had been damaged and that all the contents had been looted.

60. The Panel finds, on the basis of the evidence provided, that the claimant suffered the loss of the Valuation Items as a direct result of Iraq's invasion and occupation of Kuwait.

(c) Recommended award for all losses

61. Taking into account the report of the expert consultants regarding the Valuation Items and the evidence submitted by the claimant in support of all losses claimed, and having applied the category "D" methodologies to those aspects of the claim not involving Valuation Items, the Panel recommends that the claimant be awarded USD 2,360,992.88 for all claimed losses, of which USD 60,173 is for the Valuation Items.

H. UNCC claim No. 3009149

62. The claimant seeks compensation in the total amount of USD 872,993.08 for D4 (personal property) losses in the amount of USD 781,252.60, D4 (motor vehicle) losses in the amount of USD 40,138.41 and D7 (real property) repair costs and loss of rental income in the amount of USD 51,602.08.

63. Included in the claim for personal property items are 37 items treated as Valuation Items, namely 23 Persian rugs, seven Islamic artefacts, examples of Islamic textiles and two manuscripts with a total asserted value of USD 291,591.70.

(a) Ownership of the Valuation Items

64. The claimant submitted a detailed inventory of the Valuation Items together with pre-invasion photographs of the interior of his home showing the carpets in situ. The claimant provided purchase documentation or post-invasion certification of purchase in respect of all items claimed. In addition, a dealer in Islamic artefacts confirmed the extent and value of claimant's collection.

65. On the basis of the evidence provided, the Panel finds that the claimant owned the Valuation Items.

(b) Loss and causation with respect to the Valuation Items

66. The question of loss and causation was addressed specifically in the claimant's personal statement and in witness statements. The claimant's wife has described in detail the circumstances of the occupation of the villa and the looting of its contents by Iraqi soldiers.

67. The Panel finds, on the basis of all the evidence, that the claimant has suffered the loss of the Valuation Items as a direct result of Iraq's invasion and occupation of Kuwait.

(c) Recommended award for all losses

68. Taking into account the report of the expert consultants regarding the Valuation Items and the evidence submitted by the claimant in support of all losses claimed, and having applied the category "D" methodologies to those aspects of the claim not involving Valuation Items, the Panel recommends that the claimant be awarded USD 742,572.76 for all claimed losses, of which USD 242,229 is for the Valuation Items.

I. UNCC claim No. 3005357

69. The claimant seeks compensation in the total amount of USD 5,108,633.21 for D4 (personal property) losses in the amount of USD 3,769,038.06, D4 (motor vehicle) losses in the amount of USD 51,903.11, D7 (real property) repair costs and loss of rental income in the amount of USD 1,111,692.04 and D8/D9 business losses in the amount of USD 176,000.

70. Included in the personal property claim are three antique items with an asserted value of USD 394,764.71 that were treated as Valuation Items.

(a) Ownership of the Valuation Items

71. The claimant submitted details of the items together with copies of the original purchase invoices. In addition, he submitted a statement from the supplier in respect of two of the items claimed and a photograph of the remaining item.

72. Based on the evidence provided, the Panel finds that the claimant owned the Valuation Items.

(b) Loss and causation with respect to the Valuation Items

73. The claimant submitted a statement from his wife describing the destruction to their villa, which had been emptied of all its contents. Another witness statement describes the total destruction of the villa and its use by the Iraqi secret police as their headquarters. Post-invasion photographic evidence showing the destruction was also provided.

74. The Panel finds, on the basis of all the evidence, that the claimant suffered the loss of the Valuation Items as a direct result of Iraq's invasion and occupation of Kuwait.

(c) Recommended award for all losses

75. Taking into account the report of the expert consultants regarding the Valuation Items and the evidence submitted by the claimant in support of all losses claimed, and having applied the category "D" methodologies to those aspects of the claim not involving Valuation Items, the Panel recommends that the claimant be awarded a total of USD 3,791,747.65 for all claimed losses, of which USD 51,000 is for the Valuation Items.

J. UNCC claim No. 3009530

76. The claimant seeks compensation in the total amount of USD 5,547,871.97 for D4 (personal property) losses in the amount of USD 2,334,660.90, D4 (motor vehicle) losses in the amount of USD 249,134.95 and D7 (real property) repair costs and loss of rental income in the amount of USD 2,964,076.12.

77. Included in the D4 (personal property) claim are 51 racehorses with an asserted value of USD 2,155,709.34 that were treated as Valuation Items. The horses were kept at the claimant's private stables at the Hunting and Equestrian Club of Kuwait.

(a) Ownership of the Valuation Items

78. The claimant submitted a detailed inventory of the horses together with copies of original import documentation and insurance documents. In addition, he submitted photographs and a statement of purchase in respect of 10 of the horses. The claimant provided invoices and registration details for certain horses and produced sufficient detail describing each horse. In addition, witness

statements and information obtained from the Hunting and Equestrian Club of Kuwait in interviews conducted during the technical mission to Kuwait confirmed that the claimant was a renowned owner and breeder of racehorses in Kuwait.

79. Based on the evidence provided, the Panel finds that the claimant owned the Valuation Items.

(b) Loss and causation

80. The claimant has provided a personal statement and witness statements evidencing loss and causation of the Valuation Items. Witness statements describe the destruction to the stables and confirm that the horses were either killed or taken away.

81. The Panel finds, on the basis of all the evidence, that the claimant has suffered the loss of the Valuation Items as a direct result of Iraq's invasion and occupation of Kuwait.

(c) Recommended award for all losses

82. Taking into account the report of the expert consultants regarding the Valuation Items and the evidence submitted by the claimant in support of all losses claimed, and having applied the category "D" methodologies to those aspects of the claim not involving Valuation Items, the Panel recommends that the claimant be awarded a total of USD 3,645,450.94 for all claimed losses, of which USD 737,024 is for Valuation Items.

K. UNCC claim No. 3008802

83. The claimant seeks compensation in the total amount of USD 1,156,316.51 for D4 (personal property) losses in the amount of USD 1,026,484.43, D7 (real property) repair costs and loss of rental income in the amount of USD 126,371.87, as well as claim preparation costs in the amount of USD 3,460.21.

84. Antiques, carpets and jewellery with an asserted value of USD 410,034.60 within the D4 (personal property) claim were treated as Valuation Items.

(a) Ownership of the Valuation Items

85. The claimant submitted pre-invasion video footage and photographs of many of the Valuation Items. The claimant also provided detailed inventories and evidence of where the items claimed had been located in the house.

86. Considering the totality of the evidence, the Panel finds that the claimant owned the Valuation Items.

(b) Loss and causation with respect to the Valuation Items

87. The claimant's home was located on the Kuwaiti coast. The claimant states in her personal statement that Iraqi troops occupied the house, as evidenced by the fortifications on the balcony and

the ditches and trenches dug around the house that she found on her return after liberation. In addition, witness statements and post-invasion video footage showing the complete destruction and looting of the contents were provided.

88. The Panel finds, on the basis of the evidence provided, that the claimant has suffered the loss of the Valuation Items as a direct result of Iraq's invasion and occupation of Kuwait.

(c) Recommended award for all losses

89. Taking into account the report of the expert consultants regarding the Valuation Items and the evidence submitted by the claimant in support of all losses claimed, and having applied the category "D" methodologies to those aspects of the claim not involving Valuation Items, the Panel recommends that the claimant be awarded a total of USD 569,640.73 for all claimed losses, of which USD 65,500 is for Valuation Items.

III. CROSS CATEGORY ISSUE

90. Recommended awards in respect of claims in part two of the seventeenth instalment are reported net of category "A", "B" and "C" approved awards made to the same claimants.¹²

IV. OTHER ISSUES

A. Exchange rates

91. For purposes of calculating recommended amounts, the Panel has converted other currencies into United States dollars in accordance with the rates set out in paragraphs 61-63 of the First "D" Report.

92. In its report and recommendations concerning the third instalment of category "D" claims,¹³ the Panel noted that where losses are claimed for money in currencies other than United States dollars and it is established that the application of the exchange rate approved by the Panel in its First "D" Report "would result in either under-compensation or over-compensation of the claimant, the Panel determined that it will select a conversion rate based on the evidence that most closely compensates the claimant for the value of the losses suffered. In particular, this would be applied in situations where the claimant has submitted evidence that he or she purchased the money at a rate different from the rate adopted by the Panel."¹⁴

B. Interest

93. A number of claimants in part two of the seventeenth instalment claim for interest on losses contained in their category "D" claims for a total amount of USD 448,617.23. For category "D" losses other than loss of business income and incremental costs, the "D" Panels have previously determined that the phrase "the date the loss occurred" in Governing Council decision 16 (S/AC.26/1992/16)¹⁵ should be a single fixed date. The "D" Panels determined that 2 August 1990 (the date of Iraq's invasion and occupation of Kuwait) should serve as the fixed date.¹⁶

94. Claims for loss of business income are claims for income that would have been earned over a period of time. As such, a date of loss of 2 August 1990 for such losses would result in over-compensation for claimants. The “D” Panels have therefore adopted the midpoint of the period for which loss of business income claims have been recommended for compensation as the date of loss for the purpose of calculating interest. The “D” Panels also adopted a fixed date of 1 May 1991 as the date of loss for the purpose of calculating interest on awards for claims for incremental costs.¹⁷

95. The Panel applies these findings to the claims included in part two of the seventeenth instalment.

C. Claims preparation costs

96. A number of claimants in part two of the seventeenth instalment seek claims preparation costs incurred by them, either for a specific or an unspecified amount. The total amount asserted for claims preparation costs is USD 200,683.23.

97. The Panel has been informed by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claims preparation costs in the future. Accordingly, the Panel makes no recommendation with respect to compensation for claims preparation costs.

V. RECOMMENDED AWARDS FOR CATEGORY “D” CLAIMS

98. The annex hereto lists the awards recommended by the Panel for each Government for the claims resolved in part two of the seventeenth instalment. Each Government will be provided with a confidential list containing the individual recommendations made in respect of its claimants. As will be seen from the annex, the total amount claimed for all 305 claims in part two of the seventeenth instalment is USD 262,859,810.67. Of this amount claimed, USD 5,394,975.78 is for business losses suffered by Kuwaiti companies that will be severed from the category “D” claims and transferred to the subcategory “E4” Panels of Commissioners for their review pursuant to Governing Council decision 123. As against the net balance of USD 257,464,834.89 claimed, the Panel recommends a total compensation of USD 90,039,308.39.

VI. SUBMISSION OF THE REPORT

99. The Panel respectfully submits this report through the Executive Secretary to the Governing Council pursuant to article 38(e) of the Rules.

Geneva, 24 September 2003

(Signed) R.K.P. Shankardass
Chairman

(Signed) G. Abi-Saab
Commissioner

(Signed) M.C. Pryles
Commissioner

Notes

¹ See paragraph 2 of the “Report and recommendations made by the ‘D1’ Panel of Commissioners concerning part one of the seventeenth instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)” (S/AC.26/2003/17) (the “Part One, Seventeenth Instalment Report”).

² UNCC claim numbers 3001744, 3001999, 3002033, 3002971, 3003174, 3003175, 3003585, 3003677, 3004392, 3006282, 3010669, 3010671, 3011785, 3013127 and 3013128.

³ See the “Report and recommendations made by the D1 Panel of Commissioners concerning part two of the fifteenth instalment of individual claims for damages above USD100,000 (category ‘D’ claims)” (S/AC.26/2003/8) (the “Part Two, Fifteenth Instalment Report”).

⁴ Five claims were sent to Iraq either because the situs of the alleged loss is Iraq or because the claims are for losses arising out of business dealings with Iraqi entities or the Government of the Republic of Iraq (“Iraq”). In addition to these claims, the Panel also transmitted nine claim files to Iraq for its comments on the basis that the claimed amounts exceed USD 10 million. One of these claims was included in the Part One, Seventeenth Instalment Report and the remaining 13 claims have been deferred out of the seventeenth instalment and will be reported in part two of the nineteenth instalment.

⁵ UNCC claim numbers 3001950, 3004588 and 3004890.

⁶ In part one of the first instalment of category “D” claims, the Panel developed methodologies for the following loss types: D1 (money); D1 (mental pain and anguish) (“MPA”); D3 (death); D4 (motor vehicles); D6 (loss of income); D10 (payments or relief to others); and D10 (other). A full description of the methodologies is set out at paragraphs 103-380 of the “Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of individual claims for damages above US\$100,000 (category ‘D’ claims)” (S/AC.26/1998/1) (the “First ‘D’ Report”). The Panel developed methodologies for the following loss types in part one of the second instalment: D2 (personal injury) and D5 (loss of bank accounts, stocks and other securities). These methodologies are described in the “Report and recommendations made by the Panel of Commissioners concerning part one of the second instalment of individual claims for damages above US\$100,000 (category ‘D’ claims)” (S/AC.26/1998/11) at paragraphs 30-57. The Panel developed the methodology for D4 (personal property) losses in part two of the second instalment. This methodology is described in the “Report and recommendations made by the Panel of Commissioners concerning part two of the second instalment of individual claims for damages above US\$100,000 (category ‘D’ claims)” (S/AC.26/1998/15) (“Part Two, Second Instalment Report”) at paragraphs 30-68. The Panel developed the methodology for D7 (real property) losses in part two of the fourth instalment. This methodology is described in the “Report and recommendations made by the Panel of Commissioners concerning part two of the fourth instalment of individual claims for damages above US\$100,000 (category ‘D’ claims)” (S/AC.26/2000/11), at paragraphs 30-68. The “D2” Panel of Commissioners developed the methodology for D8/D9 (individual business) loss claims, which is described in the “Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)” (S/AC.26/2000/24) (the “Sixth Instalment Report”). The methodologies for resolving all of the loss types in category “D” have now been developed.

⁷ The term “application claims” refers to those claims in respect of which the Panel applied methodologies that were developed by it or the “D2” Panel during the course of previous instalments as set out in note 6 above.

⁸ See in particular chapter II of the First “D” Report and chapter IV of the “Report and recommendations made by the Panel of Commissioners concerning part two of the first instalment of individual claims for damages above US\$100,000 (category ‘D’ claims)” (S/AC.26/1998/3).

⁹ See note 8 above.

¹⁰ See chapter VI of the First “D” Report and chapter II of Part Two, Second Instalment Report. See also paragraph 8 of Governing Council decision 7 (S/AC.26/1991/7/Rev.1), which provides that “[s]ince...[category ‘D’] claims may be for substantial amounts, they must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss”. See also articles 35(1) and 35(3) of the Rules.

¹¹ See paragraph 25 of the Part Two, Fifteenth Instalment Report where the Panel found that “although not sufficient by themselves to establish a particular claimant’s loss, the decrees constitute significant evidence to support the claimants’ assertions that they were targeted by the Iraqi authorities and that they suffered the losses for which they seek compensation from the Commission”.

¹² See paragraph 21 of the “Report and recommendations made by the Panel of Commissioners concerning part one of the fourth instalment of individual claims for damages above US\$100,000 (category ‘D’ claims)” (S/AC.26/1999/21).

¹³ “Report and recommendations made by the Panel of Commissioners concerning the third instalment of individual claims for damages above US\$100,000 (category ‘D’ claims)” (S/AC.26/1999/9) (the “Third Instalment Report”).

¹⁴ Paragraph 39 of the Third Instalment Report.

¹⁵ Paragraph 1 of Governing Council decision 16 states that “[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award.”

¹⁶ See paragraph 64-65 of the First “D” Report with respect to category “D” losses other than D8/D9 (individual business) losses and paragraphs 225-226 of the Sixth Instalment Report with respect to claims for D8/D9 (individual business) losses.

¹⁷ See paragraphs 227-228 of the Sixth Instalment Report.

AnnexSUMMARY RECOMMENDATIONS FOR CATEGORY “D” CLAIMS
IN PART TWO OF THE SEVENTEENTH INSTALMENTTable 2. Summary of recommendations

<u>Submitting entity</u>	<u>Number of claims not recommended for payment</u>	<u>Number of claims recommended for payment</u>	<u>Total amount claimed (USD)^a</u>	<u>Net amount claimed after severance and transfer of claims (USD)</u>	<u>Amount of compensation recommended (USD)</u>
India	4	16	4,576,524.57	4,576,524.57	759,938.21
Israel	0	1	1,115,000.00	1,115,000.00	134,150.57
Jordan	5	58	68,478,601.66	63,100,926.92	13,541,983.51
Kuwait	11	132	118,438,098.45	118,438,098.45	69,363,985.19
Lebanon	0	1	433,529.41	433,529.41	29,131.01
Pakistan	1	22	10,156,370.52	10,139,069.48	3,096,506.48
Saudi Arabia	24	24	51,946,849.91	51,946,849.91	3,034,921.54
Thailand	0	1	107,231.83	107,231.83	5,901.73
Turkey	1	0	3,933,000.00	3,933,000.00	0.00
Yemen	1	3	3,674,604.32	3,674,604.32	72,790.15
<u>Total</u>	47	258	262,859,810.67	257,464,834.89	90,039,308.39 ^a

^a This total amount claimed includes USD 5,394,975.78 for business losses suffered by Kuwaiti companies that will be severed and transferred to the “E4” Panels of Commissioners for review pursuant to Governing Council decision 123.
