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REPORT AND RECOMMENDATIONS MADE BY THE “D2” PANEL OF COMMISSIONERS
CONCERNING PART THREE OF THE EIGHTEENTH INSTALMENT OF INDIVIDUAL
CLAIMS FOR DAMAGES ABOVE USD 100,000 (CATEGORY “D” CLAIMS)

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Introduction

1. This is the thirteenth 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 “D2” 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 three of the eighteenth instalment, submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules.
2. The Panel commenced its review of the eighteenth instalment in January 2003. Pursuant to Procedural Order No. 30 signed on 30 January 2003, the Panel notified all Governments with claims in the eighteenth instalment of its intention to complete its review of the instalment in two parts. The Panel resolved 380 claims for part one of the eighteenth instalment in July 2003 and resolved 383 claims for part two of the eighteenth instalment in January 2004.¹ The Panel notes, however, that due to events in Iraq in 2003 that resulted in the loss of certain claim files that had been previously transmitted to Iraq, the Government of Iraq (“Iraq”) was unable to provide comments on these claims within the designated time period for their inclusion in part two of the eighteenth instalment. Therefore, with the approval of the Governing Council, the Panel created part three of the eighteenth instalment to provide Iraq sufficient time within which to submit comments in respect of the retransmitted claim files.
3. Of the 41 claims in this report, 17 have been identified as “unusually large or complex” within the meaning of article 38(d) of the Rules, as the claimed amount for each exceeds USD 10 million. All 17 claims were transmitted to Iraq for its comments because of the significant amounts claimed. An additional 20 claims were sent to Iraq for its comments because the situs of certain of the claimed losses was in Iraq. The remaining four claims were sent to Iraq because the claimants claimed for losses arising from interrupted contracts with an Iraqi party. Iraq has provided written comments on all claims included in this report, and the Panel has given due consideration to Iraq’s comments in its review of these claims.
4. The most common loss type appearing in part three of the eighteenth instalment is D8/D9 individual business losses. Other common loss types are D4(PP) personal property losses, D6 salary losses and D7 real property losses. The majority of the claims in part three of the eighteenth instalment were submitted by the Governments of Kuwait, Jordan and Egypt.
5. Table 1 below sets out by submitting entity the claims submitted to the Panel and the claims resolved by the Panel in parts one, two and three of the eighteenth instalment. The total number of claims resolved by the Panel in the eighteenth instalment is 804.

Table 1. Summary of eighteenth instalment claims by submitting entity (parts one, two and three)

<u>Submitting entity</u>	<u>Claims resolved by the Panel in part one of the instalment</u>	<u>Claims resolved by the Panel in part two of the instalment</u>	<u>Claims resolved by the Panel in part three of the instalment</u>	<u>Total number of claims resolved by the Panel in parts one, two and three</u>
Algeria	-	1	-	1
Argentina	-	1	-	1
Bahrain	-	2	-	2
Canada	2	9	-	11
Cyprus	-	1	-	1
Denmark	-	1	-	1
Egypt	7	9	7	23
France	-	2	-	2
Germany	-	1	1	2
Greece	-	2	-	2
Hungary	1	-	-	1
India	11	10	1	22
Ireland	1	-	-	1
Italy	1	-	1	2
Japan	-	1	-	1
Jordan	72	125	9	206
Kuwait	146	158	12	316
Lebanon	10	3	3	16
Pakistan	5	9	1	15
Saudi Arabia	12	4	1	17
Somalia	-	1	-	1
Spain	1	-	-	1
Sudan	1	2	-	3
Syrian Arab Republic	17	3	-	20
Tunisia	-	1	-	1
Turkey	2	-	-	2
United Kingdom	7	11	3	21
United States	16	10	-	26
Yemen	65	9	2	76
UNDP Kuwait	1	1	-	2
UNDP United Arab Emirates	-	1	-	1
UNDP Washington	1	3	-	4
UNHCR Canada	-	1	-	1
UNRWA Gaza	1	1	-	2
<u>Total</u>	380	383	41	804

I. THE PROCEEDINGS

6. On 30 January 2003, the Panel issued Procedural Order No. 30, in which it gave notice of its intention to complete its review of the claims in the eighteenth instalment and to finalize its report and recommendations to the Governing Council. The Panel met regularly to consider the claims.

7. In reviewing the claims in part three of the eighteenth instalment, the Panel has taken into account the factual background relating to Iraq's invasion and occupation of Kuwait, as set out in its report on the sixth instalment.²

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 a number of submitting entities as well as by Iraq in response to the reports submitted to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules. Finally, the Panel has reviewed the responses provided by Iraq in connection with the claims in this report.

II. LEGAL FRAMEWORK

A. General legal framework and applicable evidentiary standard

9. The general legal framework and applicable evidentiary standard for the resolution of category "D" claims is set out in chapter III of the sixth instalment report.³ As with earlier instalments, the Panel has reviewed the claims in part three of the eighteenth instalment in accordance with article 35 of the Rules, and made its recommendations by assessing documentary and other appropriate evidence.

B. The role of the Panel

10. The Governing Council has entrusted three tasks to the Panel. First, the Panel must determine whether an alleged loss falls within the jurisdiction of the Commission and is compensable in principle. Second, the Panel must verify whether the loss was actually suffered by the claimant. Third, the Panel must determine the amount of any compensable loss suffered by the claimant and recommend an award in respect thereof.

11. Taking into account the evidentiary and causation requirements that must be met by claimants in category "D", and considering the legal principles that must be respected in the valuation of compensable losses, a case-by-case assessment of each claim is required. In summary, the Panel's objective was to review the claims by applying established principles in a consistent and objective manner.

12. Seventeen of the 41 claims in this report were designated by the Panel as "unusually large or complex" and have D8/D9 business losses in excess of USD 10 million. As part of the Panel's review process and at the direction of the Panel, these claims underwent extensive claim development, including interviews with claimants and their representatives and on-site verification of documents and premises. Third parties who provided statements regarding the claimed losses, such as auditors, insurance companies or jewellery suppliers, were also contacted by telephone, letter or in person to assist the Panel's assessment of the authenticity and probative value of the supporting documents

submitted by these claimants. These third party communications have in certain cases proven critical in the Panel's review of the claimed losses.

13. The Panel engaged the assistance of expert consultants with respect to the valuation of personal property items that were either of high value or of an unusual nature. In the case of the two "unusually large or complex" D4(PP) personal property claims discussed in this report, the valuation items were jewellery. Based upon their expertise and the review of the documentary evidence submitted by the claimants, the expert consultants provided reports to the Panel on the jewellery items.

14. In connection with the three Kuwaiti hotel claims discussed in this report, the Panel also retained the assistance of a chartered quantity surveyor and loss adjustor with experience in the insurance and construction markets of Kuwait. This expert consultant accompanied members of the secretariat to inspections of the hotels and participated in interviews with the claimant. Based on such meetings and the review of the documentary evidence submitted by the claimants, the expert consultant provided reports to the Panel for each of these claims.

15. For each of the remaining "unusually large or complex" claims, the Panel was assisted by a forensic accountant who prepared a report to the Panel on the risk of overstatement presented by such claims.

III. "UNUSUALLY LARGE OR COMPLEX" CLAIMS FOR D4(PP) PERSONAL PROPERTY LOSSES

16. The Panel reviewed two claims for jewellery that it designated as "unusually large or complex" within the meaning of article 38 of the Rules and for which it engaged the assistance of expert consultants. At the request of the Panel, the expert consultants were asked to perform a detailed review of each such item and to provide an expert opinion to the Panel as to the lowest replacement value in 1990 for each item.

A. UNCC claim No. 3005349

17. In the first "unusually large or complex" claim involving jewellery, the claimant claims for the loss of five diamond sets in the amount of USD 2,352,941 (the "Valuation Items"). The claimant indicated that these five items were purchased from a Kuwaiti jewellery supplier.

18. At the direction of the Panel, members of the secretariat conducted an on-site interview with the claimant's representatives as well as the jewellery supplier during the course of a technical mission to Kuwait in January 2003. However, the claimant was not available to attend due to illness.

19. In reviewing the claim, the Panel considered the evidence provided by the claimant in respect of ownership, loss and causation.

20. The claimant initially provided an inventory list, which stated the carat, clarity and colour of the five Valuation Items (the "original inventory list"). During the interview with the claimant's representatives, the claimant's lawyer explained that the original inventory list was based on discussions that the claimant had with the jewellery supplier in 2000, but that several errors had been made during the transcription of these items and, as a result, the original inventory list was not completely accurate. He provided a revised list, which was certified by the same jewellery supplier,

dated January 2003 (the “new inventory list”). The new inventory list contained seven diamond sets having a reduced total claimed amount of USD 2,288,927.

21. The secretariat met with the jewellery supplier. He stated that he did not look at the original inventory list submitted to the Commission and stated that the new inventory list was the correct list of purchases made prior to Iraq’s invasion and occupation of Kuwait. The supplier stated that he did not have any records of these purchases, nor did he keep a written record of his discussions with the claimant in 2000. The jewellery supplier stated that the new inventory list was based solely on his personal recollection of the claimant’s purchases.

22. The Panel compared the original inventory list with the new inventory list and determined that there was a material difference in the description of the carat, clarity and colour of each of the jewellery items. Accordingly, the Panel considered that the items on the new inventory list constituted a new claim that was not timely filed. As no evidence was provided in support of the Valuation Items described in the original inventory list, the Panel determines that the claimant has not established ownership of the Valuation Items and recommends no award for the Valuation Items.

B. UNCC claim No. 3005341

23. In the second “unusually large or complex” claim involving jewellery, the claimant asserts the loss of 36 sets of precious jewellery in the amount of USD 73,270,543 (the “Valuation Items”). The claimant stated that she owned a large quantity of jewellery, which was stolen during Iraq’s invasion and occupation of Kuwait. The claimant stated that she was claiming only for the most significant items and that these items were made of the highest quality diamonds, rubies, sapphires, emeralds and pearls. The claimant stated that many of these items were manufactured by internationally renowned jewellers such as Harry Winston, Van Cleef & Arpels, Cartier and Bulgari. Some of the Valuation Items were gifts that she had received. The claimant did not claim for any personal property losses other than the Valuation Items.

24. At the direction of the Panel, members of the secretariat and expert consultants conducted an on-site interview with the claimant as well as a jewellery supplier during the course of a technical mission to Kuwait in November 2002 and met with other jewellery suppliers after the technical mission.

25. In reviewing the claim, the Panel considered the evidence provided by the claimant in respect of ownership, loss and causation.

1. Ownership

26. The claimant provided a detailed inventory list of the 36 Valuation Items in her personal statement. This inventory included information as to the quality and size of the diamonds and other precious stones. The claimant also provided Polaroid photographs of 35 Valuation Items and several family photographs of herself and her daughters wearing some of the claimed items. The claimant explained that in 1986 or 1987, her daughter took photographs of her significant jewellery items in order to help facilitate the process of choosing which jewellery items to wear. She stated that these photographs were recovered during the cleaning of her house after Iraq’s invasion and occupation of Kuwait.

27. The claimant also provided several supplier statements from jewellers such as Harry Winston, Van Cleef & Arpels, Graff, Gaspari, Bulgari as well as two Kuwaiti jewellery suppliers listing the items purchased by the claimant prior to Iraq's invasion and occupation of Kuwait. The majority of the Valuation Items were identified in the supplier letters of the two Kuwaiti jewellery suppliers. At the direction of the Panel, the secretariat contacted the Kuwaiti supplier that was still in business. The supplier indicated that the claimant was a valued customer and that its statement was based on the recollection of the claimant and the jeweller as to the items purchased.

28. At the direction of the Panel, the secretariat also contacted Harry Winston regarding two Valuation Items alleged to be Harry Winston pieces. The Harry Winston representative stated that the claimant was well known to him and to others in the high-end jewellery business. He stated that Harry Winston kept invoices for a period of 10 years and therefore he could not provide any information as to the Valuation Items as they were stated to have been purchased in the early 1980s. The representative was shown the photographs of the alleged Harry Winston jewellery. He identified one pair of earrings as manufactured by Harry Winston and stated that the others items alleged to be Harry Winston also appeared to be manufactured by Harry Winston.

29. The claimant had also alleged that five Valuation Items were from Van Cleef & Arpels. The photographs for these items were provided to Van Cleef & Arpels for comment. Their representatives stated that two of the Valuation Items had been purchased by the claimant from their establishment. A third item appeared to be from Van Cleef & Arpels. As for the remaining two items, they could not comment due to the quality of the photographs.

30. Based on the totality of the evidence, the Panel determines that the claimant has established the ownership of the 36 Valuation Items.

2. Loss and causation

31. The claimant provided a personal statement in which she stated that at the time of Iraq's invasion and occupation of Kuwait she was in France, while her son and several servants remained in her house in Kuwait. She asserted that numerous jewellery items, including the Valuation Items, were kept in a vault in her house. The claimant stated that during the invasion and occupation of Kuwait her son was taken and tortured by Iraqi soldiers and that her servants, other than one watchman, either fled or were forced to vacate the house. The claimant stated that Iraqi soldiers looted her house repeatedly and that the watchman was unable to prevent the theft. The claimant stated that all the jewellery in her vault was looted and provided a photograph of the damaged door to the vault where her jewellery was kept. The claimant provided witness statements from her daughter, her chief accountant and the watchman corroborating the looting of her house.

32. The claimant stated that due to the passage of time and her imperfect recollection, she had not provided a comprehensive list of all jewellery items lost. She stated that while she had hundreds of jewellery items which she kept in her house in Kuwait, her other residences outside of Kuwait and a safe deposit in a bank, she only claimed for significant jewellery items which were allegedly kept in the vault in her house. While the Panel is generally satisfied that the Valuation Items were lost as a direct result of Iraq's invasion and occupation of Kuwait, the Panel applies an adjustment to the

recommended award due to the claimant's inability to provide a comprehensive account of the location of all her jewellery items as of the date of Iraq's invasion and occupation of Kuwait.

3. Response of Iraq

33. Iraq comments that the claimant appears to have determined her claimed amount based on the photographs and that the photographs are an insufficient basis for determining the value of the jewellery. The Panel notes that the claimant has provided supplier statements for most of her Valuation Items and such statements indicate the purchase price for these items. Moreover, the Panel has the benefit of the advice of the expert consultants as to valuation.

34. Iraq also comments on the possibility that third parties other than Iraqi soldiers may have been responsible for the theft of the jewellery. The Panel is satisfied, based on the personal and witness statements provided by the claimant, that the theft of the Valuation Items occurred during the jurisdictional period. The Panel notes additionally that losses arising as a result of the breakdown of civil order in Kuwait during Iraq's invasion and occupation of Kuwait are also direct losses. The Panel therefore finds the theft of the claimant's Valuation Items, whether by Iraqi soldiers or others, to be compensable as it is attributable to the breakdown of civil order in Kuwait during the jurisdictional period. Iraq also comments on some discrepancies found in the claimant's personal and witness statements. The Panel has taken these comments into account in making its findings as to ownership, loss and causation.

4. Valuation

35. The Panel determines that the value for the Valuation Items should be based on the lesser of the lowest replacement value in 1990 or the amount claimed for the Valuation Items. Based on the review of all of the evidence, the Panel recommends an award in the amount of USD 12,728,000 for the Valuation Items.

IV. "UNUSUALLY LARGE OR COMPLEX" CLAIMS FOR D8/D9 BUSINESS LOSSES

A. Claim for loss of business income - UNCC claim No. 3007938

36. The Panel reviewed a claim for the losses of two businesses in Kuwait in the amount of USD 43,900,100. The larger of the two businesses consisted of three separate divisions involved in engineering, trading and investment activities. The second business was a travel agency for which the claimant was claiming loss of business income.

37. At the Panel's request, the secretariat, together with the forensic accountant, conducted an interview with the claimant and site inspections of the business premises during a technical mission to Kuwait in October 2003. The financial statements for the first business indicated that the engineering and trading divisions operated at a loss. During the interview with the claimant, the claimant stated that the travel agency was a self-sustaining business. The claimant's income claim was thus based entirely on the profitability of the investment division. The claimant alleges that trading in his Kuwaiti and foreign accounts was interrupted during Iraq's invasion and occupation of Kuwait.

38. Iraq comments that claimant's engineering and trading divisions were operating at a loss and that income, if any, was generated solely from the investment division, for which the claimant has not

provided audited financial statements. The Panel has also noted these comments in its review of this loss.

39. Based on its review of the evidence, the Panel finds that the claimant has not established that his foreign accounts were blocked during the invasion and occupation period. The Panel also finds that the claimant has failed to establish the amount of loss due to the stoppage of his Kuwaiti account. The Panel thus recommends no award with respect to the loss of business income claim and recommends a total award in the amount of USD 9,473,239 with respect to the remaining D8/D9 losses.

B. Claims for loss of stock

1. UNCC claim No. 3002441

40. The Panel reviewed a claim for losses in connection with a business in Kuwait that supplied construction and building materials in the amount of USD 20,916,676. The claimant stated that he had a stockyard in Kuwait that was 10,000 square metres in size that was looted and vandalized during Iraq's invasion and occupation of Kuwait. The claimant claims for losses of stock, business income and receivables. In support of his claimed losses, the claimant provided a statement from his sponsor in Kuwait that stated that the claimant had suffered losses in the amounts claimed. In addition, with respect to his stock claim, his largest loss, the claimant provided a general listing of the stock items being claimed.

41. The claimant stated that he was outside of Kuwait at the time of Iraq's invasion and occupation of Kuwait and that he did not return to Kuwait for health and financial reasons. Therefore, he was unable to provide any additional evidence for the claimed losses. Iraq comments that the claimant has provided insufficient information as to the nature of his D8/D9 losses.

42. The Panel recommends no award of compensation with respect to the claim for loss of business income, receivables and stock, as the evidence provided by the claimant is insufficient to establish the existence of such losses.

2. UNCC claim No. 3009825

43. The Panel reviewed a claim for losses in connection with two businesses located in Kuwait in the amount of USD 11,174,131. The first business was a construction business trading in scrap material. The second and smaller business was a car garage. The claimant asserted that Iraqi soldiers looted both businesses. The claimant claims for losses of real property, tangible property, stock, cash, rental income and business income. The claimant provided repair contracts, repair receipts, lease contracts, rental receipts, and financial statements for 1989 and 1990.

44. At the Panel's request, the secretariat scheduled an interview with the claimant during a technical mission to Kuwait in October 2003. However, the claimant was unable to attend due to poor health. The largest claimed loss relates to stock. Iraq comments that the evidence provided by the claimant does not support the amount of stock lost. The Panel finds that the claimed stock amount is high in comparison to the profit figures reflected in the claimant's financial statements.

45. Based on the totality of the evidence provided, the Panel applies an adjustment to the recommended stock award and recommends a total award in the amount of USD 4,825,655 with respect to the D8/D9 losses.

3. UNCC claim No. 3005349

46. The Panel reviewed a claim for the losses of two businesses and two working farms in Kuwait in the amount of USD 11,728,339. The larger of the two claimed businesses was a general trading and contracting establishment also engaged in the manufacture of tiles, marbles and aluminium. In connection with this business, the claimant claims for real property damage, losses of tangible property assets, stock, business income, receivables and business vehicles, and loss in connection with a delay penalty. In support of these losses, the claimant provided evidence such as financial statements for 1987 to 1990, purchase invoices and drop registration certificates.

47. At the Panel's request, the secretariat, together with the forensic accountant, met with the claimant's family and conducted a site inspection of the business premises and farms during a technical mission to Kuwait in October 2003. The largest claimed loss relates to stock of the trading and contracting establishment. The Panel finds several accounting irregularities in the claimant's audited financial statements with respect to the stock loss. For example, the claimed amount for stock did not take into account any sales for the period from January to July 1990. For some of the activities, the amount of stock held was equal to five to seven years of annual sales, which appears excessive to the Panel.

48. For these and other similar reasons, the Panel applies an adjustment to the valuation results for the stock loss. The Panel recommends a total award in the amount of USD 5,109,909 with respect to the D8/D9 losses.

C. Claim for loss of tangible property - UNCC claim No. 3004587

49. The Panel reviewed a claim for the losses of two businesses located in Kuwait in the amount of USD 12,206,585. The larger of the two businesses was a gravel extraction business. In connection with this business, the claimant claims for losses of business vehicles, general tangible property, stock, business income and receivables. The claimant stated that the Iraqi military confiscated his machinery, equipment and stock for the purpose of its war efforts and for construction. The claimant provided extensive evidence relating to the purchase of heavy vehicles, machinery and equipment and expenditure on capital costs in the form of construction contracts and purchase agreements in relation to a majority of the specific items claimed.

50. Iraq states that the claimant did not provide evidence to support the existence and ownership of the tangible property and business vehicle losses. The Panel, however, finds that the claimant has provided evidence to establish the ownership of tangible property and business vehicles, but that the claimant has failed to supply sufficient evidence to fully support the amounts claimed in relation to a number of specific items in each of these two categories. The Panel therefore recommends an award in respect of general tangible property and business vehicles based on the amounts supported by the evidence.

51. Iraq also comments that business income losses are speculative in nature and therefore, non-compensable. The Panel, however, finds that the claimant has established a loss of business income based on the existence of financial statements showing historic profitability for the years prior to Iraq's invasion and occupation of Kuwait.

52. Finally, Iraq comments that the report of theft provided by the claimant was not sufficient proof of loss as the report indicated that the police had not been direct witnesses of such theft. As police reports of theft are often based on the statements of the victim, the Panel is not persuaded by this argument. The Panel accepts that loss and causation have been established based on personal and witness statements and photographic evidence submitted by the claimant.

53. The Panel recommends a total award in the amount of USD 7,160,040 with respect to the D8/D9 losses.

D. Claim for loss of business vehicles - UNCC claim No. 3009524

54. The Panel reviewed a claim for losses in the amount of USD 52,334,197 of a business in Kuwait that consisted of a “Contracting Division”, which engaged in the rental and repair of vehicles and a “Commercial Division”, which engaged in the sale of Suzuki cars, motorcycles and spare parts. The claimant claims for the loss of approximately 3,000 business vehicles that he alleged were stolen or damaged beyond repair by Iraqi soldiers during Iraq’s invasion and occupation of Kuwait. The claimant submitted extensive evidence, including drop registration certificates for all of the business vehicles. The claimant also claims for losses relating to real property repairs, general tangible property, stock, cash, business income, receivables, incremental costs and “other” losses.

55. At the request of the Panel, the secretariat interviewed the claimant during a technical mission to Kuwait in October 2003. It also conducted a site inspection of the claimant’s resumed business in Al Rai, Shweikh, and Al Ahmadi and noted the capacity of the business based on the large fleet of business vehicles that were present on the business premises.

56. Based on its review of all the evidence, the Panel determines that there is no risk of overstatement with respect to the loss of business vehicles and recommends a total award in the amount of USD 38,887,123 with respect to the D8/D9 losses.

E. Claims where the situs of the losses is Iraq

1. UNCC claim No. 3010718

57. The Panel reviewed a claim for losses of 30,438,700 Iraqi dinars with respect to a fish-breeding farm in Iraq. According to the claimant, the fish farm was the target of sabotage and looting in February 1991 and during the same period his office buildings in Basra suffered heavy damage as a result of bombing by Allied Coalition Forces. The claimant claims for losses relating to real property, stock, livestock and agricultural products, business income, tangible business property, business vehicles and incremental costs. Although the claimant provided substantial evidence with respect to issues of ownership, loss and causation, the claimant did not provide any financial statements for the years prior to Iraq’s invasion and occupation of Kuwait. As a result of this evidentiary deficiency, the Panel recommends no award for the portion of the claim relating to the loss of business income.

58. Iraq challenges the signatures on some documents, such as police reports and inspection reports, and asserts that other similar documents lack official stamps or signatures. However, as no model documents were provided by Iraq, the Panel has no basis for assessing the significance of these contentions.

59. Iraq also asserts that the losses were not caused directly by Iraq's invasion and occupation of Kuwait as they occurred some months after the liberation of Kuwait, a conclusion apparently based on the fact that the inspection report from the Office of Crime in Al Basra is dated early August 1991. The claimant explained that he was in Kuwait in February 1991 when the losses occurred, but that his son witnessed the damages to the farm during the Allied Coalition Forces bombing. The claimant submitted a personal statement and numerous witness statements that indicated that the losses of the business were caused by the Iraqi soldiers and the Allied Coalition Forces bombing during Iraq's invasion and occupation of Kuwait. The Panel finds that this evidence sufficiently establishes that the claimant's losses were a direct result of Iraq's invasion and occupation of Kuwait.

60. The Panel has considered whether the claimed amounts for the claimant's various loss items are overstated, either as a result of the claimant having inflated his loss values or due to exchange rate uncertainties. The Panel decides that in order to address the risk of overstatement an exchange rate of 13 Iraqi dinars to 1 Kuwait dinar should be applied in valuing all the losses except the business vehicles loss, where the utilisation of the standardized Motor Vehicles Valuation figures eliminates any risk of overstatement. The Panel recommends an award in the amount of USD 1,203,910 with respect to the D8/D9 losses.

2. UNCC claim No. 4002385

61. The Panel reviewed a claim for losses in the amount of USD 40,500,000 with respect to a contracting business based in Iraq. The claim was filed in category "E" but was subsequently transferred to category "D" as it pertains to losses of an unincorporated business.

62. The claimant's largest losses relates to payments that he made to a number of workers for the wages owed to them by contractors to whom he supplied the workers. In addition, he claims for the financial assistance that he provided to various foreign workers or the expenses that he otherwise incurred in taking care of these individuals once Iraq invaded Kuwait and until they were able to depart Iraq. However, as he has not established these two losses by sufficient documentary evidence, the Panel determines that these losses are not compensable as "payments made or relief provided to others".

63. The claimant also claims for the loss of tangible business property in Iraq. The claimant stated that he lost the tangible business property without providing any specific information as to what happened to such property. As such, the Panel finds that the claimant has not satisfactorily established that the loss of the tangible business property was a direct result of Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no award of compensation in respect of this loss.

64. The claimant also claims for various losses relating to contracts. The Panel decides that two contract losses are not compensable as insufficient documentary evidence has been submitted to substantiate the losses. The Panel finds that the losses relating to three contracts are business receivables losses as the contract amounts were already outstanding prior to 2 August 1990. The Panel recommends an award with respect to one of these receivables losses only.

65. Iraq asserts that the losses claimed are not a direct result of its invasion and occupation of Kuwait and moreover, that these losses are not supported by the evidence provided by the claimant.

The Panel has taken into consideration the comments of Iraq and recommends a total award in the amount of USD 121,818 with respect to the D8/D9 losses.

F. Hotel claims

66. The following three claims are claims filed by the proprietors of hotels in Kuwait: the Holiday Inn Crowne Plaza, the Messilah Beach Hotel and the Kuwaiti Regency Palace Hotel. Unlike many hotel claims filed with the Commission, these businesses were operated as individual proprietorships. At the request of the Panel, members of the secretariat, accompanied by an expert hotel consultant and a forensic accountant, made inspections of the hotels and interviewed the claimants and/or their representatives. These site visits were particularly useful in determining the extent of damage and the quality and the extent of the repairs undertaken since Iraq's invasion and occupation of Kuwait.

1. UNCC claim No. 3010489

67. The claim for the losses of the Kuwait Regency Palace Hotel is in the amount of USD 135,809,510. Prior to Iraq's invasion and occupation of Kuwait, this hotel was a member of the "Leading Hotels of the World". The claimant states that Iraqi soldiers converted the hotel into a military headquarters and a detention center during Iraq's invasion and occupation of Kuwait, and looted and firebombed the hotel and planted mines on the hotel beach prior to their departure. The claimant claims for real property damage, losses of business income, general tangible property, stock, cash, business vehicles and restart costs. In support of his losses, the claimant provided a loss adjustor's report, a construction assessment report, construction contracts, purchase orders, repair invoices, financial statements and photographs and videos of the damaged hotel.

68. The claimant originally claimed for loss of business income for a period of 65 months. This included the seven-month invasion and occupation period, an additional 15 months for repair and de-mining activities and a further 43 months of reduced income due to the limited operation of the hotel. In support of the de-mining activities, the claimant provided a certificate from the Ministry of Interior, dated 13 May 1991, indicating that mines had been discovered on the hotel beach and that it would take a period of one year to de-mine the beach. The claimant stated that the de-mining and repair activities were completed in May 1992 and that the hotel resumed business in June 1992. Based on such evidence, the Panel determines that an indemnity period of 22 months, comprising the period of the hotel's closure, is appropriate with respect to this loss.

69. At the Panel's request, the secretariat, together with the expert hotel consultant and the forensic accountant, conducted an interview with the claimant and inspections of the hotel during a technical mission to Kuwait in October 2003.

70. Iraq comments that the claimant's "other losses" in the amount of 12,322,663 Kuwaiti dinars were not a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that this loss is largely duplicative of the claimant's loss of business income claim and estimated repair claim and therefore, is not compensable. The Panel also finds that the remaining portion of the losses relating to restart costs had not been incurred and is therefore not compensable. Therefore, Iraq's comments regarding the "other losses" have been addressed during the Panel's review of the claim. Iraq also comments that it is not possible to verify whether the repairs conducted after the invasion and occupation of Kuwait included an element of betterment. Based on the evidence indicating that the

hotel had not been fully repaired and that the renovations appeared to be below the hotel's standard as of 2 August 1990, the Panel is satisfied that no such betterment has taken place.

71. The Panel reviewed the documentary evidence provided by the claimant and the reports of the interview and site inspections. Based on the totality of the evidence provided, the Panel recommends an award in the amount of USD 30,498,586 with respect to the D8/D9 losses.

2. UNCC claim No. 3009261

72. The claim for the losses of the Messilah Beach Hotel is in the amount of USD 53,938,290. The claimant states that the hotel was occupied by Iraqi forces during Iraq's invasion and occupation of Kuwait, resulting in extensive damage to the property. The claimant seeks compensation for the repairs and refurbishment expenses that he incurred following the liberation of Kuwait, as well as business income losses. In support of his losses, the claimant submitted a repair contract, repair invoices, financial statements and a damage survey report with photographs of the damaged hotel.

73. At the Panel's request, the secretariat, together with the expert hotel consultant and the forensic accountant, conducted an interview with the claimant and inspections of the hotel during a technical mission to Kuwait in October 2003.

74. Iraq asserts that the loss of business income is speculative. The Panel determines, however, that this portion of the claim is not unduly speculative, as it is supported by audited financial statements and other documentary evidence that establish the hotel's profitability at the time of Iraq's invasion and occupation of Kuwait. Therefore, the Panel recommends an award for loss of business income.

75. The Panel reviewed all documentary evidence provided by the claimant and the reports from the interview and inspections. Based on the totality of the evidence provided, the Panel recommends an award in the amount of USD 14,731,636 with respect to the D8/9 losses.

76. In addition, the Panel reviewed the claimant's D7 losses for actual or estimated repairs and/or lost rental income in the amount of USD 19,507,233 regarding 73 other properties that were damaged during Iraq's invasion and occupation of Kuwait. In respect of the D7 real property losses, Iraq asserts that such losses were not suffered as a direct result of its invasion and occupation of Kuwait. The Panel finds, however, that the directness requirement is established by the evidence, which included detailed damage assessment reports, witness statements and photographs of the damaged properties.

77. The Panel finds, however, that the claimant's D7 actual repairs claim is substantially overstated and bases its recommended award in respect of this loss on the amounts supported by the claimant's audited financial statements. The Panel recommends an award in the amount of USD 4,324,552 with respect to the D7 losses.

3. UNCC claim No. 3005736

78. The claim for the losses of the Holiday Inn Crowne Plaza is in the amount of USD 12,911,263. The claimant states that Iraqi soldiers occupied the Holiday Inn Crowne Plaza during the period of Iraq's invasion and occupation of Kuwait and asserts that when Iraqi troops withdrew from Kuwait, they spilled diesel fuel throughout the hotel's lobby and ignited it, which resulted in severe fire and smoke damage to the hotel. The claimant also states that Iraqi soldiers fired rocket-propelled grenades at the hotel, which caused extensive structural damage. The claimant's largest losses are for real

property repairs and the loss of business income. The remaining losses are for business vehicles, incremental costs and “other” losses. In support of his losses, the claimant provided repair contracts, refurbishment invoices, a damage survey report prepared by an architectural engineer, financial statements and a loss adjuster's report.

79. At the Panel's request, the secretariat, together with the expert hotel consultant and the forensic accountant, conducted an interview with the claimant and site inspections of the hotel during a technical mission to Kuwait in October 2003.

80. The Panel reviewed all documentary evidence provided by the claimant, the reports of the interview and inspections, and the comments of Iraq regarding the claimant's losses. Based on the totality of the evidence provided, the Panel recommends an award in the amount of USD 8,239,003 with respect to the D8/D9 losses.

V. OTHER CLAIMS WHERE THE SITUS OF THE LOSSES IS IRAQ

81. There are an additional 20 claims that were transmitted to Iraq because the situs of all or some of the claimed losses was in Iraq. With the exception of one claim filed by a Kuwaiti national, these claims were filed by non-Kuwaitis who lived or worked in Iraq or had business interests in Iraq. The total claimed amount for these claims is USD 42,665,670.

82. Several claims were for personal or business tangible property left behind in Iraq and subsequently not recovered as the claimants were unable to return to Iraq. In each case, the Panel reviewed the personal and witness statements and any other documents provided by these claimants in order to determine whether the claimant has established that the loss of such property was a direct result of Iraq's invasion and occupation of Kuwait. In those instances where the claimants do not provide specific information as to what happened to these properties other than the fact that they were left behind, the Panel recommends no award, as the claimants have failed to establish that the loss of such property was a direct result of Iraq's invasion and occupation of Kuwait. The total recommended award for these 20 claims is USD 13,598,020.

VI. OTHER ISSUES

A. Deduction of category “A”, “B” and “C” awards

83. The awards of compensation recommended by the Panel are reduced by the amount of any category “A”, “B” and “C” awards paid to the same claimant for the same losses. In some cases, the deduction of a category “C” award constitutes a deduction of a prorated amount. This occurs where there are multiple category “C” loss elements, and the category “C” award was capped at USD 100,000. In such cases, the category “C” award is prorated back to the category “C” loss elements to reach an amount that can be deducted from the corresponding category “D” award.

B. Currency exchange rate

84. The Commission issues its awards in United States dollars. The Panel therefore determines the appropriate exchange rate applicable to claims expressed in other currencies.

85. The Panel finds that it is not possible to calculate the exchange rate separately for each individual claim. The Panel accordingly adopts the reasoning of the “D1” Panel on this issue.⁴ For

claims stated in Kuwaiti dinars, the currency exchange rate to be applied is the rate of exchange in effect immediately prior to Iraq's invasion and occupation of Kuwait (i.e. 1 August 1990) for converting Kuwaiti dinars into United States dollars. For claims stated in currencies other than Kuwaiti dinars or United States dollars, the currency exchange rate to be applied is the average rate in effect for the month of August 1990 for converting those currencies into United States dollars as indicated in the United Nations Monthly Bulletin of Statistics.

C. Interest

86. In its decision 16 (S/AC.26/1992/16), the Governing Council specified that it will consider the methods of calculation and of payment of interest at a future date. Accordingly, the Panel makes no recommendation with respect to these matters, and the only task for the Panel is to identify the date of loss. Decision 16 specifies 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." For category "D" loss types other than individual business losses, "the date the loss occurred" under Governing Council decision 16 is a single fixed date, being 2 August 1990 (the date of Iraq's invasion and occupation of Kuwait).⁵ Category "D" claims for loss of business income are for losses of income that would have been earned over a period of time. As such, an interest start date of 2 August 1990 for such losses would result in over-compensation for claimants. The Panel therefore adopts 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.⁶

D. Claims preparation costs

87. A number of category "D" claimants have made claims for claims preparation costs incurred by them, either in amounts specified on the claim form or in general terms. 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 recommendations with respect thereto.

VII. RECOMMENDED AWARDS

88. Table 2 below lists the awards recommended by the Panel for each submitting entity with claimants included in part three of the eighteenth instalment. Each submitting entity will be provided with a confidential list containing the individual recommendations made in respect of its claimants. The total amounts of USD 20,854,528.46 and USD 114,798.57 are claimed for interest and for claims preparation costs, respectively. Accordingly, the total amount claimed net of interest and claims preparation costs in respect of the claims in part three of the eighteenth instalment is USD 748,526,762.51. As shown in table 2 below, the Panel recommends a total of USD 193,466,916.94 against this net total amount claimed.

Table 2. Recommended awards by submitting entity

<u>Submitting entity</u>	<u>Number of claims not recommended for payment</u>	<u>Number of claims recommended for payment</u>	<u>Amount of compensation claimed (USD)</u>	<u>Net amount of compensation claimed (USD)</u> ^a	<u>Amount of compensation recommended (USD)</u>
Egypt	1	6	6,592,289.28	6,592,289.28	475,648.14
Germany	0	1	6,768,948.78	6,768,948.78	122,932.19
India	1	0	9,942,862.00	9,942,862.00	0.00
Italy	1	0	284,654.53	284,654.53	0.00
Jordan	1	8	139,330,340.25	139,330,340.25	28,268,928.96
Kuwait	0	12	509,553,624.77	488,703,209.55	162,797,359.89
Lebanon	1	2	5,495,750.00	5,495,750.00	29,260.00
Pakistan	0	1	8,329,038.00	8,329,038.00	114,706.17
Saudi Arabia	1	0	502,395.19	496,790.38	0.00
United Kingdom	0	3	62,199,837.60	62,199,837.60	375,360.13
Yemen	0	2	20,496,349.14	20,383,042.14	1,282,721.46
<u>Total</u>	6	35	769,496,089.54	748,526,762.51	193,466,916.94

^a This amount claimed is net of the amounts of USD 20,854,528.46 for interest and USD 114,798.57 for claims preparation costs.

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

Geneva, 30 April 2004

(Signed) K. Hossain
Chairman

(Signed) I. Suzuki
Commissioner

(Signed) N. Comair-Obeid
Commissioner

Notes

¹ For a detailed description of the claims constituting part one and part two of the eighteenth instalment, see the “Report and recommendations made by the ‘D2’ Panel of Commissioners concerning part one of the eighteenth instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)” (S/AC.26/2003/18), paragraphs 2 to 4, and the “Report and recommendations made by the ‘D2’ Panel of Commissioners concerning part two of the eighteenth instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)” (S/AC.26/2004/5), paragraphs 3 to 6.

² “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”), see in particular chapters II and III.

³ See also articles 35(1) and 35(3) of the Rules.

⁴ See “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), paragraphs 61 to 63.

⁵ Ibid., paragraphs 64 to 65. The “D2” Panel adopted this decision in the sixth instalment report at paragraph 226.

⁶ This is consistent with the practice of other panels. See, for example, “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘E4’ claims,” (S/AC.26/1999/4), paragraph 230.
