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REPORT AND RECOMMENDATIONS MADE BY THE "D1" PANEL OF COMMISSIONERS
CONCERNING PART ONE OF THE NINTH INSTALMENT OF INDIVIDUAL CLAIMS
FOR DAMAGES ABOVE USD 100,000 (CATEGORY "D" CLAIMS)

GE.01-62747

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Introduction

1. This is the eleventh 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 (the "Rules"), by the "D1" Panel of Commissioners (the "Panel"), being one of two Panels appointed to review individual claims for damages above USD 100,000 (category "D" claims). 1/ This report contains the determinations and recommendations of the Panel in respect of part one of the ninth instalment claims submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules on 31 July 2000.

2. The Panel divided the ninth instalment, comprising 522 claims, into two parts. In part one of the ninth instalment, there are 244 claims. Part two of the ninth instalment consists of 278 claims. Part two includes claims requiring further development and a small number of claims for amounts over USD 10 million, which have been designated as "unusually large or complex" claims within the meaning of Article 38(d) of the Rules. The Panel will complete its review of part two of the ninth instalment within twelve months of 31 July 2000.

3. The Panel began its review of the ninth instalment on 31 July 2000. The Panel held regular meetings at the Commission's headquarters in Geneva to consider the claims.

4. The claims in part one of the ninth instalment are comprised of all loss types that can be claimed in category "D" except D2 and D3 claims. 2/ This is the first report of the Panel in which it has applied the methodology for D8/D9 losses. The following table sets out the number of claims by submitting entity in part one of the ninth instalment.

<u>Submitting entity</u>	<u>Number of claims</u>
Australia	3
Canada	4
Germany	2
India	24
Jordan	32
Kuwait	145
Netherlands	1
Pakistan	1

<u>Submitting entity</u>	<u>Number of claims</u>
Slovenia	1
Sudan	8
Sweden	1
Syrian Arab Republic	3
United Kingdom	9
United States	7
UNDP Washington	2
UNRWA GAZA	1
<u>Total</u>	244

I. BACKGROUND

A. Background information

5. In reviewing the claims in part one of the ninth 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. 3/

6. 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 the Government of the Republic of 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

7. The general legal framework for the resolution of category "D" claims is set out in chapter V of the Panel's report and recommendations concerning part one of the first instalment of category "D" claims. 4/

C. Applicable evidentiary standard

8. The evidentiary standard to be applied in reviewing category "D" claims was addressed by the Panel in chapter VI of the report and recommendations concerning part one of the first instalment and chapter II of the report and recommendations concerning part two of the first

instalment. 5/ The Panel's recommendations in these two reports were approved by the Governing Council in decisions 47 and 49 respectively. 6/ As with previous instalments, the Panel has reviewed the claims in part one of the present instalment 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 the Government of the Republic of Iraq which is liable only for any direct loss, damage or injury as a result of Iraq's invasion and occupation of Kuwait.

II. NEW ISSUES ARISING IN THE APPLICATION CLAIMS

9. Some of the claims in this instalment raise new issues that were not dealt with in the Panel's previous reports. These new issues and the Panel's recommendations are set out below.

A. D1(mental pain and anguish) issue: claim for forced hiding

10. The Panel considered two claims involving claimants who fled from Kuwait to Amman by way of Baghdad. The claimants stated that they were forced to hide at night to avoid being bombed by Allied Coalition Forces' aircraft. The Panel has previously found that in order to obtain compensation for forced hiding, a claimant must demonstrate that the forced hiding was on account of a "manifestly well-founded fear." 7/ The Panel determined that such a fear must be "a fear based upon clear indications that Iraqi authorities were seeking to kill or detain the individual in question or some group of which he or she was a member." 8/ The Panel finds that hiding from Allied Coalition Forces' aircraft does not satisfy that requirement, and therefore recommends that no compensation be awarded for these claims.

B. D8/D9(business losses) issue: valuation of fishing boats

11. The Panel considered the question of the valuation of boats under the D8/D9 methodology, belonging to fishermen who operated as sole traders on a cash basis. Many of the types of boats included in the claims do not appear in the Standard Depreciation Table attached to the D8/D9 methodology.

12. The Panel adopts the following method of valuation:

(a) A useful life of 20 years for all fishing boats, with depreciation on a straight-line basis that is consistent with the D8/D9 methodology.

(b) A certificate issued by the fisherman's union, which confirms the fisherman's average monthly income, is acceptable as sufficient

evidence for the purpose of the evidence score, in the absence of audited financial accounts.

(c) A default value of USD 1,730.10 per boat, after depreciation is to be adopted where the boat has reached the end of its useful life.

III. PANEL DETERMINATIONS ON OTHER CLAIMS IN PART ONE OF THE NINTH INSTALMENT

A. Jurisdictional issues

13. Several claims were submitted for losses incurred outside the period 2 August 1990 to 2 March 1991 (the "jurisdictional period"). The Panel considered a claim for D5(securities) losses in respect of a promissory note dated 10 October 1985. The note was assigned to the claimant in 1986, and the maturity date of the note was extended from 1 October 1988 to 1 October 1992. The claimant was unable to recover under the note, and asserted a D5 claim for loss of securities. The Panel notes that the obligation to pay the note did not arise until 1 October 1992, and finds that the claimant has not proved that the claimed loss was a direct loss resulting from Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends that no compensation be awarded.

B. D4(personal property) and D(other) issues: claims arising from property confiscation

14. A claimant sought compensation for personal property confiscated by Iraqi border guards. The claimant alleged that while fleeing Kuwait for Jordan, through Iraq, on 28 August 1990, he had in his possession Iraqi dinars and gold. He was arrested by Iraqi authorities, who confiscated the currency and gold, and imprisoned him. The claimant sought compensation under D4(PP) for the confiscated gold and under D(other) for the confiscated currency. The Panel having considered the extensive, official Iraqi evidence of the confiscation of the gold and currency, determines that the loss of property is a direct loss resulting from Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends that the claimant be compensated for the confiscated property.

C. D5(loss of securities) issues

15. Some claimants sought compensation for loss of value of shares which, they claim, was the result of Iraq's invasion and occupation of Kuwait. One claimant held shares in two entities, which lost value from the time of Iraq's invasion of Kuwait to May 1992, when he received a settlement in respect of his shares. He claimed for the difference between the settlement amount received and the amount he claims the shares were worth as at 2 August 1990. The claimant asserted that the loss in the value of his shares was a direct result of Iraq's invasion and occupation of Kuwait.

The Panel finds that the claimant has failed to establish that the alleged loss in the value of the shares was a direct loss resulting from Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends that no compensation be awarded.

16. Another claimant sought compensation for losses in investment funds. He asserted that he could not redeem his shares during Iraq's invasion and occupation of Kuwait even though their value was falling. When the claimant arrived in the United Kingdom, he could not sell his shares because his accounts had been frozen. In December 1991, he was able to sell some of his shares but at a loss. He also asserted that had the invasion and occupation not occurred, his investments would have risen in value. The Panel concludes that the claim is too speculative in nature and the directness requirement is not satisfied. Therefore, the Panel recommends that no compensation be awarded.

D. D5(loss of bank account) issue

17. A claim was submitted for the loss of a bank account in a Kuwaiti exchange house. Several months before Iraq's invasion and occupation of Kuwait, the claimant attempted to withdraw money from his accounts but was unable to do so since the exchange house had closed. The claimant alleged that he commenced legal proceedings against the exchange house to recover his money but the legal proceedings were cancelled by the Government of Kuwait at the end of 1992. The Panel finds that there is no causal link to Iraq's invasion and occupation of Kuwait as the money in the account was lost prior to the invasion. Accordingly, the Panel recommends that no compensation be awarded.

E. D6(mental pain and anguish) issue

18. A claimant and his family left Kuwait on 6 September 1990 and moved to Egypt. The claimant's Egyptian visa prohibited him from working. As a result of his inability to work in Egypt, the claimant submitted a D6(MPA) claim alleging that he was deprived of all economic resources. The Panel finds that the claimant's inability to find employment in Egypt was not directly linked to Iraq's invasion and occupation of Kuwait, but was due to the inability to obtain a work permit. Accordingly, the Panel recommends that no compensation be awarded.

F. D6(loss of salary) issue

19. A claimant submitted a claim for loss of income and other employment benefits. He alleged that he was forced to resign from his employment in the United Arab Emirates on 31 December 1990, and asserted that his employer's request for his resignation was politically motivated and based on his nationality. The Panel finds that the loss is not a direct loss

resulting from Iraq's invasion and occupation of Kuwait. Therefore, the Panel recommends that no compensation be awarded.

20. A director of a company submitted a claim under D6 (loss of salary) for loss of a profit incentive payment for the 1989/1990 financial year. The claimant asserted that he was entitled to an annual "profit incentive" based on the company's trading figures for that financial year. The Panel notes that the company continued to trade after the liberation of Kuwait and the claimant returned to work with the company on 4 July 1991. The company has also filed a category "E" claim for, inter alia, loss of profit with the Commission. The Panel determines that the claimant is in a position to recover any amounts which may be owing to him directly from the company. Accordingly, the Panel recommends that no compensation be awarded.

IV. CROSS CATEGORY ISSUES

21. Recommended awards in respect of claims in part one of this instalment are reported net of deductions of category "A", "B" and "C" approved awards made to the same claimants. 9/

V. RECOMMENDATIONS

22. The Panel extensively reviewed individual claims, examined the application of the methodologies, and satisfied itself that the appropriate methodologies have been applied to the claims in part one of the instalment.

A. Awards by submitting entity

23. The annex hereto lists the awards recommended by the Panel for each Government and international organization that has claimants included in part one of the ninth instalment. Each Government and international organization 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 Panel recommends a total of USD 25,615,019.69 against a total claimed amount of USD 47,888,651.37

B. Interest and exchange rates

24. A number of claimants in part one of this instalment filed claims in category "D" specifically for interest on their category "C" or "D" claims. As noted by the Panel in its report and recommendations on part one of the first instalment, interest will be awarded in accordance with Governing Council decision 16. 10/

C. Article 41 corrections to previously reported claim awards

25. In accordance with procedures set out in article 41 of the Rules for the correction of award amounts previously reported in an instalment and approved by the Governing Council, the Panel recommends approval of the corrections as described in the following paragraphs. 11/ A confidential listing containing a revised breakdown of amounts in respect of individual claimants will be provided to the submitting entities affected.

1. Third instalment correction

26. One claim that was approved in the third instalment requires correction, as an award for claimant's D4 (motor vehicle) losses was inadvertently excluded.

<u>Country</u>	<u>Instalment</u>	<u>Number of claims affected</u>	<u>Amount of net effect (USD)</u>
Canada	3	1	82,354.67
<u>Total</u>		1	82,354.67

2. Part one of the fourth instalment correction

27. One claim approved in part one of the fourth instalment requires correction as the claimant made claims for separate and distinct employment losses in category "C" and in category "D", but due to a computational error the claimant's C6 (loss of salary) award was deducted from his D6 (loss of salary) award.

<u>Country</u>	<u>Instalment</u>	<u>Number of claims affected</u>	<u>Amount of net effect (USD)</u>
Jordan	4/1	1	6,264.72
<u>Total</u>		1	6,264.72

3. Fifth instalment corrections

28. One claim approved in the fifth instalment requires correction as a consequence of an article 41 correction applied to the related category "C" award. 12/ The original category "C" award was deducted from the award for a related loss in category "D". The article 41 correction to the category "C" claim requires that a revision be made to the award for the related loss in category "D".

<u>Country</u>	<u>Instalment</u>	<u>Number of claims affected</u>	<u>Amount of net effect (USD)</u>
India	5	1	16,903.83
<u>Total</u>		1	16,903.83

29. Another claim approved in the same instalment requires correction due to a typographical error whereby the amount claimed was inserted instead of the amount recommended. 13/

<u>Country</u>	<u>Instalment</u>	<u>Number of claims affected</u>	<u>Amount of net effect (USD)</u>
India	5	1	(1,991.06)
<u>Total</u>		1	(1,991.06)

4. Changes to submitting entity reports by instalment

30. Pursuant to the corrections noted above in paragraphs 26-29, the changes to the submitting entity awards by instalment are as follows:

<u>Instalment</u>	<u>Submitting entity</u>	<u>Previous recommended award (USD)</u>	<u>Corrected recommended award (USD)</u>
3	Canada	252,031.36	334,386.03
4/1	Jordan	1,857,575.62	1,863,840.34
5	India	5,101,591.40	5,116,504.17

D. Submission through the Executive Secretary to the Governing Council

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

Geneva, 31 January 2001

(Signed) R.K.P. Shankardass
Chairman

(Signed) H.M. Joko-Smart
Commissioner

(Signed) M.C. Pryles
Commissioner

AnnexSUMMARY RECOMMENDATIONS OF PART ONE OF THE
NINTH INSTALMENT OF CATEGORY "D" CLAIMS

<u>Country or international organization</u>	<u>Number of claims recommended for payment</u>	<u>Number of claims not recommended for payment</u>	<u>Amount of compensation claimed (USD)</u>	<u>Amount of compensation recommended (USD)</u>
Australia	3	0	286,940.21	118,902.21
Canada	4	0	702,051.95	226,629.11
Germany	1	1	157,350.00	41,093.40
India	22	2	5,174,545.89	691,799.39
Jordan	22	10	8,740,970.92	955,920.95
Kuwait	142	3	28,432,154.78	22,598,358.78
Netherlands	1	0	145,036.59	25,293.00
Pakistan	1	0	19,591.70	14,290.24
Slovenia	1	0	30,082.00	26,775.38
Sudan	7	1	1,162,176.98	210,636.40
Sweden	1	0	3,559.74 a/	6,700.00
Syrian Arab Republic	2	1	534,003.19	87,773.18
United Kingdom	9	0	1,375,130.46	386,768.71
United States of America	7	0	508,536.80	154,013.85
UNDP Washington	1	1	428,606.67	29,722.72
UNRWA Gaza	1	0	187,913.49	40,342.37
<u>Total</u>	225	19	47,888,651.37	25,615,019.69

a/ Claim included D1(MPA) losses, for which claimed amounts are not specified.

Notes

1/ S/AC.26/1992/10.

2/ 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(payment and 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 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.26/1998/15), at paragraphs 30-57. 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(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 US\$100,000 (category 'D' claims)" (S/AC.26/2000/24). The methodologies for resolving all of the losses in category "D" have now been developed.

3/ See in particular chapter II of the First 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).

4/ S/AC 26/1998/1.

5/ 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 (3) of the Rules.

6/ S/AC.36/Dec.47 (1998) and S/AC.26/Dec.49 (1998).

7/ See para. 166 of S/AC.26/1998/1.

8/ See para. 147 of S/AC.26/1998/1.

9/ 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).

10/ Paragraph 1 of decision 16 (S/AC.26/1992/16) 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." See also paragraphs 64-65 of the report for part one of the first instalment (supra note 2).

11/ Article 41 states that:

- "1) Computational, clerical, typographical or other errors brought to the attention of the Executive Secretary within 60 days from the publication of the decisions and reports, will be reported by the Executive Secretary to the Governing Council.
- 2) The Governing Council will decide whether any action is necessary. If it is determined that a correction must be made, the Governing Council will direct the Executive Secretary as to the proper method of correction."

12/ Various corrections to category "C" claims were approved in the Eighth report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/1999/25), the Ninth report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/2000/10) and the Tenth report of the Executive Secretary pursuant to article 41 of the Provisional Rules for Claims Procedure (S/AC.26/2000/14).

13/ S/AC.26/1999/12.
