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

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Introduction

1. This is the eighteenth 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). Since the Panel submitted its last report to the Governing Council, Commissioner Henry Joko-Smart resigned from the Panel at the end of January 2003. The Governing Council appointed Mr. Georges Abi-Saab to the “D1” Panel at its 11-13 March 2003 session. This report contains the determinations and recommendations of the Panel in respect of part one of the nineteenth instalment, submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules on 28 January 2003.
2. The nineteenth instalment initially comprised 725 claims. One claim¹ was added to the instalment after the Panel commenced its review of the claims. This claim had been deferred from a previous instalment pending the receipt of additional information from the claimant.
3. The Panel has divided the nineteenth instalment into two parts. The total number of claims resolved by the Panel in part one is 323. The remaining claims will comprise part two of the instalment, which will include a number of claims for high-value personal property items that have been designated as “unusually large or complex” claims within the meaning of article 38(d) of the Rules. Some of these “unusually large or complex” claims are for asserted amounts over USD 10 million. The Panel is scheduled to complete its review of part two of the nineteenth instalment in December 2003.
4. In the case of four claims in the nineteenth instalment, either the situs of the alleged losses is Iraq or the claims are for losses arising out of business dealings with Iraqi entities or the Government of the Republic of Iraq (“Iraq”). The Panel determined that these claims should be sent to Iraq for its comments. The Panel determined that a further 12 claim files should be sent to Iraq for its comments on the basis that the claimed amounts exceed USD 10 million.² All of the claims where the Panel determined that the claim files should be sent to Iraq will be reported in part two of the nineteenth instalment.
5. Four claims³ reviewed by the Panel in part one of the nineteenth 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” in accordance with Governing Council decision 123 (S/AC.26/Dec.123 (2001)). The Panel is therefore making recommendations only with respect to the personal losses asserted in these claims.
6. In the course of its review of claims in part one of the nineteenth instalment, 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: 27-29 January, 31 March - 2 April, 21-23 May, 9-11 July and 11-13 August 2003. The March-April 2003 meeting included a joint meeting with the “D2” Panel of Commissioners to discuss issues of relevance to both Panels.

7. The nineteenth 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.⁴ With respect to the application claims⁵ comprising part one of the nineteenth instalment, there were no new factual, legal or valuation issues that have not been addressed in the Panel’s previous reports. However, the Panel reviewed two “unusually large or complex” claims for high-value personal property items. The facts of these claims and the Panel’s findings and recommendations are set out at paragraphs 15-28 below.

8. The following table sets out the number of claims by submitting entity resolved in part one of the nineteenth instalment.

Table 1. Summary of nineteenth instalment claims by submitting entity

<u>Submitting entity</u>	<u>Number of claims originally submitted to the Panel</u>	<u>Number of claims added to the instalment</u>	<u>Number of claims resolved by the Panel in part one</u>
Brazil	1	-	-
Canada	1	-	-
Egypt	22	-	8
Germany	2	-	1
India	30	-	12
Ireland	1	-	-
Jordan	103	1	10
Kuwait	390	-	215
Lebanon	2	-	-
Pakistan	10	-	2
Philippines	3	-	1
Saudi Arabia	1	-	-
Syrian Arab Republic	3	-	1
Thailand	1	-	-
Turkey	4	-	3
United Arab Emirates	1	-	-
United Kingdom	2	-	-
United States	1	-	-
Yemen	147	-	70
<u>Total</u>	725	1	323

I. BACKGROUND

A. Background information

9. In reviewing the claims in part one of the nineteenth 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.⁶

10. 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

11. The general legal framework for the resolution of category "D" claims is set out in chapter V of the Panel's First "D" Report.⁷

C. Applicable evidentiary standard

12. The evidentiary standard to be applied in reviewing category "D" claims has been addressed by the Panel in previous reports.⁸ As with earlier instalments, the Panel has reviewed the claims in part one of the nineteenth 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

13. The Panel obtained assistance from expert consultants with regard to the valuation of certain items of personal property in two claims. The items were either of high value or of an unusual nature ("Valuation Items"). These claims were also the subject of a technical mission to Kuwait undertaken at the Panel's direction by the secretariat and the expert consultants in November 2002.

14. Notable aspects of these two claims and the Panel's findings and recommendations on the Valuation Items are set out below.

B. UNCC claim No. 3008239

15. This claim was filed in 1993, but the claimant died in August 2000. The claimant sought compensation in the total amount of USD 2,969,138.40. Items totalling USD 613,148.79 were treated

as Valuation Items. The Valuation Items comprise nine paintings claimed in the amount of USD 322,491.35 and two statues claimed in the amount of USD 290,657.44.

(a) Ownership of the Valuation Items

16. The claimant provided information and evidence regarding ownership of the Valuation Items in his claim in the form of copies of original invoices and receipts and witness statements. In addition, members of the claimant's family and household staff were interviewed during the technical mission to Kuwait. Information was also obtained from the vendor of the statues.

17. On the basis of the totality of the evidence, the Panel finds that the claimant owned the Valuation Items for which he claimed.

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

18. In addition to the claimant's statement submitted with his claim, information concerning loss and causation was obtained during interviews conducted during the technical mission to Kuwait. An employee in the claimant's household stated that he was in the claimant's residence when Iraqi soldiers arrived and that he observed the Iraqi soldiers removing and destroying the claimant's property. The claimant's sister, widow and son also gave detailed accounts of the extent of the destruction and looting of the claimant's home and belongings, which they observed on their return to Kuwait after liberation.

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

(c) Recommended award for the Valuation Items

20. Taking into account the report of the expert consultants and the evidence submitted by the claimant in support of the Valuation Items, the Panel recommends that the claimant should be awarded a total of USD 45,000 for the Valuation Items.⁹

C. UNCC claim No. 3005327

21. The claimant seeks compensation in the total amount of USD 16,903,913.49. Items totalling USD 2,669,896.19 were treated as Valuation Items. The Valuation Items comprise jewellery, carpets, chandeliers, books, paintings, various musical instruments, one piece of furniture, rare coins and gold and silver medals.

(a) Ownership of the Valuation Items

22. The claimant provided detailed evidence in respect of his ownership of only some of the Valuation Items. With respect to carpets, chandeliers, books, paintings, various musical instruments and some of the jewellery items, the evidence submitted by the claimant included a copy of an original invoice, post-invasion statements from vendors, photographs of the items and witness statements. In

the case of the paintings, the claimant has also provided books in which the claimed paintings were depicted. On the basis of the totality of the evidence, the Panel finds that the claimant owned these particular items.

23. However, in respect of certain of the jewellery items, the one item of furniture and the rare coins and medals, the claimant did not provide specific details or any documentation, but simply stated that some of the items were gifts and legacies. Given the insufficiency of the evidence, the Panel finds that the claimant has failed to demonstrate his ownership of these particular items.

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

24. In his personal statement, the claimant asserts that his property was stolen as a result of Iraq's invasion and occupation of Kuwait. In an interview conducted during the technical mission to Kuwait, the claimant stated that he left Kuwait on 2 August 1990 and that Iraqi soldiers subsequently used his house as a command centre for the period of the occupation. He provided photographs evidencing the damage to the house and a weapons register allegedly left behind by the Iraqi soldiers stationed in the house.

25. The claimant also provided witness statements by his employees. The claimant's driver, in particular, stated that he was in the claimant's home on 2 August 1990 when Iraqi soldiers came to the residence and expelled the employees. The witnesses all stated that on their return to Kuwait after liberation, they saw that the claimant's home had been looted and damaged.

26. 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 dated 18 August 1990, which is one of a number of decrees that targeted named members of the Kuwaiti ruling family and other prominent Kuwaitis, and called for the destruction and confiscation of their property.¹⁰

27. On the basis of all the evidence, the Panel finds that the claimant lost the Valuation Items for which ownership was established, as a direct result of Iraq's invasion and occupation of Kuwait.

(c) Recommended award

28. Taking into account the report of the expert consultants and the evidence submitted by the claimant in support of the Valuation Items, the Panel recommends that the claimant should be awarded a total of USD 210,000 for the Valuation Items.¹¹

III. CROSS-CATEGORY ISSUE

29. Recommended awards in respect of claims in part one of the nineteenth instalment are net of category "A", "B" and "C" approved awards made to the same claimants.¹²

IV. OTHER ISSUES

A. Exchange rates

30. For the purpose of calculating recommended amounts, the Panel has converted currencies into United States dollars in accordance with the rates set out in paragraphs 61-63 of the First “D” Report.

31. 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

32. A number of claimants in part one of the nineteenth instalment claim for interest on losses contained in their category “D” claims for a total amount of USD 516,292.00. 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

33. 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

34. The Panel applies these findings to the claims included in part one of the nineteenth instalment.

C. Claims preparation costs

35. A number of claimants in part one of the nineteenth 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 94,456.76.

36. 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

37. The annex hereto lists the awards recommended by the Panel for each Government for the claims resolved in part one of the nineteenth 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 is USD 176,241,854.14. Of this amount claimed, USD 3,544,183.40 is for business losses suffered by Kuwaiti companies that will be severed from the category "D" claims and transferred to the "E4" Panels of Commissioners for their review pursuant to Governing Council decision 123. As against the net balance of USD 172,086,921.98 claimed, which excludes interest and claims preparation costs, the Panel recommends a total compensation of USD 78,725,660.40.

VI. SUBMISSION OF THE REPORT

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

Geneva, 12 August 2003

(Signed) R.K.P. Shankardass
Chairman

(Signed) G. Abi-Saab
Commissioner

(Signed) M.C. Pryles
Commissioner

Notes

¹ UNCC claim number 3004042.

² In cases where a claimant objects to the transmission of the claim file to Iraq, the Panel does not send the claim file to Iraq. However, in such cases, the Panel will examine the reasons given by the claimant for his or her objection and it reserves the right to draw an adverse inference against the claimant when it reviews the claim. If the Panel considers it appropriate, it may make an adjustment when finalizing its recommendation to take into account the fact that Iraq did not have an opportunity to comment on the claim.

³ UNCC claim numbers 3001267, 3001844, 3004557 and 3004887.

⁴ 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.

⁵ 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 4 above.

⁶ 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).

⁷ See note 4 above.

⁸ 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.

⁹ The recommended award for all losses in this claim is USD 1,739,183.94. These losses comprise D4 (personal property) losses in the amount of USD 1,803,692.04, D4 (motor vehicle) losses in the amount of USD 56,228.37, D7 (real property) repair costs and loss of rental income in the amount of USD 1,100,567.47, as well as claim preparation costs in the amount of USD 8,650.52.

¹⁰ See paragraph 25 of 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”.

¹¹ The recommended award for all losses in this claim is USD 8,971,555.33. These losses comprise D4 (personal property) in the amount of USD 11,399,844.29 and D7 (real property) repair costs and loss of rental income in the amount of USD 5,504,069.20.

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 CLAIMS IN PART ONE OF
THE NINETEENTH 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)</u> ^a	<u>Net amount claimed after severances and transfers (USD)</u>	<u>Amount of compensation recommended (USD)</u>
Egypt	5	3	1,137,620.18	723,931.90	15,404.38
Germany	1	0	148,993.17	126,510.35	0.00
India	5	7	8,654,174.57	8,362,223.01	338,001.07
Jordan	0	10	7,784,757.69	4,883,612.36	1,426,418.38
Kuwait	30	185	126,783,172.95	126,619,384.22	68,595,456.00
Pakistan	1	1	895,034.43	543,947.92	132,120.19
Philippines	0	1	119,721.45	119,721.45	62,477.69
Syrian Arab Republic	0	1	767,128.03	767,128.03	46,238.00
Turkey	3	0	232,100.00	232,100.00	0.00
Yemen	11	59	29,719,151.67	29,708,362.74	8,109,544.69
<u>Total</u>	56	267	176,241,854.14	172,086,921.98	78,725,660.40

^a This total amount claimed includes USD 3,544,183.40 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, USD 516,292.00 for interest and USD 94,456.76 for claims preparation costs.
