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REPORT AND RECOMMENDATIONS MADE BY THE "D2" PANEL OF COMMISSIONERS
CONCERNING PART TWO OF THE SIXTEENTH INSTALMENT OF INDIVIDUAL CLAIMS
FOR DAMAGES ABOVE USD 100,000 (CATEGORY "D" CLAIMS)

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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 (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).
2. This report contains the determinations and recommendations of the Panel in respect of part two of the sixteenth instalment, submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules on 28 August 2002.
3. As set out in the report concerning part one of the sixteenth instalment, there were 771 claims in the sixteenth instalment at the time of its submission to the Panel (“procedural order claims”).¹ Prior to the signing of part one of the sixteenth instalment report, 43 claims from other instalments were added to the sixteenth instalment as their review was complete at the time of signature of the report.² 13 claims were transferred from the sixteenth instalment to other instalments for various reasons.³ An additional 52 claims were included earlier in the “Report and recommendations made by the ‘D2’ Panel of Commissioners concerning part two of the fourteenth instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)” (S/AC.26/2003/7). A total of 332 claims were resolved in part one of the sixteenth instalment.
4. Since the signing of part one of the sixteenth instalment report, 183 procedural order claims in the sixteenth instalment were included in 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).
5. Of the remaining procedural order claims in the sixteenth instalment, 120 claims are being deferred or transferred to other instalments and the balance are resolved by the Panel in this report. Of the 120 claims, 113 claims are deferred to later instalments because the Panel requires additional information from the claimants to resolve these claims or they are related to claims in other instalments. Seven claims were identified as “stand alone” or “overlap” claims and will be processed by the “E4” Panels of Commissioners (the “‘E4’ Panels”) in accordance with Governing Council decision 123 (S/AC.26/Dec.123(2001)).
6. There are an additional 168 claims reported in part two of the sixteenth instalment. These comprise claims from other instalments that had been deferred to or that are related to claims originally included in the sixteenth instalment and claims from later instalments that have been moved forward as they were ready for reporting at the time of signature of this report.
7. As a result of these additions, deferrals, and transfers, part two of the sixteenth instalment comprises 282 claims. 11 of these are claims having corporate losses as well as individual losses. The Panel has made recommendations only with respect to the individual losses asserted in these claims.

The Executive Secretary has severed and transferred the corporate losses to the “E4” Panels in accordance with Governing Council decision 123.

8. The most common loss type appearing in part two of the sixteenth instalment is D8/D9 individual business losses. Other common loss types are D4(PP) personal property losses, D6 loss of salary and D7 real property losses. The majority of the claims in part two of the sixteenth instalment were submitted by the Governments of Kuwait, Jordan, Saudi Arabia and India.

9. Table 1 below sets out by submitting entity the claims submitted to the Panel and the claims resolved by the Panel in parts one and two of the sixteenth instalment.

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

<u>Submitting entity</u>	<u>Number of procedural order claims in the instalment</u>	<u>Number of claims added to the instalment</u>	<u>Number of claims deferred from the instalment</u>	<u>Number of claims originally in the instalment that were reported in earlier instalments</u>	<u>Number of claims resolved by the Panel in part one of the instalment</u>	<u>Number of claims resolved by the Panel in part two of the instalment</u>	<u>Total number of claims resolved by the Panel</u>
Algeria	1	-	1	-	-	-	-
Argentina	1	-	1	-	-	-	-
Austria	1	3	1	-	1	2	3
Bangladesh	-	1	-	-	-	1	1
Canada	8	5	3	2	6	2	10
Cyprus	1	-	1	-	-	-	-
Denmark	1	-	1	-	-	-	-
Egypt	15	5	11	2	5	2	9
France	2	-	-	-	-	2	2
Germany	2	1	1	-	-	2	2
Greece	1	-	1	-	-	-	-
Hungary	1	-	-	1	-	-	1
India	26	6	5	4	10	13	27
Ireland	1	-	-	1	-	-	1
Israel	1	-	-	-	-	1	1
Italy	5	-	1	1	-	3	4
Japan	1	-	1	-	-	-	-
Jordan	89	55	18	24	49	53	126
Kuwait	316	109	38	74	185	128	387
Lebanon	26	1	7	10	6	4	20
Pakistan	8	2	2	1	5	2	8
Russian Federation	-	1	-	-	-	1	1
Saudi Arabia	55	-	5	12	20	18	50
Spain	2	-	-	1	-	1	2
Somalia	1	-	1	-	-	-	-
Sudan	2	-	1	1	-	-	1
Syrian Arab Republic	22	10	1	11	8	12	31

<u>Submitting entity</u>	<u>Number of procedural order claims in the instalment</u>	<u>Number of claims added to the instalment</u>	<u>Number of claims deferred from the instalment</u>	<u>Number of claims originally in the instalment that were reported in earlier instalments</u>	<u>Number of claims resolved by the Panel in part one of the instalment</u>	<u>Number of claims resolved by the Panel in part two of the instalment</u>	<u>Total number of claims resolved by the Panel</u>
Turkey	3	1		2	1	1	4
United Arab Emirates	-	1	-	-	-	1	1
United Kingdom	23	4	9	5	5	8	18
United States	43	2	9	15	9	12	36
Yemen	102	1	10	65	20	8	93
UNDP Kuwait	2	-	1	1	-	-	1
UNDP United Arab Emirates	1	-	1	-	-	-	-
UNDP Washington	3	2	-	1	-	4	5
UNHCR Canada	1	-	1	-	-	-	-
UNRWA Gaza	4	1	1	1	2	1	4
<u>Total</u>	771	211	133	235	332	282	849

I. THE PROCEEDINGS

10. On 28 August 2002, the Panel issued Procedural Order No. 28, in which it gave notice of its intention to complete its review of the claims in the sixteenth instalment and to finalize its report and recommendations to the Governing Council in two parts. The Panel met regularly to consider the claims.

11. In reviewing the claims in part two of the sixteenth 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 "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").⁴

12. 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 the Government of the Republic of Iraq ("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 of Iraq in connection with four claims that the Panel transmitted to Iraq for comment.⁵

II. LEGAL FRAMEWORK

A. General legal framework and applicable evidentiary standard

13. The general legal framework and applicable evidentiary standard for the resolution of category "D2" claims is set out in chapter III of the sixth instalment report.⁶ As with earlier instalments, the Panel has reviewed the claims in part two of the sixteenth 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 fled from a war zone, with the interests of Iraq, which is liable only for direct loss, damage or injury caused by its invasion and occupation of Kuwait.

B. The role of the Panel

14. 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.

15. 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.

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

16. The Panel was called upon to address numerous factual, legal and valuation questions in the determination of the claims in part two of the sixteenth instalment. The Panel ensured that the claims which gave rise to new issues not considered in previous instalments of category “D” claims were resolved in accordance with the principles of established methodologies. These new factual, legal and valuation issues, and the Panel’s recommendations, are described below.

A. D4(PP) personal property losses: two “unusually large or complex” claims for jewellery

17. The Panel reviewed two claims for jewellery that it classified as “unusually large or complex” within the meaning of article 38 of the Rules and for which it engaged the assistance of expert consultants due to the assertion of the loss of certain types of D4(PP) personal property that are either of high value and/or unique in nature. 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.

1. UNCC Claim no. 3009462

18. In the first “unusually large or complex” claim involving jewellery, the claimant asserts the loss of seven items of jewellery in the amount of USD 2,249,135. The jewellery items and the amounts asserted are as follows: (a) emerald and diamond necklace set (USD 299,308); (b) black pearl/yellow sapphire diamond necklace set (USD 271,626); (c) antique sapphire bead necklace set (USD 176,471); (d) sapphire and diamond necklace set (USD 325,260); (e) emerald and diamond necklace set (USD 325,260); (f) emerald and diamond necklace set (USD 553,633); and (g) emerald and diamond necklace set (USD 297,578) (collectively, the “Valuation Items”). The claimant indicated that these items were purchased from two local suppliers in Kuwait.

19. The Panel instructed the secretariat to undertake claim development pursuant to article 34 of the Rules with the assistance of the expert consultants with respect to the Valuation Items. In addition, at the direction of the Panel, members of the secretariat conducted an on-site interview with the claimant during the course of a technical mission to Kuwait.

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

(a) Ownership

21. The claimant submitted invoices for five of the seven Valuation Items, which had been purchased from two local suppliers. The claimant also provided statements from these two suppliers

indicating that the claimant and his family were valuable customers and certifying as to the purchase by the claimant or his family of various items of jewellery.

22. Items (a), (b), (c) and (d) were supported by invoices from the first local supplier. The claimant stated that these invoices were original invoices, which survived Iraq's invasion and occupation of Kuwait. The secretariat conducted a telephone interview with this supplier who confirmed that any invoices that the claimant provided in support of his jewellery items were original invoices and not recreations. In preparing his statement, the supplier was shown the invoices submitted by the claimant. The supplier stated that he recognized the invoices as belonging to his establishment and that they had been prepared by his employees.

23. Item (g) was supported by an invoice from the second local supplier. The secretariat also conducted a telephone interview with this supplier, who indicated that the invoice was recreated after Iraq's invasion based on his memory and discussion with the original supplier of the item (as he had acted as a broker in the sale of the item).

24. Based on this evidence and information, the Panel determines that the claimant has established his ownership of items (a), (b), (c), (d) and (g). As no evidence was provided in support of items (e) and (f) above, the Panel determined that the claimant had not established the existence or ownership of these two items.

(b) Loss and causation

25. The claimant provided a personal statement in which he explained that, on the day of Iraq's invasion, he and his family were at their weekend chalet, which was 100 kilometres from their home. As they only intended to be away only for the weekend, they had not taken any jewellery items with them. The claimant explained that, following Iraq's invasion, he and his family went into hiding in Kuwait, where they remained until their departure for Saudi Arabia in mid-August 1990. The claimant stated that he returned to Kuwait at the end of March 1991. At that time, he discovered that his house had been ransacked and that his valuables, including the Valuation Items, had been stolen or destroyed. The claimant also provided two witness statements supporting the fact of loss. The Panel is satisfied that the Valuation Items were lost as a direct result of Iraq's invasion and occupation of Kuwait.

(c) Valuation

26. 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. On that basis, the expert consultants made their recommendations to the Panel. While the invoices provided by the claimant contained information as to the carat size of the diamond and the coloured stones and the weight of the pearls, the Panel finds that the claimant failed to provide sufficient information concerning the colour and clarity of the diamond, the origin of the coloured stones and the quality of the pearls. As a result, the Panel, having regard to the valuation reports prepared by the expert consultants, valued the loss on the basis that the diamonds, stones and pearls were of low quality.

Accordingly, the Panel recommends an award in the amount of USD 250,000 in respect of the five Valuation Items for which ownership has been established.⁷

2. UNCC Claim no. 3009532

27. In the second “unusually large or complex” claim involving jewellery, the claimant asserts the loss of jewellery in the amount of USD 1,158,270, which included the following two jewellery items: (a) diamond and ruby set (USD 248,893); and (b) diamond set with a platinum frame (USD 193,339) (collectively, the “Valuation Items”). The claimant indicated that these items were purchased from a local supplier in Kuwait.

28. The Panel instructed the secretariat to undertake claim development pursuant to article 34 of the Rules with the assistance of the expert consultants with respect to the Valuation Items. In addition, at the direction of the Panel, members of the secretariat together with the expert consultants conducted an on-site interview with the claimant during the course of a technical mission to Kuwait.

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

(a) Ownership

30. The claimant provided post-invasion invoices for the Valuation Items. Both of these invoices are detailed in their description of the jewellery items. The secretariat conducted a telephone interview with the supplier. He indicated that these invoices were copied from the original invoices that survived Iraq’s invasion and that subsequently he threw away the original invoices. The Panel queried why the original invoices were not given to the claimant, and decided to review the claim submitted by the supplier for his losses in connection with his jewellery business. In the supplier’s claim file, there was a witness statement provided by the claimant stating that he had been a customer of the supplier for the three years prior to the invasion. This raised further questions as the invoices had indicated that the Valuation Items were purchased in 1978 and 1979. In response to additional claim development, the claimant explained that the supplier had changed business premises and that his witness statement referred to his purchases from the newly relocated store. This assertion was supported by the new address of the jewellery store to which the claimant referenced in his witness statement. The secretariat recontacted the supplier who confirmed that he had changed business premises in 1985. Based on the evidence and information, the Panel determines that the claimant has established his ownership of the Valuation Items.

(b) Loss and causation

31. The claimant provided a personal statement in which he stated that at the time of Iraq’s invasion, his family was in Switzerland, whereas he was in Kuwait. The statement indicated that soon after the invasion occurred, the claimant moved from his villa to his parents’ house nearby. In mid-October 1990, the claimant’s driver came to search for him at his parents’ house. The driver told the claimant that he had been sent by Iraqi officials who had appeared at his villa. The claimant,

accompanied by his brother and cousin, went to his villa where he was informed that it would be occupied by one of the Iraqi leaders and was told to evacuate the servants. When the claimant protested and sought to collect some of his personal belongings, he, his brother and his cousin were forced to leave. In January 1991, the claimant went to his villa and saw two large trucks parked in front. Over the course of the next eight days, trucks and cars came to remove goods from his villa. The claimant witnessed this from a distance along with his brother and cousin. The claimant was finally able to enter his villa after Kuwait's liberation. He discovered that his possessions had been either looted or destroyed, including the Valuation Items. The claimant also provided witness statements from his brother and his cousin, which corroborate his personal statement. The Panel is satisfied that the Valuation Items were lost as a direct result of Iraq's invasion and occupation of Kuwait.

(c) Valuation

32. 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. On that basis, the expert consultants made their recommendations to the Panel. The invoices provided by the claimant contained sufficiently detailed information to enable the expert consultants to value the diamonds and recommend an amount. Based on its review of all of the above, the Panel recommends an award in the amount of USD 220,000 in respect of the Valuation Items.⁸

B. D4(PP) personal property losses: one "unusually large or complex" claim for coins, stamps and historical family documents – UNCC Claim no. 3005337

33. The Panel reviewed one "unusually large or complex" claim involving coins, stamps and historical family documents. At the request of the Panel, the expert consultants were asked to perform a detailed review of each category of items and to provide an expert opinion to the Panel as to the lowest replacement value in 1990 for each category of items.

34. The claimant asserts the loss of: (a) a collection of stamps in the amount of USD 2,422,145; (b) nine sets of coins in the amount of USD 415,225; and (c) historical family documents in the amount of USD 3,460,208 (collectively, the "Valuation Items").

35. The Panel instructed the secretariat to undertake claim development with the assistance of the expert consultants with respect to the Valuation Items. In addition, members of the secretariat conducted on-site interviews with the claimant and with a supplier during a technical mission to Kuwait.

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

1. Ownership

37. The claimant stated that he owned over 50,000 stamps. The claimant provided two inventory lists. The first list concerned stamps from the Middle East with a claimed value of 25,600 Kuwaiti

dinars (KWD) (the “Middle East Collection”). The second list was a 12-page listing of stamps from various countries outside the Middle East (the “International Collection”).

38. The claimant provided a witness statement from a friend, who confirmed that the claimant had a stamp collection and was a collector since childhood. In addition, the claimant provided three statements from a company that traded in stamps prior to Iraq’s invasion and occupation of Kuwait. The first of these statements, dated October 1993, indicated that pursuant to the company’s records, the claimant owned valuable stamps worth “thousands”. The second statement, dated August 1993, stated that the claimant was an important customer with a valuable stamp collection. The third statement, undated, provided an estimate of the value of the Middle East Collection based on information from the claimant. This last statement duplicated the claimant’s inventory list and the claimed amount for his Middle East Collection. The secretariat interviewed the owner of the company during a technical mission to Kuwait in order to obtain further information regarding the three statements. The owner stated that the company ran a small division in stamp trading before Iraq’s invasion. The division was closed after Iraq’s invasion and no longer had any business records. He also stated that the claimant was a former customer who used to buy stamps from his company and that the claimant had a good collection, but he could not elaborate as to the size or value of the collection. The owner had never seen the claimant’s collection and could not recall whether he had seen any records relating to the claimant’s prior purchases. The owner explained that he did not prepare the undated estimate as to the value of the Middle East Collection. Rather, a stamp specialist who used to work with the company drafted the estimate in consultation with the claimant and the owner signed it based on his awareness that the claimant was a former customer.

39. The Panel determines that the statements provided by the company are insufficient to establish ownership of a stamp collection of this size and value. The Panel notes that the estimate as to the value of the Middle East Collection was based on information provided by the claimant and was not independently verified. The Panel determines, however, that the claimant has established ownership of a stamp collection, although not in the amount claimed.

40. The claimant also claimed for a collection of coins in the amount of USD 415,225. The claimant provided an inventory list of nine coins in different quantities, some of which did not have an individual claimed amount. The claimant was not able to provide any evidence as to the existence or ownership of the coins. The Panel determines that the claimant has not proven ownership of the coins.

41. Lastly, the claimant claimed for old photographs, letters and documents belonging to his family dating from 1900 to 1950 in the amount of USD 3,460,208. The claimant stated that he owned, among other documents, a statement of land purchase (“title document”) that belonged to his grandfather. The claimant stated that this title document would entitle him to claim for the land described in the title document, which he claimed was worth KWD 1,500,000. He stated that at the time of his grandfather’s acquisition of the land, there was no official land registry system and, accordingly, the Government of Kuwait would only acknowledge his ownership of this property if he produced the original title document. Although the claimant is one of approximately 100 grandchildren, the claimant stated that the title document was passed down from his grandfather to his father and then to

him and was kept in his home. When asked why he did not pursue title to this land prior to 1990 when he had the title document in his possession, the claimant stated that taking such action would have started a feud with his relatives, who would have claimed an ownership interest in the land. In support of the ownership of this title document, the claimant provided a copy of the alleged lost title document. In support of the existence of old photographs and letters, the claimant provided copies of old photographs and letters as examples of the types of photographs and letters that were lost.

42. The Panel determines that the claimant has established the existence and ownership of the Valuation Items. However, with respect to the title document, the Panel determines that the claimant has not established that having the original title document would have granted the claimant title to the land as the claimant himself stated that his ownership of the land would have been disputed by his relatives. The Panel also determines that the claimant has not established the value of the remaining historical documents consisting of old photographs and letters.

2. Loss and causation

43. The claimant explains in his personal statement that he and his family were in the United States on a one-year visa at the time of Iraq's invasion. The claimant joined the United States Army in December 1990 and returned to Kuwait briefly in May 1991 with his unit. At that time, the claimant saw the damaged state of his house from the exterior, but was unable to enter as he was on duty. In September 1992, he and his family moved back to Kuwait and discovered that all his valuables had been stolen from the house. His neighbours informed him that the houses in the neighbourhood, including his house, had been looted during Iraq's invasion. The claimant also provided witness statements with respect to the looting of his home. The claimant indicated that he did not take any of his valuables with him to the United States. The Panel is satisfied that the Valuation Items were lost as a direct result of Iraq's invasion and occupation of Kuwait.

3. Valuation

44. The Panel determines that the claimant has established the existence and ownership of a stamp collection, although not in the amount claimed by the claimant. The Panel recommends an award of USD 2,500 for the stamp collection.⁹ The Panel recommends no award for the claimant's coin collection as ownership has not been established. Lastly, although the Panel determines that the claimant has established ownership and existence of old photographs, letters and documents, the Panel recommends no award for these items as the claimant has failed to establish their value.¹⁰

C. D4(PP) personal property losses: one "unusually large or complex" claim for Islamic works of art, paintings and prints – UNCC Claim no. 3006235

45. The Panel reviewed one "unusually large or complex" claim involving Islamic works of art, painting and prints. At the request of the Panel, the expert consultants were asked to perform a detailed review of each category of items and to provide an expert opinion to the Panel as to the lowest replacement value in 1990 for each category of items.

46. The claimant asserts the loss of Islamic works of art such as pottery, manuscripts, tiles and 300 Iraqi carpets, and various antique and contemporary paintings, lithographs and posters (collectively, the "Valuation Items"). The amount claimed in respect of the Valuation Items is USD 587,889.27.

47. The Panel instructed the secretariat to undertake claim development with the assistance of the expert consultants with respect to the Valuation Items. In addition, members of the secretariat conducted on-site interviews with the claimant and his representatives during a technical mission to Kuwait.

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

49. The claimant owns a primary and secondary school in Kuwait. The claimant asserts that all the Valuation Items were located in the claimant's school at the time of Iraq's invasion and occupation of Kuwait. The claimant is a collector of Islamic art who, in addition to the school, privately owns a museum in Kuwait. According to the claimant, he donated the Valuation Items (except the Iraqi carpets) to the school for the educational enrichment of its students during the period from 1974 to 1978. The Iraqi carpets formed part of the collection of the claimant's museum and were temporarily stored at the school when Iraq's invasion and occupation of Kuwait occurred.

50. The evidence submitted in respect of the Valuation Items consisted of a detailed personal statement, illustrative photographs, witness statements, photographs of the damaged school and copies of the school's pre-invasion yearbooks where some of the Valuation Items appear to be visible.

51. The school was insured before Iraq's invasion and occupation of Kuwait. The insurance policy for the school, however, did not cover the Valuation Items despite their allegedly high monetary and educational value. Similarly, the school's pre-invasion financial statements did not account for the Valuation Items.

52. The Panel determines that the evidence provided by the claimant is insufficient to establish the existence or the claimant's ownership of the Valuation Items. The Panel therefore recommends no award of compensation in respect of the Valuation Items.¹¹

D. D4(PP) personal property losses: one "unusually large or complex" claim for paintings and Persian carpets – UNCC Claim no. 3006092

53. The Panel reviewed one "unusually large or complex" claim involving paintings and Persian carpets. At the request of the Panel, the expert consultants were asked to perform a detailed review of each category of items and to provide an expert opinion to the Panel as to the lowest replacement value in 1990 for each category of items.

54. In his original claim, the claimant asserted the loss of: (a) 15 paintings and prints in the amount of USD 384,870.24; and (b) 10 Persian carpets in the amount of USD 596,366.78 (collectively, the "Valuation Items"). As explained in more detail below, the claimant subsequently withdrew his claim in respect of one painting.

55. The Panel instructed the secretariat to undertake claim development with the assistance of the expert consultants with respect to the Valuation Items. In addition, members of the secretariat conducted on-site interviews with the claimant, the claimant's brother and the supplier of the Persian carpets during a technical mission to Kuwait.

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

1. Ownership

57. The claimant alleges that he owned a collection of 15 "Orientalist" paintings that he purchased through his brother, an art collector, prior to Iraq's invasion and occupation of Kuwait. Most of the paintings were allegedly purchased in London or Paris, although some were allegedly purchased in Kuwait.

58. The claimant in his original claim provided five pre-invasion invoices in support of 10 of the paintings, and an undated and unsigned list that included the remaining five paintings (among other works of art) that was written by hand on the letterhead of an art gallery in Paris. The claimant also provided the witness statement of his brother, a self-described collector of "Orientalist" paintings, who explained that he had purchased the paintings on behalf of the claimant.

59. The secretariat accompanied by the expert consultants interviewed the claimant in his home during a technical mission to Kuwait. During the course of the interview, the expert consultants found a painting in the claimant's home which was one of the 15 paintings claimed by the claimant as lost during Iraq's invasion and occupation of Kuwait. The claimant was asked to explain in writing why he claimed for this painting and was requested to provide additional documentary evidence to show that the claimed paintings were present in Kuwait as of 2 August 1990 since most of the claimed paintings were purchased outside of Kuwait.

60. In his written response, the claimant withdrew the claim for the painting that was found in his home. Other than a witness statement concerning the paintings purchased from the Paris gallery, the claimant submitted no additional evidence to show that any of the paintings purchased outside Kuwait before 2 August 1990 had been shipped to or were otherwise present in Kuwait as of the date of Iraq's invasion and occupation of Kuwait.

61. The Panel determines that the claimant's evidence is insufficient to establish that eight of the paintings, all of which were purchased outside Kuwait before 2 August 1990, were present in Kuwait during the period of Iraq's invasion and occupation of Kuwait. Two of these paintings were supported by the same invoice as the painting that had been claimed and subsequently withdrawn by the claimant. Another painting was unsupported by any documentary evidence. The remaining five paintings were supported only by the undated and unsigned handwritten list on the letterhead of a Paris gallery and a witness statement, which the Panel determines is insufficient to show either the claimant's ownership of such paintings or the paintings' presence in Kuwait as of 2 August 1990.

62. In respect of the six remaining paintings, all of which are supported by invoices from a Kuwaiti supplier, the Panel notes that the invoices in respect of four paintings do not clearly identify the Valuation Items they are meant to support. In the circumstances of this claim, the Panel cannot rely on the invoices. The Panel accordingly determines that the claimant has not provided sufficient evidence to establish the existence or the claimant's ownership of these four paintings. The two final paintings are supported by a pre-invasion, signed invoice that clearly identifies the paintings. The Panel therefore determines that the claimant has established his ownership of these two paintings as of 2 August 1990.

63. The Panel reviewed the claimant's evidence in support of the 10 Persian carpets, which consisted of pre-invasion invoices from a Kuwaiti supplier in respect of all the carpets and photographs in respect of five carpets. All the Persian carpets were purchased by the claimant's brother, who also supplied a witness statement to explain that all the Valuation Items were given to the claimant before 2 August 1990. The expert consultants also interviewed the Kuwaiti supplier during the technical mission to Kuwait. The Panel determines that the claimant's evidence is sufficient to establish the claimant's ownership of all 10 Persian carpets as of 2 August 1990.

2. Loss and causation

64. The claimant was residing in London at the time of Iraq's invasion and occupation of Kuwait. The claimant asserts that his Kuwaiti home was robbed by Iraqi soldiers sometime in late December 1990.

65. The claimant submitted two witness statements from relatives, who stated that they personally witnessed the looted state of the claimant's home during Iraq's invasion and occupation of Kuwait. The Panel is satisfied that the claimant has established that the loss of two paintings and all 10 Persian carpets was a direct result of Iraq's invasion and occupation of Kuwait.

3. Valuation

66. The Panel determines that the value for the two paintings and the 10 Persian carpets should be based on the lesser of the lowest replacement value in 1990 or the amount claimed for each respective Valuation Item. On that basis, the expert consultants made their recommendations to the Panel. Based on their report, the Panel recommends an award of USD 203,952 in respect of the two paintings and the 10 Persian carpets.¹²

E. D4(PP) personal property losses: one "unusually large or complex" claim for jewellery, paintings and prints, Persian carpets and a collection of gold and silver medals – UNCC Claim no. 3006245

67. The Panel reviewed one "unusually large or complex" claim involving jewellery, paintings and prints, Persian carpets and a collection of gold and silver medals. The claimant is the sister-in-law of the claimant in UNCC Claim no. 3006092, discussed above. At the request of the Panel, the expert consultants were asked to perform a detailed review of each category of items and to provide an expert opinion to the Panel as to the lowest replacement value in 1990 for each category of items.

68. The claimant asserts the loss of: (a) seven items of jewellery, namely diamond stones, in the amount of USD 474,910.03; (b) 15 paintings and prints in the amount of USD 143,695.50; (c) six Persian carpets in the amount of USD 570,934.26; and (d) a collection of 17 gold or silver medal sets in the amount of USD 1,363,235.29 (collectively, the “Valuation Items”).

69. The Panel instructed the secretariat to undertake claim development with the assistance of the expert consultants with respect to the Valuation Items. In addition, members of the secretariat conducted on-site interviews with the claimant, her husband, the claimant’s brother-in-law, and the supplier of the Persian carpets during a technical mission to Kuwait.

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

1. Ownership

71. In support of each of the seven items of jewellery, the claimant provided a copy of a pre-invasion invoice from a Kuwaiti supplier. Each invoice provided a description of the diamond stone, including shape or cut, weight, clarity grade and colour. The Panel determines that the claimant has established her ownership of all seven items of jewellery.

72. The claimant alleges that she owned a collection of 15 “Orientalist” paintings and prints. As in UNCC Claim no. 3006092, above, most of the claimant’s paintings were purchased through a brother-in-law who is an art collector. The rest of the paintings were given to the claimant by her husband.

73. Five paintings were allegedly purchased from the same Paris art gallery that supplied the claimant in UNCC Claim no. 3006092 with a number of paintings. As in the case of UNCC Claim no. 3006092, the Panel determines that this evidence is insufficient to show either the claimant’s ownership of such paintings or the paintings’ presence in Kuwait as of 2 August 1990.

74. In respect of the 10 remaining paintings or prints, the Panel determines that the claimant has established her ownership of seven Valuation Items, which were supported by a signed invoice that clearly identified the items or by photographs that clearly showed the claimed paintings. The Panel examined the evidence submitted in respect of the remaining three Valuation Items, which consists of two unsigned invoices from a Kuwaiti supplier of antique carpets. Pursuant to article 35(1) of the Rules,¹³ the Panel determines that unsigned invoices from this supplier of carpets is not sufficient evidence of the existence of paintings or prints.

75. The six Persian carpets were alleged to be nineteenth-century Kazak, Tabriz or Farahan carpets, which the claimant asserts that she purchased through her brother-in-law from a known Kuwaiti dealer of antique carpets. This dealer was interviewed by the expert consultants during the technical mission to Kuwait. The carpets were supported by two pre-invasion invoices from this supplier that clearly identified each item. In the light of this evidence, the Panel determines that the claimant has established her ownership of the claimed carpets.

76. In support of her claim for the collection of 17 medal sets, the claimant submitted a detailed, post-invasion statement from the supplier in respect of 16 medal sets, as well as copies of certificates of ownership in respect of four medal sets. The final medal set was supported by a detailed, pre-invasion invoice from a Kuwaiti supplier. On the basis of this evidence, the Panel determines that the claimant has established her ownership of all 17 medal sets.

2. Loss and causation

77. The claimant and her family were outside Kuwait on holiday when Iraq's invasion and occupation of Kuwait occurred. In support of her claim, the claimant submitted two statements from family relatives who witnessed the looted state of the claimant's home in September 1990. The looting of the claimant's home is also evidenced by photographs included as part of a damage survey report completed after the liberation of Kuwait. The photographs show the claimant's broken safe where the jewellery items had been stored before Iraq's invasion and occupation of Kuwait.

78. With the exception of the paintings for which the claimant submitted insufficient evidence of ownership or of their presence in Kuwait as of 2 August 1990, the Panel is satisfied that the claimant has established that the loss of the Valuation Items was a direct result of Iraq's invasion and occupation of Kuwait.

3. Valuation

79. 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 each respective Valuation Item. On that basis, the expert consultants made their recommendations to the Panel. The Panel recommends no award of compensation in respect of the eight paintings or prints for which the claimant submitted insufficient evidence of ownership or of their presence in Kuwait as of 2 August 1990. In respect of the remaining Valuation Items, the Panel recommends an award in the amount of USD 766,331.¹⁴

F. D4(PP) personal property losses: one "unusually large or complex" claim for jewellery and other personal effects – UNCC Claim no. 3005320

80. The Panel reviewed one "unusually large or complex" claim involving jewellery and personal effects such as tapestries, objets d'art, dinner services (china, silver cutlery and glassware), paintings and lithographs, a piano, a coin collection, and antique furniture. At the request of the Panel, the expert consultants were asked to perform a detailed review of each category of items and to provide an expert opinion to the Panel as to the lowest replacement value in 1990 for each category of items.

81. The claimant asserts the loss of: (a) 15 items or sets of jewellery in the amount of USD 5,328,719.72; and (b) various types of personal effects, including seven Aubusson tapestries, two antique Chinese vases, seven gold swords with precious stones, commissioned paintings, limited-edition lithographs by Dali, Chagall and Picasso, silver cutlery by Christofle and Mappin & Webb, china by Royal Worcester, glassware by Baccarat and St. Louis, a Steinway piano, a collection of 300

antique coins, and antique Louis XV-style furniture, in the amount of USD 5,201,557.09 (collectively, the "Valuation Items").

82. The Panel instructed the secretariat to undertake claim development with the assistance of the expert consultants with respect to the Valuation Items. In addition, members of the secretariat conducted on-site interviews with the claimant during a technical mission to Kuwait. As the total claimed amount exceeded USD 10 million, the Panel instructed the secretariat to transmit a copy of the claim file to Iraq for comments.

83. In reviewing the claim, the Panel considered Iraq's response and the evidence provided by the claimant in respect of ownership, loss and causation.

1. Ownership

84. The Valuation Items include nine jewellery sets, with each set including a necklace, bracelet, ring and earrings and made of diamonds, sapphires, emeralds, turquoise, rubies and/or pearls; three gold crowns made of diamonds, rubies, emeralds and/or other precious stones; 14 diamond-inlaid rings with rubies, sapphires or emeralds, a solitaire 18-carat diamond ring, and a 15.75-carat marquise diamond ring; a set of diamond earrings; and collections of natural pearl necklaces, brooches made of various precious stones, diamond stones ranging from 8 carats to 21 carats, gold handbags, and jewellery inherited from the claimant's grandfather, which included two gold wedding sets and numerous gold belts, bracelets, anklets, earrings and rings.

85. In support of the jewellery claim, the claimant provided a personal statement that described each individual item or set of jewellery in detail and, in most cases, also gave the item's provenance. The claimant also provided numerous pre-invasion photographs of herself or a family member in which many of the jewellery items are visible, as well as witness statements from family members and friends of the claimant who provided detailed descriptions of many of the jewellery items. The claimant asserts that her jewellery collection was inherited, gifted or purchased between the mid-1940s and the mid-1960s and, therefore, it was not possible to provide additional documentary evidence. The Panel determines that the claimant's evidence is sufficient to establish her ownership of the jewellery Valuation Items.

86. The remaining Valuation Items are supported principally by the claimant's detailed personal statement and, in respect of certain Valuation Items, by detailed witness statements and photographs. In addition, the commissioned paintings are supported by a statement from the artist, and the Christofle silver cutlery and the Royal Worcester china are supported by post-liberation correspondence from either the claimant's Lebanese supplier or the manufacturer. As in the case of the claimant's jewellery, the Panel is mindful of the difficulties experienced by the claimant in providing additional documentary evidence for Valuation Items that were purchased by or gifted to the claimant several decades before Iraq's invasion and occupation of Kuwait. With the exception of the claimed Picasso and Dali lithographs, the existence of which the expert consultants could not verify based on the claimant's description, the Panel determines that the claimant's evidence is sufficient to establish her ownership of the remaining Valuation Items.

2. Loss and causation

87. The claimant was in Geneva, Switzerland on 2 August 1990. Only the household servants were present in the claimant's home when Iraq's invasion and occupation of Kuwait occurred. The claimant submitted a detailed statement from her maintenance manager, who personally witnessed the looting of her home by Iraqi soldiers in the early days of the occupation. The claimant also submitted a copy of Iraq's Revolutionary Command Council resolution No. 361 to show that her home was targeted by Iraqi authorities. Finally, the claimant submitted a copy of a damage assessment report and additional witness statements, which included photographs of the claimant's ransacked and damaged home as well as of the broken safe, to further establish the looting of the claimant's home by Iraqi forces during Iraq's invasion and occupation of Kuwait.

88. In its comments concerning this claim, Iraq asserts that the claimant has not proven that her losses were a direct result of Iraq's invasion and occupation of Kuwait. Iraq contends that the damages to the claimant's property were the result of bombing by Allied Coalition Forces, and that Revolutionary Command Council resolution No. 361 was intended to protect the properties of the ruling Al Sabah family by prohibiting any misuse or illegal conduct in respect of such property. With respect to the first point, the Panel notes that, even if Iraq's assertion were factually correct, losses caused by the Allied Coalition Forces in liberating Kuwait are directly linked to Iraq's invasion and occupation of Kuwait and are clearly contemplated as "direct" losses under Governing Council decision 7 (S/AC.26/1991/7/Rev.1) for which Iraq is responsible. With respect to Iraq's second point, the Panel considers the intended purpose of Iraq's Revolutionary Command Council resolution No. 361 to be irrelevant, since the looting of the claimant's home is supported by evidence, and this evidence is not rebutted by any evidence submitted on the part of Iraq.

89. The Panel is satisfied that the claimant has established that the loss of the Valuation Items was a direct result of Iraq's invasion and occupation of Kuwait.

3. Valuation

90. 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 each respective Valuation Item. On that basis, the expert consultants made their recommendation to the Panel. The Panel recommends an award of USD 3,967,312.¹⁵ The Panel recommends no award of compensation in respect of the claimed Picasso and Dali lithographs for which the claimant submitted insufficient evidence of their existence in Kuwait as of 2 August 1990.

G. D4(PP) personal property losses: one "unusually large or complex" claim for jewellery, Persian carpets, paintings, gun collection and silverware – UNCC Claim no. 3005273

91. The Panel reviewed one "unusually large or complex" claim involving jewellery, Persian carpets, paintings, a gun collection and silverware. At the request of the Panel, the expert consultants were asked to perform a detailed review of each category of items and to provide an expert opinion to the Panel as to the lowest replacement value in 1990 for each category of items.

92. The claimant asserts the loss of: (a) jewellery belonging to the claimant, his wife and their children in the amount of USD 5,005,640.14; (b) 29 Persian carpets in the amount of USD 927,449.83; (c) 15 paintings in the amount of USD 70,588.24; (d) a collection of eight antique and 42 modern guns in the amount of USD 612,456.75; and (e) two silverware items or sets in the amount of USD 113,278.55 (collectively, the "Valuation Items").

93. The Panel instructed the secretariat to undertake claim development with the assistance of the expert consultants with respect to the Valuation Items. In addition, members of the secretariat conducted on-site interviews with the claimant during a technical mission to Kuwait. As the total claimed amount exceeded USD 10 million, the Panel instructed the secretariat to transmit a copy of the claim file to Iraq for comments.

94. In reviewing the claim, the Panel considered Iraq's response and the evidence provided by the claimant in respect of ownership, loss and causation.

1. Ownership

95. The jewellery claim consists of three parts. The first part relates to the claimant's personal jewellery and the children's jewellery, which includes watches, cufflinks, lighters, earrings, necklaces, rings, brooches and bracelets made with gold and diamonds or other precious stones. In respect of this jewellery, the claimant provided no documentary evidence other than an itemized list and a personal statement that gave few details concerning the claimed jewellery. The Panel determines that this evidence is insufficient to establish the existence or the claimant's ownership of such Valuation Items.

96. The second part of the jewellery claim consists of Valuation Items that the claimant purchased for his wife and other members of the household. This jewellery includes a claim for an unspecified lot of jewellery that is not itemized and for which the claimant has provided no details or documentary evidence. The Panel finds that the claimant has failed to establish the existence or ownership of the unspecified jewellery. In addition, the claimant asserts the loss of 62 items or sets of jewellery purchased from Boucheron in Paris. In respect of this jewellery, the claimant submitted a post-liberation statement from the supplier that details each of the 62 Valuation Items, and pre-invasion original or post-liberation recreated invoices from the supplier for approximately two thirds of the 62 Valuation Items. The Panel determines that the claimant has established the existence and his ownership of the 62 items of Boucheron jewellery based on this evidence.

97. The final part of the jewellery claim consists of items from a jewellery business owned by the claimant's wife until it closed in 1988. The jewellery was stored in the claimant's safe at his home when Iraq's invasion and occupation of Kuwait occurred. In support of this part of the jewellery claim, the claimant submitted the financial statements of the jewellery business for the last complete financial year before it closed, a schedule of the jewellery that was transferred to the claimant's wife in 1988, and a detailed third party valuation of the business' jewellery that was prepared in 1987. The claimant also submitted documentation, in the form of invoices, valuations and copies of the business' ledger, to establish that the jewellery business did not trade in Boucheron jewellery and to prove that the jewellery business was supplied principally by suppliers in the Far East. Based on this evidence,

the Panel determines that the claimant has established the existence and ownership of this jewellery and that this part of the jewellery claim does not duplicate the claim for the Boucheron jewellery.

98. In respect of the 29 Persian carpets, the claimant submitted two invoices for carpets of similar quality as the claimed carpets, and personal or witness statements to demonstrate, in general terms, the existence or the location of Persian carpets in the claimant's home as of 2 August 1990. The claimant's personal statement described only one commissioned pictorial carpet in detail. Finally, the claimant submitted photographs taken in the claimant's home before Iraq's invasion where portions of Persian carpets are visible. Except for the pictorial carpet, which is visible in one of the photographs, the claimant did not correlate any of the photographs with the claimed carpets. The Panel determines that the claimant has established ownership of only one pictorial carpet. In respect of the 15 paintings, the claimant submitted photographs of the interior of his home in which some paintings are visible. The claimant, however, does not specify whether any of the claimed paintings are evidenced by the photographs, with the exception of one painting of the claimant's late father. The itemized list described in some detail only thirteen paintings. The claimant also submitted evidence to show that he spent about 9 million French francs up to 1987 in connection with the purchase of unspecified antiques, furniture and paintings. The Panel determines that the claimant established the existence and ownership of thirteen paintings.

99. In respect of the antique and modern gun collection, the claimant submitted photographs in which at least one of the antique guns is visible, as well as witness statements from two of the claimant's employees who visited the claimant's home before Iraq's invasion and occupation of Kuwait and who saw the claimant's gun collection. The claimant alleges, in respect of the eight antique guns, that they were nineteenth-century guns previously owned by Saud Bin Rasheed, Chief of the Wahibi tribe that attacked Kuwait in the early twentieth century. The claimant further explains that no purchase documentation is possible, because the guns had been in the possession of the claimant's family for several generations before he inherited them. In respect of the modern gun collection, the claimant asserts that an unspecified number of guns were manufactured by Holland & Holland. The claimant submitted no documentary proof of purchase for any of the modern guns. On the basis of this evidence, the Panel determines that the claimant has established the existence and the claimant's ownership of the eight antique guns but not the modern gun collection.

100. The two silverware Valuation Items consist of a solid silver centrepiece by Mozzecurto and a 180-piece silver dinner set. According to the claimant, who was interviewed by the expert consultants during the technical mission to Kuwait, the dinner set comprised 24 place settings and included serving dishes. Other than the claimant's oral statement and itemised list, there is no documentary evidence to support the claim for the silverware items. The Panel determines that the claimant has not established the existence or ownership of these silverware items.

2. Loss and causation

101. The claimant asserts that he and his family were ordered to leave their home during the first week of Iraq's invasion and occupation of Kuwait, and that Iraqi soldiers ordered everyone not to carry anything out of the house. The claimant was not allowed to return to his home, which remained

occupied by Iraqi soldiers during the entire period of Iraq's invasion and occupation of Kuwait. The claimant asserts that he and his family left Kuwait at the end of October 1990, upon learning that he was being sought by the Iraqi authorities. The claimant's allegations are supported by a detailed witness statement from a family member, who briefly visited the claimant's home in late August or early September 1990 under the escort of Iraqi soldiers and personally witnessed that it had been looted. The claimant also submitted numerous photographs to show that the home was ransacked, looted and damaged during the period of Iraq's invasion and occupation of Kuwait.

102. In its comments concerning this claim, Iraq asserts, without offering any supporting evidence, that the claimant's losses resulted from the destruction and loss of security or safety in Kuwait caused by the Allied Coalition Forces. The Panel finds that even if Iraq is correct as a matter of fact, any losses caused by the Allied Coalition Forces in liberating Kuwait are directly linked to Iraq's invasion and occupation of Kuwait and are clearly contemplated as "direct" losses under Governing Council decision 7 for which Iraq is responsible. In addition, the claimant submitted a witness statement to establish that the looting of the claimant's home was perpetrated by Iraqi forces.

103. The Panel is satisfied that the claimant has established that the loss of the Valuation Items was a direct result of Iraq's invasion and occupation of Kuwait.

3. Valuation

104. 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 each respective Valuation Item. On that basis, the expert consultants made their recommendation to the Panel. The Panel recommends an award of USD 1,420,786.¹⁶ The Panel recommends no award of compensation in respect of the claimant's and the children's personal jewellery, 28 carpets, two paintings, the modern gun collection and the silverware.

IV. UNUSUALLY LARGE OR COMPLEX CLAIMS INVOLVING D8/D9 INDIVIDUAL BUSINESS LOSSES

A. D8/D9 individual business losses: losses of consultancy business – UNCC claim nos. 3010717 and 3004967

105. The claimant seeks compensation for losses relating to his consultancy business, which had been based in Kuwait and elsewhere in the Middle East at the time of Iraq's invasion and occupation of Kuwait. The claimant acted as a consultant to a number of multi-national corporations operating in construction, defence and strategic sectors. The claimant had originally filed two claims for the same business. As it was not immediately apparent whether these two claims duplicated each other, the Panel asked the claimant for clarification as to the losses claimed in each. The claimant responded in July 2001, identifying the losses that had been claimed in both claims, thereby reducing the amount claimed for the two claims. Despite a subsequent request from the claimant to increase the total amount of his claimed losses, the Panel accepts the reduced claimed amount provided in July 2001 as the amended timely-filed claim.

106. The claimant claims compensation for commissions lost in respect of contracts that were cancelled on or about 2 August 1990. These contracts were entered into between the claimant and various companies that were bidding on public works projects in Kuwait, Saudi Arabia and elsewhere in the Middle East. The claimant described his role as that of “sponsor” (i.e. consultant or facilitator) for these companies, assisting them in winning bids and thereafter providing administrative and political support in carrying out the works called for under the contracts. The Panel has carefully reviewed the extensive documentation provided by the claimant and decides that, in respect of each claim for commissions, the claimant has not established that the contract between the company and the appropriate Government was cancelled or not continued as a direct result of Iraq's invasion and occupation of Kuwait.

107. The claimant also claims compensation for losses relating to a number of debts owed to him. In respect of most of these debts, the Panel decides that the claimant has not shown that his inability to recover these debts occurred as a direct result of Iraq's invasion and occupation of Kuwait. But the Panel determines that, in relation to a debt, the claimant has established that the debtor was bankrupted as a direct result of Iraq's invasion and occupation of Kuwait. This debt was also current at 2 August 1990. In accordance with its previous decisions relating to debts,¹⁷ the Panel decides that the claimant has proven that the loss of this debt occurred as a direct result of Iraq's invasion and occupation of Kuwait, and recommends an award of compensation for this loss.

108. The Panel is also satisfied that the claimant has shown that he suffered a loss of tangible property in the form of office furniture as a direct result of Iraq's invasion and recommends an award of compensation for this loss. The Panel is also satisfied that the claimant has shown that he suffered a loss of income over the period of Iraq's invasion and occupation of Kuwait and recommends an award of compensation for this loss.

B. D8/D9 individual business losses: stock – UNCC claim no. 3003493

109. The Panel reviewed a claim for losses in connection with a car retail business headquartered in the United Arab Emirates, with branch offices in Kuwait and other Persian Gulf countries. In addition to other losses amounting to USD 77,160,943.61, the claimant seeks compensation of USD 26,866,140.02 for the loss of 622 vehicles that he alleged were looted from the business premises in Kuwait during Iraq's invasion and occupation of Kuwait. The claimant stated that he imported vehicles into the United Arab Emirates, which he subsequently exported to the branch offices for resale.

110. As the total claimed amount exceeded USD 10 million, the Panel instructed the secretariat to transmit a copy of the claim file to Iraq for comments. The Panel, in arriving at its conclusions, considered the comments received from Iraq.

111. Given that the claimant was operating his business primarily outside of the war zone, the Panel does not accept the destruction of the claimant's records in the course of business activity as adequate reason to relieve the claimant from his burden to produce appropriate and sufficient evidence to substantiate the claim. The Panel notes that the claimant's business records should have been intact,

as the business' headquarters was located in the United Arab Emirates. The Panel finds that the claimant has not established that his inability to submit the requisite proof was itself a direct result of Iraq's invasion and occupation of Kuwait.

112. Although specifically requested, the claimant failed to submit evidence relating to the purchase, import and export procedures for the vehicles. In particular, the Panel considers that the claimant has not proven ownership of the vehicles. The claimant also failed to show that his alleged purchase and subsequent export of the vehicles occurred during the jurisdictional period and that the 622 vehicles allegedly exported to Kuwait remained unsold at the time of Iraq's invasion and occupation of Kuwait.

113. The Panel finds that the claimant's explanations as to the details of his business operations were vague and devoid of the requisite particulars to establish a loss of stock of the magnitude of USD 26,866,140.02. The Panel further finds that although the claimant submitted voluminous documentation, the bulk of the documents provided are not what the claimant purported them to be, nor do they provide the evidentiary support alleged by the claimant.

114. For all of these reasons, the Panel recommends no award of compensation in respect of the loss of the 622 vehicles.

V. AUTHORITY TO ACT

115. The Governing Council determined in decision 123 that stand alone claims are not properly filed in category "C" or category "D" and directed the Commission to identify and transfer such claims to the 'E4' Panels for review as Kuwaiti corporate claims. However, pursuant to the terms of decision 123, each claimant who has filed a stand alone claim must first demonstrate that he or she had the authority to act on behalf of the company in filing a claim before the claim is transferred by the "D" Panels to the "E4" Panels for review. If the claimant fails to demonstrate that he or she had such authority to act, the stand alone claim is not reviewed by the "E4" Panels. The "D" Panels have previously developed an "authority to act" test pursuant to which a claimant is deemed to have authority to file the claim on behalf of the company where the claimant demonstrates that he or she had authority to manage the business on a day-to-day basis or had a not insubstantial ownership interest in the company.¹⁸

116. In respect of claims which are to be transferred to the "E4" and "E4A" Panels to be considered in future instalments of stand alone claims, the Panel confirms that one claimant was unable to provide any evidence to show that he had the authority to act on behalf of the company in filing a claim. He provided no evidence to show that he had authority to manage the business on a day-to-day basis, nor did he provide evidence of any ownership interest in the company. The claim for the company's losses accordingly fails.

VI. OTHER ISSUES

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

117. The awards of compensation recommended by the Panel are reduced by the amount of any category “A”, “B” and “C” awards 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

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

119. 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.¹⁹ 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

120. 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).²⁰ 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 accordingly 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.²¹

D. Claims preparation costs

121. 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

122. Table 2 below lists the awards recommended by the Panel for each submitting entity with claimants included in part two of the sixteenth instalment. Each submitting entity will be provided with a confidential list containing the individual recommendations made in respect of its claimants. With reference to paragraph 5 above, USD 20,856,891.28 is claimed by 11 claimants in respect of business losses that the claimants assert were suffered by Kuwaiti companies. The Executive Secretary has severed and transferred or will sever and transfer the corporate losses to the "E4" Panels in accordance with Governing Council decision 123. The amounts of USD 15,710,965.47 and USD 247,450.44 are claimed for interest and for claims preparation costs, respectively. Accordingly the net total amount claimed in respect of the claims in part two of the sixteenth instalment is USD 486,619,860.55. As will be seen from table 2 below, the Panel recommends a total of USD 105,942,621.02 against this net total claimed amount.

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)^a</u>	<u>Amount of compensation recommended (USD)</u>
Austria	2	0	923,489.38	923,489.38	0.00
Bangladesh	0	1	842.93	842.93	842.93
Canada	1	1	409,631.54	409,631.54	202,605.00
Egypt	0	2	2,950,238.76	2,950,238.76	1,681,603.17
France	1	1	582,446.47	582,446.47	45,755.09
Germany	2	0	814,631.71	814,631.71	0.00
India	3	10	6,906,273.92	6,133,992.92	2,214,682.05
Israel	1	0	97,895.25	97,895.25	0.00
Italy	0	3	1,048,105.04	1,048,105.04	255,117.41
Jordan	8	45	189,926,111.13	174,366,848.85	16,113,327.93
Kuwait	2	126	156,020,443.03	155,343,091.82	79,374,196.32
Lebanon	1	3	1,432,183.16	1,234,644.13	233,286.95
Pakistan	0	2	825,363.32	825,363.32	373,477.34
Russian Federation	0	1	223,003.46	223,003.46	21,540.42
Saudi Arabia	13	5	15,715,426.94	15,714,358.85	1,107,987.92
Spain	1	0	205,444.27	205,444.27	0.00
Syrian Arab Republic	3	9	7,432,527.22	7,432,527.22	2,050,069.11
Turkey	0	1	498,985.00	498,985.00	93,758.80
UNDP Washington	1	3	1,003,257.15	1,003,257.15	137,461.22
UNRWA Gaza	0	1	236,946.51	236,946.51	78,798.19
United Arab Emirates	1	0	104,027,083.63	89,519,368.02	0.00
United Kingdom	5	3	16,872,311.20	16,872,311.20	44,029.50
United States	2	10	7,180,710.45	7,180,710.45	1,152,757.29
Yemen	1	7	3,001,726.30	3,001,726.30	761,324.38
<u>Total</u>	48	234	518,335,077.77	486,619,860.55	105,942,621.02

^a This amount claimed is net of the amounts of USD 15,710,965.47 for interest and USD 247,450.44 for claims preparation costs. It is also net of USD 15,756,801.31 for business losses allegedly suffered by Kuwaiti companies that will be transferred to the "E4" Panels of Commissioners for review pursuant to Governing Council decision 123.

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

Geneva, 16 October 2003

(Signed) K. Hossain
Chairman

(Signed) I. Suzuki
Commissioner

(Signed) N. Comair-Obeid
Commissioner

Notes

¹ “Report and recommendations made by the ‘D2’ Panel of Commissioners concerning part one of the sixteenth instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)”, S/AC.26/2003/9 (the “part one of the sixteenth instalment report”), paragraph 2.

² Ibid., paragraph 5.

³ Ibid., paragraph 4. These claims were identified as “stand alone” claims, “overlapping” claims, claims having non-Kuwaiti corporate losses or claims requiring further claim development.

⁴ See in particular sections II and III.

⁵ The claims selected by the Panel for transmission to Iraq satisfied the following criteria. The amount claimed exceeded USD 10 million and either the verification and quantification of the claim was deemed by the Panel to require more than 180 days, or the Panel determined that the views of Iraq may be of assistance to the Panel for the review of the claim. In addition, the Panel considered a claim for transmission to Iraq if Iraq was a party to a contract forming part of the subject matter of the claim, or if the situs of the alleged loss was in Iraq.

⁶ See also articles 35(1) and 35(3) of the Rules.

⁷ Out of the total amount claimed of USD 5,768,916.81, USD 2,474,491.35 was claimed in respect of D4(PP) personal property losses, USD 2,734,511.97 was claimed in respect of D7 real property losses and USD 559,913.49 was claimed in respect of D8/9 business losses. Out of the total amount claimed of USD 2,474,491.35 in respect of D4(PP) personal property losses, USD 420,088.92 is recommended.

⁸ Out of the total amount claimed of USD 4,524,135.47, USD 3,617,595.15 was claimed in respect of D4(PP) personal property losses, USD 270,523.01 was claimed in respect of D7 real property losses and USD 636,017.30 was claimed in respect of D8/9 business losses. Out of the total amount claimed of USD 3,617,596.15 in respect of D4(PP) personal property losses, USD 3,210,545.74 is recommended.

⁹ This award recommendation is consistent with awards recommended by the ‘D1’ Panel of Commissioners with regard to loss claims involving a hobby or recreational pastime. See “Report and recommendations made by the ‘D1’ Panel of Commissioners concerning part two of the ninth instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)”, S/AC.26/2001/26, paragraph 17.

¹⁰ Out of the total amount claimed of USD 7,311,874.92, USD 7,041,366.78 was claimed in respect of D4(PP) personal property losses, USD 51,903.11 was claimed in respect of D1 departure costs, USD 176,470.59 was claimed in respect of D7 real property losses, USD 8,367.82 was claimed in respect of D4(MV) motor vehicle losses and USD 33,766.62 was claimed in respect of D8/9 business losses. Out of the total amount claimed of USD 7,041,366.78 in respect of D4(PP) personal property losses, USD 265,699.78 is recommended.

¹¹ Out of the total amount claimed of USD 3,358,422.15, USD 605,190.31 was claimed in respect of D4(PP) personal property losses, USD 2,443,370.24 was claimed in respect of D8/9 business losses, USD 6,920.42 was claimed in respect of claimpreparation costs and USD 302,941.18 was claimed in respect of interest. Although the Panel recommends no award of compensation in

respect of the Valuation Items, the Panel recommends a total award of USD 12,975.78 in respect of the claimant's remaining D4(PP) personal property losses.

¹² Out of the total amount claimed of USD 2,567,176.47, USD 2,421,069.20 was claimed in respect of D4(PP) personal property losses and USD 146,107.27 was claimed in respect of D7 real property losses. Out of the total amount claimed of USD 2,421,069.20 in respect of D4(PP) personal property losses, USD 1,332,413.98 is recommended.

¹³ Which provides that “[e]ach panel will determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted.”

¹⁴ Out of the total amount claimed of USD 4,527,134.95, USD 4,359,705.88 was claimed in respect of D4(PP) personal property losses, USD 163,968.86 was claimed in respect of D7 real property losses and USD 3,460.21 was claimed in respect of claim preparation costs. Out of the total amount claimed of USD 4,359,705.88 in respect of D4(PP) personal property losses, USD 2,005,462.27 is recommended.

¹⁵ Out of the total amount claimed of USD 17,333,518.51, USD 17,092,169.55 was claimed in respect of D4(PP) personal property losses, USD 37,003.46 was claimed in respect of D4(MV) motor vehicle losses, USD 190,504.67 was claimed in respect of D7 real property losses and USD 13,840.83 was claimed in respect of claims preparation costs. Out of the total amount claimed of USD 17,092,169.55 in respect of D4(PP) personal property losses, USD 7,455,959.56 is recommended.

¹⁶ Out of the total amount claimed of USD 10,070,608.99, USD 9,218,162.63 was claimed in respect of D4(PP) personal property losses, USD 83,044.98 was claimed in respect of D4(MV) motor vehicle losses and USD 769,401.38 was claimed in respect of D7 real property losses. Out of the total amount claimed of USD 9,218,162.63 in respect of D4(PP) personal property losses, USD 3,342,208.83 is recommended.

¹⁷ See the sixth instalment report, paragraphs 157 to 182.

¹⁸ See the “Report and recommendations made by the ‘D2’ Panel of Commissioners concerning part two of the fourteenth instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)” (S/AC.26/2003/7), paragraphs 65 to 67, and the “Report and recommendations made by the ‘D1’ Panel of Commissioners concerning part two of the fifteenth instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)” (S/AC.26/2003/8), paragraphs 88 to 91.

¹⁹ 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 61-63.

²⁰ *Ibid.*, paragraphs 64-65. The “D2” Panel adopted this decision in the sixth instalment report at paragraph 226.

²¹ 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.