



**Security Council**

Distr.  
GENERAL

S/AC.26/2004/6  
2 July 2004

Original: ENGLISH

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UNITED NATIONS  
COMPENSATION COMMISSION  
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE "D1" PANEL OF COMMISSIONERS  
CONCERNING PART TWO 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 twentieth report to the Governing Council of the United Nations Compensation Commission (the “Commission”) submitted pursuant to article 38(e) of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the “Rules”) by the “D1” Panel of Commissioners (the “Panel”), being one of two Panels appointed to review individual claims for damages above 100,000 United States dollars (USD) (category “D” claims). This report contains the determinations and recommendations of the Panel in respect of part two of the nineteenth instalment, submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules.

2. The Panel commenced its review of the nineteenth instalment in January 2003. Pursuant to Procedural Order No. 35 signed on 28 January 2003, the Panel notified all governments with claims in the nineteenth instalment of its intention to complete its review of the instalment in two parts. The Panel completed its review of 323 claims in part one of the nineteenth instalment in August 2003. This report contains the Panel’s determinations and recommendations on 387 claims in part two of the instalment. The Panel notes, however, that due to events in Iraq during the course of the review of the instalment that resulted in the loss of certain claim files transmitted to Iraq, the Government of Iraq (“Iraq”) was unable to provide its comments on 19 claims in time for inclusion in this report. The Panel has, therefore, deferred 19 claims<sup>1</sup> to part three of the nineteenth instalment to provide Iraq sufficient time within which to respond to the claims. The Panel will complete its review of claims in part three of the nineteenth instalment in March 2004.

3. The nineteenth instalment initially comprised 725 claims. A total of 63 claims have been added to the instalment since the Panel commenced its review of the claims. Fourteen of these additional claims are related to claims already in the nineteenth instalment and 13 were transferred from part two of the seventeenth instalment pending the receipt of comments on the claims by Iraq. A further 18 claims were added to the instalment to review the personal losses of claimants whose business losses were reviewed by the “E4” Panels. Two category “D” claims filed by the Government of Lebanon were accepted and reviewed by the Panel as “late filed” claims after the Panel determined that the claims met the criteria established by the Governing Council for late filing.<sup>2</sup> The remaining 16 claims were deferred from previous instalments awaiting the receipt of additional information from the claimants. One of the 63 additional claims<sup>3</sup> was included in the Panel’s report in respect of part one of the nineteenth instalment and 53 of the claims are included in this report. Nine claims will be reported in part three of the nineteenth instalment. Of the 725 claims that originally comprised the nineteenth instalment, 42 claims have been transferred out of the instalment to be reviewed by the “D2” Panel with related claims or will be resolved by the “E4” Panels of commissioners pursuant to Governing Council decision 123 (S/AC.26/Dec.123 (2001)) because they include claims for losses suffered by Kuwaiti companies. Three claims were previously resolved by the Panel in part two of the seventeenth instalment. A further 14 claims have been reviewed by the Panel as category “C” claims as described in paragraphs 8 and 48-58 below.

4. The nineteenth instalment includes 24 claims that the Panel determined should be sent to Iraq for its comments. In the case of eight of these claims, 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 Iraq. The remaining 16 claims were sent to Iraq on the basis that the claimed amounts exceed USD 10 million.<sup>4</sup> This report includes five claims on which Iraq has provided its comments to the Panel.<sup>5</sup> As noted above, the remaining 19 claims will be reported in part three of the nineteenth instalment to allow Iraq sufficient time to respond to these claims. Two claims were withdrawn by the claimants during the course of the Panel's review of the nineteenth instalment.<sup>6</sup> Taking into account all of the claims added to or transferred from the nineteenth instalment, the Panel has resolved a total of 710 claims, including two claims that have been withdrawn.

5. Twenty-seven claims<sup>7</sup> reviewed by the Panel in part two of the nineteenth instalment include personal losses suffered by the claimants and business losses suffered by Kuwaiti companies. The Panel is therefore making recommendations only with respect to the personal losses asserted in those claims. The claims relating to the Kuwaiti corporations will be severed and transferred to the "E4" Panels of Commissioners for review as "overlapping claims" or "stand alone claims" in accordance with Governing Council decision 123.<sup>8</sup>

6. The Panel commenced its review of the nineteenth instalment on 28 January 2003. In addition to ad hoc 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, 11-13 August, 22-24 September, 3-5 November and 15-17 December 2003. The March - April and September 2003 meetings included joint meetings with the "D2" Panel of Commissioners to discuss issues of relevance to both Panels. The Panel also held oral proceedings in respect of one claim<sup>9</sup> on 23 September 2003, attended by the claimant and the Government of Iraq. This claim and the Panel's determinations are discussed in detail in paragraphs 25-38 below.

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.<sup>10</sup> Part two of the nineteenth instalment includes 12 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. Six claims in the instalment are for asserted amounts over USD 10 million.

8. This report also includes the Panel's review and recommendations in respect of 30 claims filed by individuals for losses sustained by unincorporated businesses for amounts under USD 100,000 that were originally filed as category "E" claims, but were subsequently transferred by the Executive Secretary to category "D" for determination in accordance with the category "C" methodology. These claims and the Panel's determinations in respect of these claims are discussed in detail in paragraphs 48-58 below.

9. Pursuant to a request from the Governing Council, referred to hereafter, the Panel undertook the review of 22 late filed claims filed by 16 Lebanese nationals. Twelve claims were resolved and reported upon in the Panel's report on part one of the seventeenth instalment and one other claim previously accepted by the Panel is included in this report among the regular category "D" claims. The remaining nine claims have been considered after receipt of further information requested by the

Panel; the Panel's findings on these claims are also included in this report. Three claims were accepted and six were rejected in accordance with the criteria established by the Governing Council for late filing. Of the accepted claims, one is a category "A" claim and one is a category "C" claim and one claim has been categorized by the Panel as a category "D" claim. These claims and the Panel's determinations in respect of these claims are discussed in detail in paragraphs 59-73 below.

10. The following table sets out the number of claims by submitting entity in the nineteenth instalment, including the number resolved in part two 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>Total number of claims submitted to the Panel</u> | <u>Number of claims transferred out of the instalment</u> | <u>Number of claims withdrawn</u> | <u>Number of claims resolved by the Panel in part one</u> | <u>Number of claims resolved by the Panel in part two</u> | <u>Total number of claims resolved by the Panel in parts one and two</u> |
|--------------------------|---|---|--|---|-----------------------------------|---|---|--|
| Brazil                   | 1   | -   | 1  | -   | -                                 | -   | 1   | 1  |
| Canada                   | 1   | 1   | 2  | -   | -                                 | -   | 2   | 2  |
| Egypt                    | 22  | 2   | 24   | 12  | -                                 | 8   | 4   | 12   |
| Germany                  | 2   | -   | 2  | -   | -                                 | 1   | 1   | 2  |
| India                    | 30  | 4   | 34   | 4   | 1                                 | 12  | 18  | 30   |
| Ireland                  | 1   | -   | 1  | -   | -                                 | -   | 1   | 1  |
| Jordan                   | 103   | 21  | 124  | 33  | -                                 | 10  | 80  | 90   |
| Kuwait                   | 390   | 20  | 410  | 5   | 1                                 | 215   | 174   | 389  |
| Lebanon                  | 2   | 2   | 4  | -   | -                                 | -   | 4   | 4  |
| Pakistan                 | 10  | 4   | 14   | -   | -                                 | 2   | 12  | 14   |
| Philippines              | 3   | -   | 3  | -   | -                                 | 1   | 2   | 3  |
| Saudi Arabia             | 1   | 4   | 5  | 1   | -                                 | -   | 3   | 3  |
| Syrian Arab Republic     | 3   | 2   | 5  | -   | -                                 | 1   | 4   | 5  |
| Thailand                 | 1   | -   | 1  | 1   | -                                 | -   | -   | -  |
| Turkey                   | 4   | -   | 4  | -   | -                                 | 3   | 1   | 4  |
| United Arab Emirates     | 1   | -   | 1  | -   | -                                 | -   | -   | -  |
| United Kingdom           | 2   | -   | 2  | -   | -                                 | -   | 2   | 2  |
| United States            | 1   | 1   | 2  | -   | -                                 | -   | 2   | 2  |
| Yemen                    | 147   | 2   | 149  | 3   | -                                 | 70  | 76  | 146  |
| <u>Total</u>             | 725   | 63  | 788  | 59  | 2                                 | 323   | 387   | 710  |

## I. BACKGROUND

### A. Background information

11. In reviewing the claims in part two 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.<sup>11</sup>

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 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

13. The general legal framework for the resolution of category "D" claims is set out in chapter V of the Panel's First "D" Report.<sup>12</sup>

### C. Applicable evidentiary standard

14. The evidentiary standard to be applied in reviewing category "D" claims has been addressed by the Panel in previous reports.<sup>13</sup> As with earlier instalments, the Panel has reviewed the claims in part two 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. COMPETING CLAIMS FOR BUSINESS LOSSES

15. The Panel refers to previous reports in which it has identified the issue of competing claims filed by different individuals for business losses sustained by the same unincorporated business entity.<sup>14</sup> The Panel has reviewed a number of competing claims for business losses during the course of part two of the nineteenth instalment, of which two are described below.

16. In the first set of competing claims, two Kuwaiti claimants filed separate claims with the Commission in categories "C" and "D" seeking compensation for the losses arising from the same video equipment business that operated in Kuwait prior to Iraq's invasion and occupation of Kuwait. Each claimant asserts that he/she was the sole owner of the business as at 2 August 1990.

17. The category "C" Panel of Commissioners (the "C" Panel") reviewed the category "C" claim in the seventh instalment of category "C" claims and recommended that USD 77,372.45 be awarded to the claimant in respect of the losses sustained by the business.<sup>15</sup> This recommendation was subsequently approved by the Governing Council and the award has been paid to the category "C"

claimant. The category “C” claimant did not make any reference to the category “D” claimant in her claim.

18. The category “D” claimant asserts that he and another Kuwaiti national were equal partners in the business by virtue of their purchase of the business and its assets on 27 December 1989 from the category “C” claimant, who was the business licence holder. He provided a sale agreement certified by the Ministry of Justice to this effect. He also submitted documentation from his partner authorizing him to file on his behalf for the losses of the business.

19. The claimants were asked to comment on the assertions and evidence submitted by the other, in the light of their competing claims. The category “D” claimant reiterated that he was the owner of the business (along with his business partner) as at 2 August 1990 pursuant to the December 1989 agreement. The category “C” claimant admitted that she had sold the business to the category “D” claimant and his partner as reflected in the December 1989 agreement. However, she alleged that two months after the sale, the “D” claimant had informed her that he was unable to successfully run the business and that he would have to close it down. The category “C” claimant stated that she therefore agreed to resume operating the business at the beginning of March 1990 under a verbal agreement with the category “D” claimant and that the business continued under her supervision until Iraq’s invasion and occupation of Kuwait and thereafter.

20. On the basis of the totality of the evidence submitted by the “D” claimant, and applying the evidentiary standards applicable to category “D” claims, the Panel finds that the category “D” claimant (jointly with his business partner) has proved his ownership interest in the video equipment business. The Panel therefore recommends that he be compensated for the losses sustained by this business in the amount of USD 49,596.94.

21. In the second set of competing claims, two non-Kuwaiti claimants filed separate claims in categories “C” and “D” seeking compensation for the losses of the same car garage business that operated in Kuwait prior to Iraq’s invasion and occupation of Kuwait. Each claimant asserts that he was the sole owner of the business as at 2 August 1990. The “C” Panel recommended an award of USD 53,750.79 for the losses of the business of the category “C” claimant and the Governing Council subsequently approved that recommendation. The category “C” award has been paid to the claimant in full. In accordance with Kuwaiti law, the licence in respect of the business was registered in the name of a Kuwaiti national (the “business licence holder”). Each claimant alleged that he was renting the business licence from the business licence holder, who has not filed a claim with the Commission.

22. The documentary evidence submitted by the category “C” claimant included a contract dated 1970 between himself and the business licence holder, which stipulated the amount he paid as key money to take over the business, and the amount he paid for the monthly rent of the business premises. Further, the category “C” claimant submitted a “rent-a-permit” agreement dated 1978 by which he rented the business licence for a monthly fee, and an attestation from the Kuwaiti Ministry of Labour and Social Affairs dated 1984 that stated that the category “C” claimant was an employee of the business licence holder. The category “D” claimant also submitted a “rent-a-permit” agreement dated 1990 by which he rented the business licence from the business licence holder for a monthly fee. The

agreement further stipulated that the category “D” claimant pay an amount as key money to take over the business, through the business licence holder, to the former lessees of the business, namely the category “C” claimant and three other workers. In addition, the category “D” claimant submitted a contract dated 1990 between him and the business licence holder stipulating that the business equipment and tools listed therein were the property of the category “D” claimant.

23. On the basis of the totality of the evidence submitted by the “D” claimant, and applying the evidentiary standards applicable to category “D” claims, the Panel finds that the category “D” claimant has established his ownership interest in the business at the date of Iraq’s invasion and occupation of Kuwait, and the Panel therefore recommends that the category “D” claimant be compensated for the losses sustained by this business in the amount of USD 55,020.12.

### III. “UNUSUALLY LARGE OR COMPLEX” CLAIMS

#### A. Claims for high-value or unique personal property

24. The Panel reviewed 12 claims where assistance from expert consultants was obtained with regard to the valuation of certain items of personal property. The items were either of high value or of an unusual nature (“Valuation Items”), such as jewellery and gems, paintings, carpets, bloodstock and various antiques. Some of the claimants were interviewed by the secretariat and expert consultants at the Panel’s direction. In considering each of these claims, the Panel took into account the report of the expert consultants and the evidence submitted by the claimant in support of the Valuation Items. For the items where sufficient evidence was provided to prove the value of the items, the claimant’s ownership and loss of the items, and the requisite causal link of the loss to Iraq’s invasion and occupation of Kuwait, the Panel recommends awards within a range of the lowest replacement values in 1990.

#### B. UNCC claim No. 3001721

##### 1. Background

25. The claimant submitted the claim on behalf of himself, his wife and his brother as the sole shareholders in a privately held corporation. His original claim was for USD 1,496,061,643.82 as compensation for the loss resulting from the extinction of the value of the claimant’s 100 per cent shareholding in the corporation, as well as the loss of the anticipated increase in value of the shareholding from 1990 to 1993. The losses are alleged to have been a result of Iraq’s invasion and occupation of Kuwait. The claimant submitted that the invasion and occupation of Kuwait by Iraqi forces caused the corporation’s bankers to reconsider their credit exposure and to call in their lines of credit immediately. In explaining the basis of one part of the claim (approximately one half), the claimant stated that as a result of the invasion, the corporation, and therefore the family’s investments, became worthless and the claimant’s family was forced to dispose of its private assets the proceeds of which went to the corporation’s bankers. The other part of the claim represented the loss of the anticipated increase in value of the shareholding from 1990 to 1993.

26. In 1994 when the claimant filed this category “D” claim for personal losses, a consolidated category “E” claim for losses of the corporation (and some of its subsidiaries) was also filed by the corporation. Both claims cited the non-payment of Iraq’s debt as the reason for the losses alleged (though, the category “E” claim was for the monies owed by Iraq on certain letters of credit and the category “D” claim was for the entire value of the stock of the corporation).

27. As at 2 August 1990, the claimant’s corporation was a large beef processor, with a total annual turnover in excess of USD 1 billion. The corporation purchased beef from numerous farmers in the claimant’s country and traded in beef and beef products. Though its primary market was Europe, it had smaller but significant trade with other parts of the world, including Iraq. The corporation’s structure required large amounts of flexible operating capital, which it drew down through short-term credit facilities issued by 33 banks. The credit facilities were maintained on a pari passu basis, requiring the claimant to notify all of the creditor banks, should one creditor bank call a loan due or refuse to renew the corporation’s credit facilities. At the date of Iraq’s invasion of Kuwait, the corporation maintained a total indebtedness in excess of USD 1.1 billion.

28. As at 2 August 1990, the total of Iraq’s debt to the corporation was approximately USD 288 million, with about USD 108 million of that amount overdue. That debt represented amounts owed to the claimant’s corporation under the terms of a number of letters of credit issued for Iraq’s purchase of beef and beef products. The corporation had experienced significant delays in receiving payments due under the letters of credit, with late, partial payments being the norm. The claimant stated that his corporation’s creditor banks nevertheless considered the debts owed by Iraq to the corporation to be collectable, despite the inconsistent payment history. The creditor banks were, however, immediately concerned about the consequences of Iraq’s invasion and occupation of Kuwait on the prospects of continued payment of that debt.

29. Indeed, the claimant alleged that the creditor banks’ concerns about the financial health of the corporation escalated following 2 August 1990 to 22 August 1990 when a meeting was called between the 33 creditor banks and representatives of the corporation, including the claimant. At that meeting, the creditor banks demanded repayment of all outstanding loans. Absent that repayment, the creditor banks indicated that they wished to see the corporation liquidated by its creditors to recover some of their losses. Shortly thereafter, on 29 August 1990, the claimant’s national parliament was recalled and it passed legislation that called, on petition to the high court, for the appointment of an examiner to determine if the corporation could continue as a going concern. The claimant’s corporation applied to the high court the day the legislation was passed, and an examiner was appointed that same day.

30. During the period that the examiner was determining the corporation’s financial viability, the claimant and the creditor banks engaged in intensive negotiations concerning restructuring plans for the corporation’s debts. A plan was eventually agreed upon, and this plan, along with the examiner’s conclusions, was presented to the high court on 28 January 1991. The plan required the claimant to cede 60 per cent of his ownership of the corporation to the creditor banks, to sell or mortgage to the creditor banks nearly USD 34 million worth of real property, and to forgive a USD 8.6 million loan made to the corporation. In addition, the claimant was required to serve as the chief executive officer

of the successor business to the corporation. All of these things the claimant consented to, and all of them he did.

31. The claimant continued to act as the chief executive officer of the corporation (and its successor business) from 1991 to 1995, when he led a consortium of investors that bought out the creditor banks' 60 per cent ownership interest. As part of that transaction, the creditor banks received the rights to Iraq's debts due to the claimant's corporation, which were still considered a valuable asset. The creditor banks continued to push for a resolution of the debt after the buyout as well as the release of certain performance bonds held by Iraq, and the claimant traveled to Baghdad in August 1997 to achieve this objective. As a result of the negotiations conducted in Baghdad, Iraq released its hold on the performance bonds related to the corporation's contracts with Iraq, and signed an agreement which incorporated an acknowledgment of its continuing debt (in the amount of USD 122,268,785.03 and DM 253,834,449.49) to the corporation. Concurrently, the claimant withdrew the category "E" claim of the corporation. Finally, in 1999 the claimant bought out his consortium partners and once again became the sole owner of the corporation.

32. In view of the developments described above this claim was deferred from consideration in the ninth instalment and eventually taken up for consideration in the nineteenth instalment. Based on the losses originally alleged in the category "D" and "E" claims, the Panel invited the claimant to explain why he should be permitted to assert a claim for the alleged diminution (or extinction) in the value of his investment in the corporation instead of the incorporated entities that constituted the corporation; and to explain why the corporation withdrew its claim, with prejudice; the claimant was also asked if he is permitted to assert a claim for the alleged diminution in the value of his equity interest in the Corporation, he should explain how the diminution in value is attributable, for the purposes of the "direct loss" requirement of paragraph 16 of Security Council resolution 687 (1991), to Iraq's invasion and occupation of Kuwait.

33. Following these questions, the claimant reduced his claim to USD 331,849,315.07, and re-characterised the loss elements asserted as follows: the loss of 60 per cent of the equity of the corporation, the value of certain real estate sold or mortgaged, and the value of a loan the claimant had made to the corporation. The claimant alleged that he was forced to relinquish these three assets to the creditor banks of the corporation as part of a debt restructuring, and that the restructuring plan was itself a direct result of Iraq's invasion and occupation of Kuwait.

34. Because of the factual, legal and valuation issues it presented, and the asserted amount of the claim, the claim file was sent to Iraq for its comments. In addition, the Panel issued a number of procedural orders putting questions to both the claimant and Iraq. The Panel also invited Iraq and the claimant to attend oral proceedings, and to present evidence and clarification on certain issues identified by the Panel. The oral proceedings were held in Geneva on 23 September 2003, with the participation of both representatives of the claimant and Iraq.

## 2. The Panel's determinations

35. The Panel finds that the claimant's losses are not a direct result of Iraq's invasion and occupation of Kuwait as required by paragraph 16 of Security Council resolution 687 (1991). The Panel is of the view that, for a loss to be considered direct within the meaning of paragraph 16 of Security Council resolution 687 (1991) and applicable Governing Council decisions,<sup>16</sup> it must be a reasonable and foreseeable consequence of Iraq's invasion and occupation of Kuwait.<sup>17</sup> In this claim, a number of intervening factors that cannot be considered reasonable and foreseeable consequences of Iraq's invasion and occupation of Kuwait arose to break the chain of causation. Specifically, the intervention of the claimant's national parliament and the examiner legislation, and the reaction of the creditor banks played important roles in the alleged losses. Most significantly, the Panel finds that the alleged losses were the result of the claimant's decision to participate in the restructuring scheme, and thereby preserve his business reputation and the corporation itself as a going concern. The Panel further finds that any monies expended by him were expended to preserve the claimant's reputation and business, not in mitigation of a direct loss within the jurisdiction of the Commission.

36. In the Panel's view, the corporation's reliance on short-term credit facilities for its operating capital meant that the risk of interruption to its business was inherently high. The Panel notes that the corporation's consolidated financial statements for 1990 indicate that a number of factors contributed to its difficult financial condition prior to 2 August 1990, including the substantial losses relating to the decline in the value of stock investments, the weak United States dollar, the worsening economic conditions in its main markets, and continuing negative market reaction to BSE (mad cow disease). Under such circumstances, the Panel determines that it is not possible to conclude that an interruption to less than six per cent of the corporation's income stream could have caused its collapse. The Panel also notes that Iraq had a history of irregular payment of its debts to the corporation, and had generally made late or partial payments over the course of its dealings with the corporation. Thus, although Iraq's invasion and occupation of Kuwait had the effect of stopping that income stream, it was not a reasonable or foreseeable consequence of the invasion and occupation that the corporation would lose its entire value and be forced to restructure its debt to continue as a going concern.

37. Finally, the Panel notes that the claimant and Iraq concluded an arrangement whereby Iraq agreed to release the performance bonds provided by the corporation and to acknowledge its debt to the corporation in return for the withdrawal of the UNCC claims. The claimant maintained that this arrangement was confined to the withdrawal of the corporation's UNCC claim, and did not include the claimant's present claim. The Panel accepts that Iraq was not aware of the claimant's personal claim and believed that all UNCC claims would be withdrawn. The Panel finds that Iraq, in all probability, would not have released the bonds and acknowledged its debt if it was aware that the claimant was pursuing a separate individual claim against it. It is not necessary for the Panel to determine whether the claimant is unable to pursue its claim on the basis of an estoppel or lack of good faith, because of the Panel's finding concerning the directness of the loss. However, there is merit in the Iraqi submission that, in the light of the arrangement, it would not be equitable to allow the claim.

### 3. Recommended award for all losses

38. After reviewing all of the claimant's alleged losses, the Panel recommends that no compensation be awarded with respect to this claim.

## IV. CROSS-CATEGORY ISSUE

39. Recommended awards in respect of claims in part two of the nineteenth instalment are net of category "A", "B" and "C" approved awards made to the same claimants.<sup>18</sup>

## V. OTHER ISSUES

### A. Exchange rates

40. 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.

41. In its report and recommendations concerning the third instalment of category "D" claims,<sup>19</sup> 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.<sup>20</sup>

### B. Interest

42. A number of claimants in part two of the nineteenth instalment claim for interest on losses contained in their category "D" claims for a total amount of USD 1,573,357.20. Governing Council decision 16 (S/AC.26/1992/16) provides the methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time. For this purpose, in relation to 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 should be a single fixed date.<sup>21</sup> The "D1" and "D2" Panels (collectively, "the 'D' Panels") determined that 2 August 1990 (the date of Iraq's invasion and occupation of Kuwait) should serve as the fixed date.<sup>22</sup>

43. 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.<sup>23</sup>

44. The Panel applies these findings to the claims included in part two of the nineteenth instalment.

### C. Claims preparation costs

45. A number of claimants in part two 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 439,152.07.

46. 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.

## VI. RECOMMENDED AWARDS FOR CATEGORY "D" CLAIMS

47. The annex hereto lists the awards recommended by the Panel for each government for the claims resolved in part two 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 789,283,315.43. Of this amount claimed, USD 40,502,145.38 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. Against the net balance of USD 746,768,660.78 claimed, which excludes interest and claims preparation costs, the Panel recommends a total compensation of USD 168,097,728.70.

## VII. THE PANEL'S REVIEW AND RECOMMENDATIONS IN RESPECT OF CLAIMS TRANSFERRED FROM CATEGORY "E" WITH CLAIMED AMOUNTS UNDER USD 100,000

### A. Background

48. During the course of the review by the various category "E" Panels of Commissioners of claims filed in category "E", a total of 79 claims were identified as including losses sustained by unincorporated businesses that could not be reviewed in category "E". Thirty-eight of these claims were for claimed amounts of under USD 100,000 while the remaining 41 claims were for more than USD 100,000. Between 1999 and 2003, all 79 claims were transferred by the Executive Secretary to the category "D" Panels for review in accordance with either the category "C" methodology, in the case of those claims with claimed amounts under USD 100,000, or the category "D" methodology, in respect of the remaining claims. All of the claims were transferred to category "D", regardless of the quantum of the claimed amount, because the category "C" claims programme was either coming to an end or, in the case of claims transferred more recently, had been completed. The 38 claims for amounts under USD 100,000 that were transferred to the "D" Panels (the "transferred claims") are the subject of this section of the Panel's report.<sup>24</sup>

49. Fifteen of the transferred claims were originally allocated to the "D2" Panel for its review. The "D" Panels have conferred on this issue and are of the opinion that one Panel should review all of the transferred claims in accordance with the category "C" methodology. Therefore, the "D2" Panel transferred those claims that it had not yet reviewed to the Panel for its review.<sup>25</sup>

50. Of the 38 transferred claims, eight claims have already been reviewed by the “D” Panels.<sup>26</sup> These eight claims received recommendations of no compensation by the “D” Panels. The Panel has revisited these claims in the light of the requirements of the methodology and evidentiary standards for category “C” claims. In applying the category “C” methodology to these eight claims, the Panel finds that the claimants would have received a recommendation of no compensation had the claims been filed in category “C”. Therefore, the Panel recommends that no alteration be made to the recommended awards in respect of these eight claims that were included in earlier reports of the “D” Panels.

51. Five of the remaining 30 transferred claims were originally included in the Panel’s report in respect of part one of the nineteenth instalment.<sup>27</sup> Before that report was considered by the Governing Council, the Panel withdrew the claims from the report in order to value them under the category “C” methodology together with the balance of the transferred claims.

#### B. Category “C” methodology for individual business losses

52. When reviewing these 30 claims, the Panel applied the category “C” processing methodology established by the “C” Panel in respect of claims for individual business losses. During the regular category “C” programme, claims for individual business losses were processed differently depending on the location of the business at the time of Iraq’s invasion and occupation of Kuwait. The “C” Panel considered that it was reasonable to assume that losses incurred by businesses located in either Iraq or Kuwait during the jurisdictional period were the direct result of Iraq’s invasion and occupation of Kuwait.<sup>28</sup> However, where the business was located outside Kuwait or Iraq, the “C” Panel required the claimant to more fully substantiate that the asserted losses were a direct result of Iraq’s invasion and occupation of Kuwait.<sup>29</sup> Category “C” claims that included losses sustained by a business outside Kuwait or Iraq were subject to an individual review to determine whether the claimant had established that the asserted losses were the direct result of Iraq’s invasion and occupation of Kuwait. Such claims only proceeded to valuation if the “C” Panel was satisfied that this causal link had been established. Therefore, the Panel reviewed all of the transferred claims in respect of businesses located outside Kuwait or Iraq to determine whether the claimant had satisfied this causal link.

53. The Panel was also mindful of the fact that in category “C”, no development of the claims took place. Claims filed in category “C” were reviewed and valued solely on the basis of the original claim form that was completed by the claimant and the evidence attached to that claim form at the time of filing. Therefore, when reviewing the transferred claims, the Panel only considered the original claim form and the evidence submitted with that claim form.

54. Once the Panel determined that a particular transferred claim was compensable pursuant to the category “C” methodology, the valuation of the asserted individual business losses was undertaken by applying the compensation formulae established by the “C” Panel.<sup>30</sup> While it is not necessary to restate the formulae in this report, the Panel notes that compensable claims for individual business losses of USD 20,000 or less were compensated in full. In respect of those compensable claims for individual business losses exceeding USD 20,000, claimants were awarded at least USD 20,000 with

compensation on any balance being calculated by reference to “a macro-economic valuation benchmark”<sup>31</sup> that was based on the submitting entity to which the claimant belonged.

C. The Panel’s review of and recommendations concerning the transferred claims

55. Upon reviewing the 30 transferred claims and applying the category “C” methodology, the Panel finds that seven of the claims are not compensable in terms of that methodology. Accordingly, the Panel recommends that no award of compensation be made in respect of these seven transferred claims.

56. The Panel finds that the remaining 23 transferred claims are compensable under the category “C” methodology and it recommends awards of compensation be made in respect of these 23 claims. Eleven of the compensable claims are for amounts under USD 20,000 and the Panel therefore recommends that these claimants be awarded compensation equal to the actual amount claimed.

57. In respect of the remaining 12 compensable claims, the Panel recommends awards of compensation calculated in accordance with the category “C” methodology, as set out below.

Table 2. Recommended awards in respect of the transferred claims

| <u>Submitting entity</u> | <u>UNCC claim No.</u> | <u>Claimed amount<br/>(USD)</u> | <u>Recommended award<br/>(USD)</u> |
|--------------------------|-----------------------|---------------------------------|------------------------------------|
| Egypt                    | 4002732               | 19,118.40                       | 19,118.40                          |
| Egypt                    | 4002733               | 16,961.82                       | 16,961.82                          |
| Egypt                    | 4002735               | 43,784.00                       | Nil                                |
| Egypt                    | 4002739               | 19,743.28                       | 19,743.28                          |
| Egypt                    | 4002742               | 5,179.00                        | 5,179.00                           |
| Egypt                    | 4002743               | 26,282.34                       | 25,277.17                          |
| Egypt                    | 4002753               | 7,150.63                        | Nil                                |
| Egypt                    | 4002755               | 4,210.00                        | 4,210.00                           |
| Egypt                    | 4002817               | 27,299.27                       | 26,131.39                          |
| Egypt                    | 4002839               | 25,673.54                       | Nil                                |
| Egypt                    | 4002847               | 29,605.20                       | 28,068.37                          |
| Egypt                    | 4002853               | 19,730.48                       | 19,730.48                          |
| Egypt                    | 4002854               | 82,308.00                       | 48,919.85                          |
| Egypt                    | 4002855               | 42,297.48                       | 38,729.88                          |
| Egypt                    | 4002857               | 26,857.00                       | Nil                                |
| Egypt                    | 4002859               | 87,116.99                       | Nil                                |
| Egypt                    | 4002866               | 57,893.81                       | Nil                                |
| Egypt                    | 4002868               | 32,225.63                       | 30,269.53                          |
| Egypt                    | 4002892               | 1,012.00                        | 1,012.00                           |
| Egypt                    | 4002906               | 19,819.22                       | 19,819.22                          |
| Germany                  | 4000390               | 3,249.30                        | 3,249.30                           |
| India                    | 4000653               | 2,977.76                        | 2,977.76                           |
| India                    | 4000702               | 44,010.00                       | Nil                                |
| India                    | 4000756               | 9,058.00                        | 9,058.00                           |

| <u>Submitting entity</u> | <u>UNCC claim No.</u> | <u>Claimed amount<br/>(USD)</u> | <u>Recommended award<br/>(USD)</u> |
|--------------------------|-----------------------|---------------------------------|------------------------------------|
| India                    | 4000770               | 50,101.83                       | 40,055.29                          |
| India                    | 4000771               | 50,522.49                       | 40,131.01                          |
| Kuwait                   | 4003104               | 69,290.66                       | 63,783.18                          |
| Kuwait                   | 4003115               | 62,041.52                       | 59,071.24                          |
| Kuwait                   | 4003261               | 45,674.74                       | 45,674.74                          |
| Kuwait                   | 4006147               | 45,051.90                       | 45,051.90                          |
| <u>Total</u>             |                       | 976,246.29                      | 612,222.81                         |

58. The Panel adopts the view expressed by the “C” Panel in its first instalment report,<sup>32</sup> that the phrase “the date the loss occurred” in Governing Council decision 16<sup>33</sup> should be interpreted to be a single fixed date for all category “C” claims and that the date of Iraq’s invasion and occupation of Kuwait, namely 2 August 1990, should serve as the fixed date.

#### VIII. THE PANEL’S REVIEW AND RECOMMENDATIONS IN RESPECT OF THE REMAINING LEBANESE LATE FILED CATEGORY “A” AND “C” CLAIMS

##### A. Background information

59. During the Governing Council’s thirty-ninth session held from 13-15 March 2001, a representative of the Permanent Mission of the Government of Lebanon in Geneva requested the Governing Council to accept for “late” filing category “A” (departure from Iraq or Kuwait) and category “C” (individual losses up to USD 100,000) claims of 15 Lebanese individuals who had lived in the area of southern Lebanon that was occupied by Israel until 24 May 2000. The Government of Lebanon subsequently added an additional “late filed” claim. (the “late filed claims”).

60. By its decision at its forty-fifth session held from 1-3 October 2002, the Governing Council requested the Panel to review and process the claims if the Panel determines in each case that the claimants did not have a full and effective opportunity to file their claims within the regular filing period. In deciding whether these late filed claims should be accepted, the Panel was requested to take into account the particular circumstances of these claimants and whether they qualify for late filing under the established criteria, namely the existence of a war situation or civil disorder that prevented the filing to take place and evidence of prior attempts by the claimants to file within the regular filing period.

61. Accordingly, taking into consideration the information available and the criteria established by the Governing Council for late filing, the Panel reviewed each of the late filed claims individually. The Panel accepted 13 claims from 10 individuals on the basis that the documents and other supporting materials provided showed that the claimants had not had a full and effective opportunity to submit claims to the Commission within the regular filing period. The Panel directed that further information and clarification should be sought from the remaining six claimants. Following the acceptance of the 13 claims for late filing, 12 claims submitted by nine individuals were reviewed by

the Panel in part one of the seventeenth instalment of category “D” claims and compensation was recommended by the Panel in respect of all 12 claims.<sup>34</sup> The thirteenth claim was categorized by the Panel as a category “D” claim and is included in this report among the regular category “D” claims.

B. The Panel’s findings regarding the eligibility of the remaining nine Lebanese late filed claims

62. The Panel’s inquiries with regard to the nine claims of the remaining six claimants were conveyed to the Permanent Mission of Lebanon in Geneva, which provided the requested additional information by the deadlines set by the Panel. These nine claims consist of four category “A” claims, four category “C” claims and one category “D” claim. Upon its detailed examination of the claim files, along with the supplemental information provided by the Permanent Mission, the Panel accepted three claims, which were submitted by three claimants, for immediate filing on the basis that the evidence conclusively showed they did not have a full and effective opportunity to file within the Commission’s regular filing period. Out of the three claims found to be eligible by the Panel for “late” filing, one claim is a category “A” claim, one is a category “C” claim and one claim was categorized by the Panel as a category “D” claim and is included in this report among the regular category “D” claims.

63. The Panel was not able to accept four claims submitted by two claimants for late filing since the claimants had failed to provide the necessary proof to demonstrate that they did not have a full and effective opportunity to file within the regular filing period. In one case, the information provided by the former employer of the claimant in Kuwait showed that the claimant was still working in Kuwait in October 1993 even though the claimant had asserted in his claim file that he had resided continuously in the occupied zone in southern Lebanon from February 1992 until the Israeli withdrawal in May 2000.

64. With respect to the sixth claimant, who filed two claims, one in category “A” and another in category “C”, the Panel did not accept his claims for late filing on the basis that a matching search in the Commission’s database showed conclusively that the claimant had filed a category “C” claim during the regular filing period. The claim in question, UNCC claim No. 1508862, was awarded an amount of USD 8,380.62 by the “C” Panel in the second instalment of category “C” claims in May 1996. The existence of this claim file contradicted the claimant’s assertion in his “late” claim file that he had entered the Israeli occupied zone in mid-1991 and had not been able to leave the zone until May 2000, which was the basis on which the Panel has accepted claims for late filing. The review of the original category “C” claim demonstrated that the claimant was able to submit a claim to the Commission through his Government in 1993. This made the claimant ineligible to recover compensation in the late filed Lebanese claims programme.

C. The Panel’s review of and recommendations concerning the Lebanese late filed category “A” claim

65. A category “A” claim has been submitted by one of the three Lebanese claimants whose claims have been found to be eligible by the Panel for acceptance as late filed claims. In reviewing this claim, the Panel has taken into account the fact that category “A” claims are claims for departure from

Iraq or Kuwait during the period from 2 August 1990 to 2 March 1991 (the “jurisdictional period”). These claims are among the “most urgent claims” for which Governing Council decision 1 (S/AC.26/1991/1) set out “simple and expedited procedures” in order to provide “prompt compensation in full” or “substantial interim relief” to claimants. The Panel has also noted the evidentiary standard applicable to category “A” claims, as stated in Governing Council decision 1 and, more specifically, in article 35(2)(a) of the Rules, namely that category “A” claimants “... are required to provide simple documentation of the fact and date of departure from Iraq or Kuwait. Documentation of the actual amount of loss will not be required.”

66. The Panel finds that the documentation submitted with the claim file met the evidentiary requirements established by the category “A” Panel of Commissioners (the “A’ Panel”) for the entire category “A” claims population. The claimant provided relevant proof of presence in Iraq or Kuwait as at 2 August 1990 through the submission of a Kuwaiti civil identification number and a photocopy of a passport with an exit stamp showing the claimant’s departure from Kuwait or Iraq within the jurisdictional period. The claimant also produced a personal statement that included his last residential address and a description as to how he had traveled from Kuwait or Iraq to Lebanon.

67. Having satisfied itself that the category “A” evidentiary standard has been met, the Panel finds that the claimant is entitled to the same recommendation for compensation as those made by the “A” Panel with regard to the overall population of successful category “A” claimants.

68. The Panel therefore recommends an award of compensation for the category “A” claim in the total amount of USD 8,000, in accordance with the methodology applied by the “A” Panel for family claims. The recommended award for the category “A” claimant is set out in the following table:

Table 3. Recommended award in respect of the Lebanese late filed category “A” claim

| <u>UNCC claim No.</u> | <u>Claimed amount (USD)</u> | <u>Recommended award<br/>(USD)</u> |
|-----------------------|-----------------------------|------------------------------------|
| 2000233               | 8,000                       | 8,000                              |
| <u>Total</u>          | 8,000                       | 8,000                              |

69. The Panel adopts the view expressed by the “A” Panel in its first instalment report,<sup>35</sup> that the phrase “the date the loss occurred” in Governing Council decision 16 should be interpreted to be a single date for all category “A” claims and that the date of Iraq’s invasion and occupation of Kuwait, namely 2 August 1990, should serve as the fixed date.

D. The Panel’s review of and recommendations concerning the Lebanese late filed category “C” claim

70. A category “C” claim has been submitted by one of the three Lebanese claimants whose claims have been found to be eligible by the Panel for acceptance as late filed claims. In reviewing this claim, the Panel has taken into account the fact that category “C” claims are claims for individual losses not exceeding USD 100,000. These claims are among the “most urgent claims” for which

Governing Council decision 1 set out “simple and expedited procedures” in order to provide “prompt compensation in full” or “substantial interim relief” to claimants.

71. In addition, the Panel has also taken into account that in category “C”, the loss types claimed by the claimant (C4 personal property, C4 motor vehicle and C6 loss of income or salary), would have been subject to the same mass claims processing verification criteria and valuation methodology of the “C” Panel that were applied to the same loss types for all similarly situated claimants. The Panel finds that, consistent with the category “C” claims methodology, the information and data provided by the claimant within his claim is sufficient to establish that his losses would have been considered compensable, in principle, by the “C” Panel.

72. Having applied the criteria and methodology developed by the “C” Panel for the processing of category “C” claims, the Panel recommends compensation in the total amount of USD 58,681.45 for the late filed category “C” claim. The recommended award for the category “C” claimant is set out in the following table:

Table 4. Recommended award in respect of the Lebanese late filed category “C” claim

| <u>UNCC claim No.</u> | <u>Claimed amount (USD)</u> | <u>Recommended award (USD)</u> |
|-----------------------|-----------------------------|--------------------------------|
| 1854191               | 85,000                      | 58,681.45                      |
| <u>Total</u>          | 85,000                      | 58,681.45                      |

73. The Panel adopts the view expressed by the “C” Panel in its first instalment report,<sup>36</sup> that the phrase “the date the loss occurred” in Governing Council decision 16 should be interpreted to be a single fixed date for all category “C” claims and that the date of Iraq’s invasion and occupation of Kuwait, namely 2 August 1990, should serve as the fixed date.

#### IX. SUBMISSION OF THE REPORT

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

Geneva, 17 December 2003

(Signed) R.K.P. Shankardass  
Chairman

(Signed) G. Abi-Saab  
Commissioner

(Signed) M.C. Pryles  
Commissioner

Notes

<sup>1</sup> UNCC claim Nos. 3003942, 3005224, 3005266, 3005325, 3005342, 3006365, 3006502, 3006730, 3006804, 3006993, 3007002, 3007077, 3007350, 3007417, 3007440, 3007604, 3007791, 3008054, and 3010648.

<sup>2</sup> UNCC claim Nos. 3013166 and 3013167.

<sup>3</sup> UNCC claim No. 3004042.

<sup>4</sup> 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.

<sup>5</sup> UNCC claim Nos. 3001721, 3004181, 3005323, 3010580, and 3010691.

<sup>6</sup> UNCC Claim Nos. 3001463 and 3009839.

<sup>7</sup> UNCC claim Nos. for overlapping claims are 3001442, 3001637, 3003275, 3003605, 3003802, 3003809, 3003863, 3004030, 3004197, 3004209, 3004460, 3004571, and 3005086. UNCC claim Nos. for stand alone claims are: 3004093, 3004555, 3003770, 3003791, 3003798, 3003805, 3003857, 3004849, 3004868, 3002622, 3003260, 3003263, 3004469 and 3004545.

<sup>8</sup> In respect of the stand alone claims that have been transferred to the "E4" Panels of Commissioners for review, the "D" Panels jointly determined at their September 2003 meeting that all claimants have satisfied the authority to act test, as set out at paragraph 89 of 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).

<sup>9</sup> UNCC claim No. 3001721.

<sup>10</sup> 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.

<sup>11</sup> 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).

<sup>12</sup> See note 10 above for further information on the development of the general legal framework.

<sup>13</sup> 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.

<sup>14</sup> See paragraphs 12-30 of the “Report and recommendations made by the ‘D1’ Panel of Commissioners concerning the eleventh instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)” (S/AC.26/2002/2); paragraphs 17-33 of the “Report and recommendations made by the ‘D1’ Panel of Commissioners concerning part one of the fifteenth instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)” (S/AC.26/2002/30); and, paragraphs 13-17 of the “Report and recommendations made by the ‘D1’ Panel of Commissioners concerning part one of the seventeenth instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)” (S/AC.26/2003/17).

<sup>15</sup> “Report and recommendations made by the Panel of Commissioners concerning the seventh instalment of individual claims for damages up to US\$100,000 (category ‘C’ claims)” (S/AC.26/1999/11) (the “Seventh Instalment ‘C’ Report”).

<sup>16</sup> Specifically, decisions 7, 9 (S/AC.26/1992/9) and 15 (S/AC.26/1992/15).

<sup>17</sup> The Panel notes that the definition of a “direct loss” has been elucidated by various other Panels of Commissioners since its initial review of the requirement in its first report (S/AC.26/1998/1). See paragraphs 92-93 of the “Report and recommendations made by the Panel of Commissioners concerning the third instalment of ‘E2’ claims” (S/AC.26/1999/22), which refers to S/AC.26/1999/6, paragraph 70. See also paragraphs 19-20, 141 of the “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘E2’ claims” (S/AC.26/1998/7). The Panel also relied on the “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘F3’ claims” (S/AC.26/1999/24), as well as the “Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of ‘D’ claims” (S/AC.26/2000/24), the “Reports and recommendations made by the Panel of Commissioners concerning the Egyptian workers’ claims” (S/AC.26/1995/R.20) and the “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘C’ claims” (S/AC.26/1994/3).

<sup>18</sup> 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).

<sup>19</sup> “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”).

<sup>20</sup> Paragraph 39 of the Third Instalment Report.

<sup>21</sup> 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.”

<sup>22</sup> 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.

<sup>23</sup> See paragraphs 227-228 of the Sixth Instalment Report.

<sup>24</sup> Twenty-three of the transferred claims were allocated to the “D1” Panel for review and the remaining 15 transferred claims were allocated to the “D2” Panel for review.

<sup>25</sup> The 12 claims that the “D2” Panel transferred to the Panel for review were previously scheduled for review by the “D2” Panel in part two of the eighteenth instalment of category “D” claims.

<sup>26</sup> One claim (UNCC claim No. 4001863) was included in the “Report and recommendations made by the ‘D2’ Panel of Commissioners concerning part one of the twelfth instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)” (S/AC.26/2002/10), one claim (UNCC claim No. 4001763) was included in the “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), one claim (UNCC claim No. 4001865) was 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) and five claims (UNCC claim Nos. 4001660, 4001718, 4002737, 4002738, and 4002897) were included in the “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)” (S/AC.26/2003/27).

<sup>27</sup> The UNCC claims Nos. of these five claims are 4002732, 4002742, 4002853, 4002892 and 4002906.

<sup>28</sup> This assumption of the “C” Panel was based on a comparative analysis of all claims included in the first instalment of category “C” claims and on extensive documentation compiled by United Nations-sponsored missions and other missions as to business losses suffered as a direct result of Iraq’s invasion and occupation of Kuwait. See paragraphs 347, 338 and 339 of the Seventh Instalment “C” Report.

<sup>29</sup> See paragraphs 347-350 of the Seventh Instalment “C” Report.

<sup>30</sup> See paragraph 366 of the Seventh Instalment “C” Report.

<sup>31</sup> See paragraphs 360-366 of the Seventh Instalment “C” Report.

<sup>32</sup> See section II.G of the “Report and recommendations made by the Panel of Commissioners concerning the first instalment of individual claims for damages up to US\$100,000 (category ‘C’ claims)” (S/AC.26/1994/3) (the “First Instalment ‘C’ Report”).

<sup>33</sup> See note 22 above.

<sup>34</sup> The Panel’s report in question was approved by the Governing Council at its September 2003 session as decision 198 (S/AC.26/Dec.198 (2003) of 18 September 2003.

<sup>35</sup> See section IV.C.3 of the “Report and recommendations made by the Panel of Commissioners concerning the first instalment of claims for departure from Iraq or Kuwait” (S/AC.26/1994/2).

<sup>36</sup> See section II.G of the First Instalment “C” Report.

AnnexSUMMARY RECOMMENDATIONS FOR CATEGORY "D" CLAIMS IN  
PART TWO OF THE NINETEENTH INSTALMENTTable 1. 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)<sup>a</sup></u> | <u>Net amount claimed after severances and transfers (USD)</u> | <u>Amount of compensation recommended (USD)</u> |
|--------------------------|---|---|---|--|---|
| Brazil                   | -   | 1   | 327,030.00                                    | 327,030.00   | 10,990.00                                       |
| Canada                   | 1   | 1   | 400,584.64                                    | 400,584.64   | 2,462.13  |
| Egypt                    | 3   | 1   | 2,235,476.82                                  | 2,108,288.58   | 96,997.00                                       |
| Germany                  | -   | 1   | 1,752,137.00                                  | 1,752,137.00   | 736,208.63                                      |
| India                    | 4   | 14  | 15,362,735.62                                 | 9,776,111.34   | 1,300,746.62                                    |
| Ireland                  | 1   | -   | 331,849,315.07                                | 331,849,315.07   | 0.00  |
| Jordan                   | 14  | 66  | 99,135,963.74                                 | 72,151,698.05  | 15,854,602.71                                   |
| Kuwait                   | 10  | 164   | 263,683,820.13                                | 262,771,436.07   | 132,389,307.61                                  |
| Lebanon                  | -   | 4   | 3,109,753.23                                  | 3,109,753.23   | 663,695.91                                      |
| Pakistan                 | -   | 12  | 4,695,198.44                                  | 4,695,198.44   | 1,276,979.37                                    |
| Philippines              | -   | 2   | 1,073,653.91                                  | 1,073,653.91   | 177,471.85                                      |
| Saudi Arabia             | 1   | 2   | 2,190,907.52                                  | 2,190,907.52   | 38,376.10                                       |
| Syrian Arab Republic     | 1   | 3   | 2,729,225.00                                  | 1,182,225.00   | 177,001.32                                      |
| Turkey                   | -   | 1   | 546,026.00                                    | 546,026.00   | 386,756.50                                      |
| United Kindom            | -   | 2   | 1,362,224.79                                  | 1,362,224.79   | 189,763.52                                      |
| United States            | -   | 2   | 4,233,930.00                                  | 1,833,930.00   | 330,574.98                                      |
| Yemen                    | 15  | 61  | 54,595,333.52                                 | 49,638,141.14  | 14,465,794.45                                   |
| <u>Total</u>             | 50  | 337   | 789,283,315.43                                | 746,768,660.78   | 168,097,728.70                                  |

<sup>a</sup> This total amount claimed includes USD 40,502,145.38 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 1,573,357.20 for interest and USD 439,152.07 for claims preparation costs.

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