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

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Introduction

1. This is the sixth 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. On 28 January 2002, the Executive Secretary of the Commission submitted the fourteenth instalment of category “D” claims, consisting of 600 claims and alleging losses aggregating USD 443,272,196.83, to the Panel pursuant to article 32 of the Rules. This report contains the determinations and recommendations of the Panel in respect of part one of the fourteenth instalment, which comprises a total of 308 claims, of which two claims were transferred from other category “D” instalments after 28 January 2002. The balance of claims in the instalment will be reported in the Panel’s report concerning part two of the fourteenth instalment of category “D” claims.

I. OVERVIEW OF THE CLAIMS IN PART ONE OF THE FOURTEENTH INSTALMENT

3. The most common loss type appearing in the 308 claims in part one of the fourteenth instalment is D8/D9 individual business losses. The next most common loss types are D4 personal property losses, D6 loss of salary and D7 real property losses. The majority of the claims in part one of the fourteenth instalment were submitted by the Governments of Kuwait, Jordan and The Syrian Arab Republic.

4. Of the 308 claims submitted to the Panel in part one of the fourteenth instalment, six claims have been deferred out of the fourteenth instalment as they have been found to be “overlapping” or “stand alone” shareholder claims that will be processed in accordance with Governing Council decision 123 (S/AC.26/Dec.123 (2001)). In addition, there are six claims where claimants have claimed for personal losses as well as business losses suffered by Kuwaiti companies. The business losses suffered by Kuwaiti companies will be severed from these claims and will be processed separately in accordance with Governing Council decision 123. The Panel reviewed the remaining personal losses in these claims and has made recommendations with respect to awards of compensation for these losses in this report.

5. As a result of these deferrals and transfers, the number of claims in part one of the fourteenth instalment was reduced to 302. Of these, one claim was withdrawn by the claimant and is indicated in parentheses in table 1 below.

6. Table 1 below sets out by submitting entity the claims in part one of the fourteenth instalment submitted to the Panel and the claims resolved by the Panel.

Table 1. Summary of claims by submitting entity

<u>Submitting entity</u>	<u>Number of claims submitted to the</u>	<u>Number of claims resolved by the</u>
	<u>Panel</u>	<u>Panel</u> ^a
Austria	1	1
Canada	6	5
Jordan	58	54
Kuwait	225	225(1)
Pakistan	1	1
Syrian Arab Republic	17	16
<u>Total</u>	308	302

^a Numbers in parentheses represent claims that were withdrawn.

II. THE PROCEEDINGS

7. On 28 January 2002, the Panel issued Procedural Order No. 14, in which it gave notice of its intention to complete its review of the claims in the fourteenth instalment and to finalize its report and recommendations to the Governing Council in two parts, part one in July 2002 and part two in January 2003. The Panel met regularly to consider the claims.

8. The Panel has taken into consideration relevant 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. One claim was sent to Iraq for comment pursuant to Procedural Order No. 6 dated 19 December 2000 and the Panel considered the written response received.

9. The Panel has sought to achieve consistency, in so far as is possible, with the verification and valuation procedures adopted by other panels of Commissioners for category "D" and "E" losses. This has been accomplished by adapting the relevant features of related methodologies in the assessment of claims, where appropriate.

III. LEGAL FRAMEWORK

A. Applicable law

10. The Security Council reaffirmed Iraq's liability under international law for any direct loss arising as a result of Iraq's invasion and occupation of Kuwait. Paragraph 16 of Security Council resolution 687 (1991) states (in part) that Iraq:

"... is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait".

11. Article 31 of the Rules identifies the law to be applied by panels of Commissioners in their consideration of claims. Specifically, panels are to apply Security Council resolution 687 (1991) and

other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. Where necessary, panels are to apply other relevant rules of international law.

B. Evidentiary requirements

12. Article 35(1) of the Rules provides that:

“Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991). Each panel will determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted.”

13. Article 35(3) of the Rules provides that claims in categories “D”, “E” and “F” must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss.

14. In addition, decision 15 of the Governing Council (S/AC.26/1992/15) expressly requires “detailed factual descriptions of the circumstances of the claimed loss, damage or injury” with respect to “all types of business losses, including losses relating to contracts, transactions that have been part of a business practice or course of dealing, tangible assets and income-producing properties”.¹

15. The Panel has reviewed the claims and made its recommendations by assessing documentary and other appropriate evidence. In addition, the Panel has sought to balance 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.

C. Causation

16. Security Council resolution 687 (1991) establishes Iraq’s liability for any “direct” loss arising as a result of its invasion and occupation of Kuwait. The Panel has been particularly concerned to ensure that all losses recommended for compensation are direct losses caused by Iraq’s invasion and occupation of Kuwait.

17. In dealing with the issue of causation, the Panel has been guided by Governing Council decision 7 (S/AC.26/1991/7/Rev. 1), which provides that compensation is available with respect to any direct loss, damage, or injury (including death) to individuals as a result of Iraq’s invasion and occupation of Kuwait. Under paragraph 6 thereof, this will include any loss suffered as a result of:

(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;

(b) Departure from or inability to leave Iraq or Kuwait (or a decision not to return) during that period;

(c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;

(d) The breakdown of civil order in Kuwait or Iraq during that period; or

(e) Hostage taking or other illegal detention.

18. The Governing Council has confirmed that these guidelines are not intended to be exhaustive.² For each claim, the causation analysis begins with reference to Security Council resolution 687 (1991), and an assessment of whether the claimed loss was a direct result of Iraq's invasion and occupation of Kuwait. The Panel has applied Security Council resolution 687 (1991) in accordance with the guidance provided by relevant decisions of the Governing Council. In each case, therefore, the Panel assesses whether the directness requirement has been met based on one of the enumerated circumstances outlined in paragraph 6 of decision 7, or some other causal relationship arising directly from Iraq's invasion and occupation of Kuwait. If a claim or a loss element fails to meet the directness requirement, the Panel recommends no compensation for that claim or loss element.

D. The role of the Panel

19. 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.

20. 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.

IV. NEW FACTUAL, LEGAL AND VALUATION ISSUES ARISING IN THE DETERMINATION OF CLAIMS IN PART ONE

21. The Panel was called upon to address numerous factual, legal and valuation questions in the determination of the claims in part one of the fourteenth instalment. The Panel ensured that the claims in part one of the fourteenth instalment that 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: unusually large or complex claim

22. The Panel reviewed one claim in part one of the fourteenth instalment that is one of a number of claims in the "D" category of claims that the Panel classified as "unusually large or complex" within the meaning of article 38 of the Rules and for which the Panel engaged expert consultant assistance due to the presence in the claims of certain types of D4(PP) personal property, such as antiques, jewellery, bloodstock and other items that are either of high value and/or unique in nature. At the request of the Panel, expert consultants were asked to perform a detailed review of each such item.

23. The items in the claim that the Panel referred to the expert consultants for review were three sets of Persian carpets, respectively a set of four Nain silk carpets, a set of four Isfahan silk carpets and a set of two Nain silk and wool carpets (the "Valuation Items").

24. The claimant sought compensation in a total amount of USD 13,468,633.23. Of that total amount claimed, the Valuation Items represent an amount of USD 1,444,968.86.³

25. The Panel issued a procedural order instructing the secretariat to submit the claim file to Iraq for review and comment. Claim development pursuant to article 34 of the Rules was undertaken by the secretariat with the assistance of the expert consultants with respect to the Valuation Items. In addition, an on-site interview of the claimant was conducted during the course of a technical mission to Kuwait. The claim was reviewed and discussed by the Panel at several of its meetings, with the expert consultants in attendance at some of those meetings. The Panel, in arriving at its conclusions, duly considered the comments received from Iraq.

26. In reviewing the claim, the Panel considered the evidence provided by the claimant for ownership, loss and causation.

1. Ownership

27. To document his ownership of the Valuation Items, the claimant submitted a post-invasion statement from a carpet supplier that confirmed the sale of two of the three sets of Persian carpets to the claimant over time. The documentation showed that the carpet supplier had sold these items to the claimant over a period of time. The supplier based his statement on his own records and recollection. The supplier's statement listed the items sold and their purchase price. The claimant also submitted an original invoice that confirmed the sale of the third set of Persian carpets and a post-invasion statement from the carpet supplier that contained a detailed description of the items listed in the invoice. The Panel found the information provided in the original invoice and the supplier's statements to be consistent with the amount and items claimed by the claimant.

28. The Panel, having reviewed the evidence provided for ownership of the Valuation Items, determines that there is sufficient evidence of ownership of the Valuation Items by the claimant.

2. Loss and causation

29. Iraq asserted that the claimant failed to prove that the loss was a direct result of Iraq's invasion and occupation of Kuwait, and proposed several possible alternative scenarios that may have caused the losses being claimed. The Panel notes, however, that Iraq did not submit any specific evidence in support of its assertions. The Panel finds that the claimant's personal statement, witness statements, photographs, video recordings and other documentary evidence tendered by the claimant, as well as evidence provided during the technical mission, demonstrated that the house where the items were located had in fact been occupied by units of the Iraqi army during the time of Iraq's invasion and occupation of Kuwait. This evidence, together with evidence of the extensive repairs that had to be carried out on the house, also shows that the claimant's house had been ransacked, damaged and was left devoid of much of its contents after the Iraqi army had withdrawn from Kuwait.

30. The Panel finds therefore that the claimant lost the Valuation Items as a direct result of Iraq's invasion and occupation of Kuwait.

3. Valuation

31. The Panel determines that the values for each of the Valuation Items should be based on the lowest replacement value in 1990. The expert consultants have made their recommendations accordingly.

32. The Panel recommends that the claimant be awarded an amount of USD 1,257,213.84 in respect of the Valuation Items.⁴

B. D7 real property losses: reduced rental income

33. The Panel reviewed a claim for loss of rental income in relation to apartment units in Kuwait. The claim was made for 12 months of lost rental income resulting from the disruption in rental payments following Iraq's invasion and occupation of Kuwait and for additional losses. The additional losses resulted from the fact that, beginning in August 1991, the claimant reduced rents from pre-invasion levels for a number of units in order to attract new tenants. The claimant provided a chart comparing the pre-invasion and post-liberation rents charged. The chart indicates that one of the new leases containing a reduced rental provision commenced in August 1991, two others commenced in October 1991, 11 commenced in 1992, and the remaining three commenced in 1993. The claimant calculated his loss by multiplying the monthly reduction in rent per unit by the number of months during which the unit was rented. The loss periods claimed for thus ranged from 8 to 27 months and spanned the period August 1991 to October 1993.

34. While the Panel recommends compensation for the rental losses suffered in the 12-month period commencing 2 August 1990 due to the claimant's inability to let the units, the Panel finds that the claim for reduced rental income from August 1991 to October 1993 is not compensable. In order to establish a claim for rental income losses in excess of a 12-month compensable period, the claimant must demonstrate extraordinary circumstances sufficient to warrant the extension of this period.⁵ For example, the claimant must establish that the rental units were destroyed and could not be repaired quickly or that the units were located in an uninhabitable area of Kuwait, such as an area containing land mines and/or unexploded ordnance. In this instance, the claimant has not stated any exceptional circumstances. While the claimant has demonstrated that after the liberation of Kuwait he reduced the rents charged for the units, the claimant has not demonstrated that this reduction was a direct result of Iraq's invasion and occupation of Kuwait or anything other than an independent business decision. Accordingly, the Panel recommends no compensation for the portion of the claim for reduced rental income during the period August 1991 to October 1993.

C. D8/D9 individual business losses: receivables owed by an Iraqi party

35. The Panel reviewed a claim involving losses from a cleaning business. The claimant alleged losses in relation to amounts awarded to the claimant by the Kuwaiti courts in respect of a debt owed to the business by an Iraqi citizen, and receivables losses under a contract with an Iraqi citizen.

1. Court award

36. The claimant's business was in dispute with a former director at the time of Iraq's invasion and occupation of Kuwait. During his association with the business, the director, an Iraqi national, had used his own funds for business purposes, expecting to be repaid at a later date. The director then

used business income for his personal use and received other sums from the business. In the dispute that followed, both the claimant on behalf of the business and the director claimed that money was due from the other. In 1992 the Court of First Instance in Kuwait found, after offsetting amounts due to the director from the business, that the director owed an amount of money to the claimant's business. The claimant asserted that the director had fled Kuwait during the time of Iraq's invasion and occupation of Kuwait and that the claimant was therefore unable to enforce the court judgment.

37. As part of his supporting documentary evidence, the claimant presented an accountant's expert report that had been relied upon by the Kuwaiti court, which set out the history of payments by both the director and the claimant's business. It is not clear when exactly the director received sums either from customers or from the business itself. However, the total amount accepted by the expert as having been received by the director was first set out in court submissions on 25 March 1989.

38. In assessing the compensability of claims involving debts owed by Iraqi parties, the Panel applied the guidelines it adopted in the report concerning the tenth instalment of category "D" claims.⁶ In that report the Panel noted that Security Council resolution 687 (1991) requires that "the receivables claimed do not fall within the clause excluding from the Commission's jurisdiction 'debts and obligations of Iraq arising prior to 2 August 1990.'" ⁷

39. The Panel then adopted the following guidelines:⁸

(a) "For purposes of review of claims for receivables owed by an Iraqi party, such claims include claims for debts and obligations owed both by the Iraqi government and Iraqi private parties operating or residing in Iraq.

(b) The Commission has jurisdiction over claims for receivables owed by an Iraqi party under the 'arising prior to' clause of Security Council resolution 687 (1991) in the following instances:

(i) If the basis of the claim is a contract for the sale of goods, the supplier's claim is within the Commission's jurisdiction if the shipment of the goods occurred on or after 2 May 1990; and

(ii) If the basis of the claim is a letter of credit, the Panel may consider either the contract for the sale of goods or the letter of credit as the basis for the Commission's jurisdiction. On the basis of a letter of credit, the supplier's claim is within the Commission's jurisdiction if the documents required under the letter of credit were presented to the issuing bank on or after 2 May 1990 and the period between the shipment and the presentation of the documents to the bank did not exceed 21 days.

(c) Claims for receivables owed by an Iraqi party are presumed to be a direct result of Iraq's invasion and occupation where the debt became due between 2 August 1990 and 2 August 1991.⁹

(d) For purposes of valuing claims for receivables owed by an Iraqi party, the valuation method for receivables greater than 500 Kuwaiti dinars (KWD), as described in the sixth instalment 'D' report, will apply."¹⁰

40. Applying those guidelines for claims for debts owed by Iraqi parties, the Panel notes that the claimant must first prove that the debt arose on or after 2 May 1990 and that the debt was due for

payment between 2 August 1990 and 2 August 1991 (the “compensable period”). If the debt arose prior to 2 May 1990 or if the debt came due for payment after 2 August 1991, the loss is attributable to reasons other than Iraq’s invasion and occupation of Kuwait and is therefore not compensable.

41. The Panel finds that the losses relating to this unpaid debt are not compensable as the date that the debt arose and came due for payment falls outside the compensable period. The Panel finds that there is no interpretation of the facts that could support a finding that the debt came due for payment within the compensable period. For instance, where the debt arose on or before the date when the total amount received by the director was first set out in court submissions (on or before 25 March 1989), the debt would have arisen prior to 2 May 1990 and the claimant would have failed to demonstrate that the inability to collect the debt was a direct result of Iraq’s invasion and occupation of Kuwait. On the other hand, where the debt was not definite and due until the Kuwaiti court had conclusively established the amount of the debt through its judgment of 25 September 1992, then the debt would have arisen after the compensable period and is not compensable.

2. Contract claim

42. The same claimant asserted losses for 10 per cent of the value of a contract in respect of the delivery of goods to Iraq. The claimant provided very little information concerning the contractual arrangements underlying her claim. From the explanation provided in a loss adjustor’s report provided by the claimant, it appears that 90 per cent of the value of the contract was due and paid prior to Iraq’s invasion and occupation of Kuwait pursuant to a letter of credit dated 16 June 1990 but that “the remaining 10% was to be withheld pending delivery of the goods and a suitable time period for the consignees to confirm the goods were received in a satisfactory state”. The claimant was asked to clarify the nature of the arrangements giving rise to the debt and her entitlement to claim but no additional material was provided.

43. The Panel applied the guidelines referred to in paragraphs 38 and 39 above for receivables owed by Iraqi parties to this claim. Firstly, the claimant had to prove that the shipment or sale of goods occurred on or after 2 May 1990. The letter of credit under which she received 90 per cent of the value of the contract is dated 16 June 1990. From this, the Panel concludes that the shipment took place either on or shortly after 16 June 1990 and that the claimant satisfies the requirement that the debt arise on or after 2 May 1990.

44. The question remaining was whether the claimant could demonstrate that payment for the shipment was due and payable between 2 August 1990 and 2 August 1991. Despite an article 34 notification on this issue, the claimant did not provide any evidence of when payment of the remaining 10 per cent was due and payable. As this information was not provided, the Panel finds that the claimant did not demonstrate that her loss occurred as a direct result of Iraq’s invasion and occupation of Kuwait and that, in the absence of specific information on the nature of the goods and their origin, it is not possible to assume any time frame for the delivery and inspection of the goods. Accordingly, the Panel recommends no compensation for this loss.

D. D8/D9 individual business losses: related or competing claims for the ownership of a business

45. Part one of the fourteenth instalment contains a number of related or competing claims for business losses. In some instances two or more claimants filed in category “D” for losses from the

same business. In other cases a category “D” claimant filed for losses from a business in respect of which a category “C” claimant had already received compensation.

46. While in some cases the related claims were filed by business partners who agreed on their proportional ownership of the business that was the subject of the claim, in other cases the claimants disagreed on their respective pre- or post-invasion ownership rights in the business. In these cases, the Panel found it necessary to request further information in order to resolve ownership issues. The responses received enabled the Panel to resolve some competing ownership issues.

47. Other claims were resolved following claimant interviews during a technical mission to Kuwait and Jordan. For example, the Panel reviewed competing claims for the same used-car establishment filed by a Kuwaiti category “D” claimant and a non-Kuwaiti category “C” claimant. The Kuwaiti filed a claim for 100 per cent of the stock losses of the business. The non-Kuwaiti asserted that he was a 50 per cent partner in the business and claimed for his capital contribution, providing a partnership agreement dated 1989 in support of his interest in the business. The non-Kuwaiti has already received a category “C” award for losses from this business.

48. In an interview during the technical mission to Kuwait, the Kuwaiti claimant acknowledged that the non-Kuwaiti claimant had worked as an employee in his business but denied that the non-Kuwaiti claimant had management responsibilities. The Kuwaiti claimant stated that although he worked at the Kuwait Municipality for most of the day, he was present at the used-car business after 4 p.m. each day, at which time he would personally attend to the management duties and vehicle sales. When the Kuwaiti claimant went on vacation, he would leave pre-signed and stamped documents in the safe relating to the ongoing conduct of the business.

49. When asked about the partnership agreement provided by the non-Kuwaiti claimant, the Kuwaiti claimant acknowledged that the document contained his signature but denied that he ever agreed to the contents of the document. He suggested that the non-Kuwaiti claimant may have created the document during the period of Iraq’s invasion and occupation of Kuwait or after liberation from a blank, signed document in the safe. He supported this assertion by pointing to the fact that his address on the document was incorrect and that the business was worth substantially more than the amount specified in the partnership agreement.

50. The Panel is not convinced by the Kuwaiti claimant’s explanation concerning the creation of the document or the explanation concerning the management of the business. In addition, the Kuwaiti claimant was unable to produce financial statements to support his claim. The Panel therefore decides to limit the Kuwaiti claimant’s D8/D9 recommended award for losses from this business by 50 per cent to take account of the fact that he had only established that he owned 50 per cent of the business at the date of Iraq’s invasion and occupation of Kuwait.

51. Another set of competing claims was resolved by the withdrawal of a claim. In this case a Kuwaiti category “D” claimant and a non-Kuwaiti category “D” claimant claimed for losses in connection with a trading and contracting establishment. Both claimants initially asserted 100 per cent ownership of the business. In support of his ownership, the non-Kuwaiti claimant provided the business licence and a letter from the Kuwaiti claimant acknowledging the non-Kuwaiti claimant’s use

of the licence. He also provided a lease for the business premises and statements from the landlord confirming his interest in the premises.

52. The Panel requested further information from both claimants. Although the non-Kuwaiti claimant did not respond, the Kuwaiti claimant responded by explaining that the non-Kuwaiti claimant was employed by the business as a financial manager. He denied that the non-Kuwaiti claimant had any ownership interest in the business and alleged that the signature on the letter authorising the non-Kuwaiti claimant's use of the licence was forged.

53. A representative of the Kuwaiti claimant was interviewed during the technical mission to Kuwait. He stated that the claimants had reached a settlement with regard to their competing claims and that the Kuwaiti claimant wished to withdraw his claim. He provided written documentation confirming this intention and stating that the non-Kuwaiti claimant was solely entitled to claim for the losses of the business. The Panel acknowledges the withdrawal of this claim.

E. Deduction of category "A", "B" and "C" awards

54. The awards of compensation recommended by the Panel are reduced by the amount of any approved 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.

V. OTHER ISSUES

A. Currency exchange rate

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

56. 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.¹¹ 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.

B. Interest

57. In its decision 16 (S/AC.26/1992/16), the Governing Council specified 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).¹² 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.¹³

C. Claims preparation costs

58. 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 recommendation with respect thereto.

VI. RECOMMENDED AWARDS

59. Table 2 below lists the awards recommended by the Panel for each Government with claimants included in part one of the fourteenth instalment. Each Government will be provided with a confidential list containing the individual recommendations made in respect of its claimants. With reference to paragraph 4 above, USD 18,955,440.23 is claimed for business losses suffered by Kuwaiti companies that will be severed from the category “D” claim and transferred to the “E4” Panels of Commissioners for their review pursuant to Governing Council decision 123. This results in a net total claimed amount of USD 143,390,856.53 for the 302 claims resolved in part one of the fourteenth instalment. As will be seen from the table below, the Panel recommends a total of USD 87,029,015.18 against this net total claimed amount.

Table 2. Recommended awards by submitting entity

<u>Submitting entity</u>	<u>Number of claims recommended for payment</u>	<u>Number of claims not recommended for payment or withdrawn</u> ^a	<u>Amount of compensation claimed (USD)</u>	<u>Net Amount of compensation claimed (USD)</u> ^b	<u>Amount of compensation recommended (USD)</u>
Austria	1	0	148,866.98	148,866.98	104,285.26
Canada	4	1	1,454,752.70	1,454,752.70	104,771.93
Jordan	46	8	29,705,631.40	27,088,891.36	6,988,970.08
Kuwait	224	(1)	107,916,416.23 ^c	107,916,461.23 ^d	77,258,774.72
Pakistan	1	0	1,149,147.10	1,149,147.10	769,226.76
Syrian Arab Republic	14	2	21,971,437.35	5,632,737.16	1,802,986.43
Total	290	11(1)	162,346,296.76	143,390,856.53	87,029,015.18

^a Numbers in parentheses represent claims that were withdrawn and are in addition to the claims not recommended for payment.

^b This amount claimed is net of USD 18,955,440.23 for business losses suffered by Kuwaiti companies that will be transferred to the “E4” Panels for review pursuant to Governing Council decision 123.

^c Excludes the “Amount claimed” with respect to the claim that was withdrawn.

^d See note c above.

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

Geneva, 26 July 2002

(Signed) K. Hossain
Chairman

(Signed) N. Comair-Obeid
Commissioner

(Signed) I. Suzuki
Commissioner

Notes

¹ Decision 15, paragraphs 5 and 10.

² Decision 7, paragraph 6 and decision 15, paragraph 6.

³ Out of the total amount claimed of USD 13,468,633.23, USD 5,653,615.92 was claimed in respect of D4(PP) personal property losses, USD 428,782.01 was claimed in respect of D4(MV) motor vehicle losses, USD 7,368,934.26 was claimed in respect of D7 real property losses and USD 17,301.04 was claimed in respect of claim preparation costs.

⁴ Out of the total amount recommended of USD 9,681,880.06, USD 4,993,919.93 was recommended in respect of D4(PP) personal property losses, USD 165,197.29 was recommended in respect of D4(MV) motor vehicle losses and USD 4,522,762.84 was recommended in respect of D7 real property losses.

⁵ See “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, paragraph 63.

⁶ See “Report and recommendations made by the ‘D2’ Panel of Commissioners concerning the tenth instalment of individual claims for damages above USD100,000 (category ‘D’ claims)”, S/AC.26/2002/1, (the “tenth instalment ‘D’ report”), paragraphs 22-24.

⁷ Paragraph 16.

⁸ See the tenth instalment ‘D’ report at paragraph 24.

⁹ Ibid. See also “Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of ‘E2’ claims”, S/AC.26/2000/2, paragraphs 86-87, 96 and 117-119; “Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of ‘E2’ claims”, S/AC.26/2001/1, paragraphs 35-37 and 42; “Report and recommendations made by the Panel of Commissioners concerning the seventh instalment of ‘E2’ claims”, S/AC.26/2001/11, paragraphs 48-49; “Report and recommendations made by the Panel of Commissioners concerning the fifth instalment of ‘E4’ claims,” S/AC.26/2000/7, paragraph 89; “Report and recommendations made by the Panel of Commissioners concerning the third instalment of ‘E4’ claims,” S/AC.26/2000/6, paragraphs 62-65.

¹⁰ Ibid. See also “Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of individual claims for damages above USD100,000 (category ‘D’ claims)”, S/AC.26/2000/24, (the “sixth instalment ‘D’ report”) paragraph 180.

¹¹ 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.

¹² Ibid., paragraphs 64-65. The “D2” Panel has adopted this decision in the sixth instalment ‘D’ report at paragraph 226.

¹³ 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.