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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)

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Introduction

1. This is the sixteenth 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 fifteenth instalment, submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules on 30 January 2002.
2. The fifteenth instalment initially comprised 694 claims. A total of 47 claims were subsequently added to the fifteenth instalment. Four of these claims are related to claims already in the fifteenth instalment, and the remaining 43 claims were deferred from previous instalments pending the receipt of additional information from the claimants. Thirty-nine of the 47 claims added to the fifteenth instalment were listed in the Panel's report in respect of part one of the fifteenth instalment¹ and the remaining eight claims are listed in this report.² Of the 694 claims that originally comprised the fifteenth instalment, 27 claims have been deferred out of the instalment because they require further review by the Panel or because they include claims for losses sustained by Kuwaiti companies and will be resolved pursuant to Governing Council decision 123 (S/AC.26/Dec.123 (2001)). Taking into account all of the claims added to or deferred from the fifteenth instalment, the Panel has resolved a total of 714 claims during the course of its review of the fifteenth instalment.
3. The Panel divided the fifteenth instalment into two parts. The Panel resolved 500 claims in the Part One, Fifteenth Instalment Report. The total number of claims resolved by the Panel in part two of the fifteenth instalment is 214. Part two of the fifteenth instalment includes a number of claims for high value personal property items that have been designated as "unusually large or complex" claims within the meaning of article 38(d) of the Rules. Some of these "unusually large or complex" claims are for asserted amounts over USD 10 million. The Panel has set out its findings and recommendations regarding these "unusually large or complex" claims in this report.
4. The Panel began its review of the fifteenth instalment on 30 January 2002. In addition to communications among the Commissioners and the secretariat, the Panel held meetings at the Commission's headquarters in Geneva on the following dates: 28-30 January 2002, 18-20 March 2002, 15-17 April 2002, 15-17 May 2002, 8-10 July 2002, 5-7 August 2002, 23-25 September 2002, 7-9 November 2002, 11-13 December 2002 and 27-29 January 2003. These meetings included joint meetings with the "D2" Panel of Commissioners (the "D2' Panel") in January, May and September 2002 to discuss issues of relevance to both Panels (collectively, the "D' Panels").
5. On 15 March 2001, the Governing Council determined in decision 123 that claims filed by individuals in category "C" and category "D" for losses sustained by companies incorporated in Kuwait should be identified and transferred to the "E4" Panels of Commissioners (the "'E4' Panels"), to be valued as "overlapping" claims in cases where the Kuwaiti company has also filed a claim with the Commission, or as "stand alone" claims where no such corporate claim existed ("stand alone claims"). In conjunction with the "D2" Panel, and in addition to its work on the fifteenth instalment,

the Panel considered a total of 132 category “C” and category “D” claims in relation to 110 Kuwaiti companies to identify those claims that are to be transferred to the “E4” Panels being stand alone claims in accordance with decision 123. A summary of the “D” Panels’ work in respect of these stand alone claims is set out in this report.

6. The fifteenth instalment comprises all loss types that can be claimed in category “D”, with a large number of claims containing D7 (real property) losses and D8/D9 (individual business) losses.³ In the case of 10 claims in the fifteenth instalment, the situs of the alleged losses was Iraq. These claim files were transmitted to the Government of the Republic of Iraq (“Iraq”) for its comments. In addition to these claims, the Panel also transmitted six claim files that were deferred from previous instalments to Iraq for its comments, on the basis that the claimed amounts exceed USD 10 million or the situs of the alleged losses was Iraq. Where the Panel has received Iraq’s comments in respect of the claim files that were transmitted, it has taken those comments into consideration when making recommendations concerning the claims.⁴

7. The following table sets out the number of claims by submitting entity resolved in the fifteenth instalment.

Summary of claims by submitting entity (parts one and two of the fifteenth instalment)

<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 deferred out of the instalment</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>Number of claims withdrawn</u>	<u>Total number of claims resolved by the Panel</u>
Australia	1	-	1	-	-	1	-	1
Austria	1	-	1	-	1	-	-	1
Canada	4	-	4	-	2	3 ^a	-	5
Egypt	10	-	10	-	-	10	-	10
France	3	-	3	-	-	3	-	3
Germany	2	-	2	-	1	1	-	2
India	87	1	88	2	47	39	-	86
Israel	4	1	5	1	1	3	-	4
Italy	3	-	3	-	1	2	-	3
Jordan	107	17	124	7	70	47	1	117
Kuwait	301	20	321	11	246	64	-	310
Lebanon	2	2	4	-	3	1	-	4
Netherlands	1	-	1	-	-	1	-	1
Pakistan	5	-	5	1	2	2	-	4
Sudan	11	-	11	-	7	4	-	11
Switzerland	1	-	1	-	1	-	-	1
Syrian Arab Republic	2	1	3	1	1	1	-	2
Turkey	2	-	2	-	1	1	-	2
United Kingdom	26	1	27	1	14	12	-	26
United States	11	-	11	1	4	6	-	10
Yemen	102	3	105	2	92	11	-	103
UNRWA Gaza	8	1	9	-	6	2 ^b	1	8
<u>Total</u>	694	47	741	27	500	214	2	714 ^c

^a The submitting entity in respect of one claim reported in part two of the fifteenth instalment has been changed to Canada from UNRWA Gaza at the request of the claimant and with the consent of the submitting entities concerned.

^b The submitting entity in respect of one claim reported in part two of the fifteenth instalment has been changed from UNRWA Gaza to Canada at the request of the claimant and with the consent of the submitting entities concerned.

^c Includes two claims that were withdrawn by the claimants during the course of the Panel's review of the fifteenth instalment.

I. BACKGROUND

A. Background information

8. In reviewing the claims in part two of the fifteenth 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.⁵

9. 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

10. The general legal framework for the resolution of category "D" claims is set out in chapter V of the Panel's First "D" Report.⁶

C. Applicable evidentiary standard

11. The evidentiary standard to be applied in reviewing category "D" claims has been addressed by the Panel in previous reports.⁷ As with earlier instalments, the Panel has reviewed the claims in part two of the fifteenth 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. NEW ISSUES ARISING IN THE APPLICATION CLAIMS⁸

12. Some of the claims in part two of the fifteenth instalment raise new factual, legal and valuation issues that have not been dealt with in the Panel's previous reports. To the extent that claims in part two of the fifteenth instalment gave rise to new issues not considered in previous instalments, the Panel has ensured that these claims were resolved so as to be consistent with the established methodologies. These new issues and the Panel's findings and recommendations are set out below.

A. D4 (personal property) issue – causation

13. The Panel considered a claim that was filed by a member of the former Iraqi royal family who was living in Kuwait at the time of Iraq's invasion of Kuwait. In her personal statement, the claimant describes the persecution that she and her family were allegedly subjected to by the Kuwaiti authorities in Jordan, Abu Dhabi and Bahrain during the period of Iraq's occupation of Kuwait and by the Kuwaiti authorities in Kuwait after liberation on 2 March 1991. The claimant alleges that her house and her personal belongings were destroyed when the Kuwaiti authorities burned the house.

She seeks compensation in the amount of USD 1,902,000.00 for the loss of her personal property but she has not claimed compensation for the damage that was allegedly done to the house.

14. The Panel finds that the evidence submitted by the claimant indicates that the destruction of her house and the loss of her personal property occurred after the liberation of Kuwait at the hands of Kuwaiti authorities. Therefore, the Panel finds that the claimant has not established that the loss of her personal property was the direct result of actions by officials, employees or agents of Iraq or its controlled entities during the period of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no award of compensation in respect of this claim for the loss of personal property.

B. D8/D9 (individual business loss) issue – intangible property

15. A claimant seeks compensation in the amount of USD 622,837.37 for the loss of intangible property allegedly sustained by his publishing business. Prior to Iraq's invasion and occupation of Kuwait, the claimant had been writing a 12 volume treatise on the commercial law of Kuwait, the first three volumes of which had been published. The claimant asserts that the manuscripts for the remaining nine volumes that he was working on at the time of Iraq's invasion and occupation of Kuwait, including three that were complete and ready for publishing, were stolen or destroyed during the period of Iraq's invasion and occupation of Kuwait. He states that after the liberation of Kuwait, he could not locate any paper or electronic version of these manuscripts and claims compensation for the loss of the manuscripts.

16. Having considered the evidence submitted by the claimant in support of his claim for the loss of the nine manuscripts, the Panel is satisfied that the claimant has established his credentials as an author in the field of Kuwaiti law, that the unpublished manuscripts existed prior to Iraq's invasion and occupation of Kuwait, that the manuscripts were the property of the claimant, that the manuscripts were lost as a direct result of Iraq's invasion and occupation of Kuwait and that the manuscripts had commercial value. When considering how to value the claimant's loss, the Panel had regard to the information provided by the claimant in relation to the pre-invasion annual earnings of his publishing business, which included income from the sales of the first three volumes of his treatise. On this basis, the Panel recommends that the claimant be awarded a total of USD 62,283.73 for the loss of the nine manuscripts.

17. The claimant also seeks compensation in the amount of USD 138,408.30 for the value of another manuscript, relating to Arab Gulf Development Funds, that he had written prior to Iraq's invasion and occupation of Kuwait. However, the Panel finds that the evidence submitted by the claimant in relation to this aspect of the claim suggests that he still had a copy of the manuscript after the liberation of Kuwait and therefore the intangible property contained in that manuscript was not lost. Accordingly, the Panel recommends that no award of compensation be made in respect of this additional manuscript.

C. D8/D9 (individual business loss) issue – application of compensable period

18. The Panel reviewed a business loss claim wherein the claimant seeks compensation for the losses allegedly sustained by his fishing business in the amount of USD 51,187,958.48. The claimant asserts that 14 fishing vessels were stolen or destroyed during the period of Iraq's invasion and occupation of Kuwait and seeks compensation for the loss of these vessels. He has also claimed compensation for 29 months of lost income from the business as a result of the cessation of fishing activities during the period of Iraq's invasion and occupation of Kuwait and in the period after the liberation of Kuwait while mines were removed from the Kuwaiti coastline. The claimant did not resume his business after the liberation of Kuwait.

19. In accordance with the D8/D9 methodology for individual business losses (the "D8/D9 methodology") as set out in the Sixth Instalment Report, the Panel finds that the claimant submitted sufficient documentary evidence to prove his ownership of the business as at the time of Iraq's invasion and occupation of Kuwait. The Panel also finds that the claimant submitted sufficient documentary evidence to prove that the business sustained losses and that these losses were the direct result of Iraq's invasion and occupation of Kuwait.

20. The Panel notes that the claimant did not resume the business after the liberation of Kuwait and it therefore recommends that the claim for the loss of income of the business be limited to a period of seven months in accordance with the D8/D9 methodology. The Panel recommends that the claimant be awarded a total of USD 7,032,861.60 in respect of the losses sustained by his business.

D. Claims raising causation issues

21. Part two of the fifteenth instalment includes 10 claims filed by claimants who resided in Iraq at the time of Iraq's invasion and occupation of Kuwait. These claimants have submitted claims to the Commission seeking compensation for a range of losses allegedly sustained as a direct result of Iraq's invasion and occupation of Kuwait. The Panel determined that all of these claims should be sent to Iraq for its comments given that the situs of all of the claimants' losses, including their business losses, where applicable, was Iraq.

22. In most cases, the claimants are seeking compensation for losses that they allegedly sustained after the liberation of Kuwait on or after 2 March 1991, including losses that occurred in 1993 and 1994. While the majority of the claimants allege that they suffered injuries and losses at the hands of Iraqi authorities, these injuries and losses did not occur during the jurisdictional period (2 August 1990 to 2 March 1991) and appear to have been the result of reprisal action that Iraqi authorities took against these claimants on account of their nationality and the position that their Government adopted against Iraq during the period of Iraq's invasion and occupation of Kuwait. The Panel finds that as these claimants appear to have been persecuted and deported from Iraq because of their nationality, they have failed to establish that their losses were the direct result of Iraq's invasion and occupation of Kuwait. In seven of the 10 claims, the claimants have failed to establish the necessary causal link between Iraq's invasion and occupation of Kuwait and their asserted losses. In respect of these seven claims, the Panel recommends no award of compensation. In the remaining three claims, the Panel

recommends compensation in respect of those particular losses that the claimants have established occurred during the jurisdictional period as a direct result of Iraq's invasion and occupation of Kuwait.

III. "UNUSUALLY LARGE OR COMPLEX" CLAIMS

A. Introduction

23. The Panel reviewed nine claims in part two of the fifteenth instalment that it had previously classified as "unusually large or complex" within the meaning of the Rules.

24. In addition to considering the evidence provided by each claimant, the Panel recalled the information it had detailed in the First "D" Report, in which it discussed background reports prepared for the Security Council on the circumstances of Iraq's invasion and occupation of Kuwait.⁹ Of particular relevance to some claims in this group was the extent of the destruction and looting of homes by the Iraqi military, particularly in the coastal area, detailed in the background reports.

25. The Panel also reviewed decrees issued by the Iraqi Revolutionary Command Council during Iraq's invasion and occupation of Kuwait. Those decrees called for the elimination of named members of the Kuwaiti ruling family and other prominent Kuwaitis, as well as the destruction and confiscation of their property. The decrees named a number of the claimants whose claims are discussed in this report. The Panel finds that, although not sufficient by themselves to establish a particular claimant's loss, the decrees constitute significant evidence to support the claimants' assertions that they were targeted by the Iraqi authorities and that they suffered the losses for which they seek compensation from the Commission. This fact was also taken into account by the category "C" Panel of Commissioners in its first report.¹⁰

26. The Panel retained expert consultants with regard to the valuation of certain items of personal property in the claims considered by it that were either of high value or of an unusual nature ("Valuation Items"). The Valuation Items include jewellery, antiques and collectibles, paintings, carpets and bloodstock (racing and breeding horses). At the request of the Panel, the expert consultants conducted a detailed review of available information pertaining to each Valuation Item and produced reports covering the Valuation Items in each claim, identifying a range of values for each Valuation Item. The Panel considered these valuation reports in arriving at their recommended awards for this group of claims. The Panel determined that the starting point for compensation for the Valuation Items should be the lowest replacement value of each Item in 1990. Accordingly, the valuations set out in the expert consultants' report, and the recommended awards made by the Panel, are based on the Valuation Items' lowest replacement value in 1990 and the quality of evidence in support of the value. Seven of these nine claims were the subject of a technical mission to Kuwait undertaken by members of the secretariat and the expert consultants in February 2002.

27. With respect to one claim featuring a unique D7 (real property) repair costs claim, the Panel retained a quantity surveyor as expert consultant. The quantity surveyor conducted a site visit to assess the claim during a technical mission to Kuwait in November 2002.

28. Notable aspects of the claims in this group and the Panel's recommendations on them are discussed in the following paragraphs.

B. UNCC claim No. 3001840

29. This claim consists of D4 (personal property) losses in the amount of USD 1,531,764. Apart from personal effects and a motor vehicle with a total claimed amount of USD 50,613.70, the balance of the claim consists of artwork produced by the claimant, purchased artwork and jewellery, all of which were treated as Valuation Items.

30. The claimant is a non-Kuwaiti national who resided in Kuwait before Iraq's invasion and occupation of Kuwait. The claimant earned his living as an artist, producing paintings, sculptures and other artwork. In addition, he also sold some items of jewellery out of his home. The items for which he claims were located at his home and in various other places where they were being held for sale on consignment or being displayed for public viewing as part of several exhibitions.

1. Ownership of personal property

31. The claimant's evidence of ownership includes a number of witness statements and correspondence demonstrating the claimant's status as a professional artist, the existence of consignment arrangements for the sale of the claimant's artwork in various outlets and arrangements to display a number of his works at a museum in the Netherlands. The claimant also provided a detailed inventory of the items for which he claims, as well as photographs of most of the items, and a number of publications featuring articles about the claimant and his work.

32. The Panel finds that the witness statements and the remainder of the evidence are sufficient to prove that the claimant owned the property for which he claims.

2. Loss and causation with respect to personal property

33. The claimant submitted witness statements from his landlord and neighbour and the owners of the outlets where his artwork was on display attesting to the loss of the claimant's property as a result of Iraq's invasion and occupation of Kuwait. These include a statement from the claimant's landlord's son, who asserts that he personally saw Iraqi soldiers looting the claimant's home.

34. Upon considering the evidence, the Panel finds that the claimant's property was stolen or destroyed as a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommended award

35. Taking into account the report of the expert consultants and the evidence in support of the claim, and having applied the category "D" methodologies to those aspects of the claim not involving Valuation Items, the Panel recommends that the claimant be awarded a total of USD 710,793.87 for all losses.

C. UNCC claim No. 3005284

36. The claimant seeks compensation in the total amount of USD 72,272,254.67 for D4 (personal property), D4 (motor vehicles), D7 (real property) and D10 (payment or relief to others) losses. Of this amount, USD 71,922,431.14 is for D4 (personal property) losses, with items totalling USD 71,053,487.58 being treated as Valuation Items. The Valuation Items include jewellery, a set of silver cutlery, modern and Islamic art and bloodstock.

1. Ownership of personal property

37. The claimant submitted extensive evidence to establish ownership of his personal property. Prior to the invasion and occupation, the claimant had original receipts and other documentation for many of the items for which he claims. The claimant's executive secretary managed this documentation, which was located in the claimant's office. A security guard employed at the office said in a detailed statement that Iraqi personnel removed much of this documentation on 10 August 1990. Notwithstanding the loss of these documents, some documentation located elsewhere survived Iraq's invasion and occupation of Kuwait, and the claimant was able to obtain copies of invoices and other documentation from vendors. The claimant has supported his claim with numerous witness statements, photographs, receipts, invoices and statements from vendors confirming that he purchased certain items and containing details of the purchase date and price of the items. The claimant has also submitted detailed accounts of the steps taken to document his claim.

38. In support of the claim for jewellery, the claimant has provided witness statements made by prominent individuals from museums or engaged in the jewellery business in various parts of the world, including Europe, India and the United States of America. Some of them sold jewellery to the claimant, others created custom jewellery for him or advised him on the purchase of certain items. Apart from confirming the sale of numerous items to the claimant, they attest to his stature as an internationally recognised collector and expert on the subject of jewellery in general and Islamic jewelled objects in particular.

39. There is also evidence demonstrating that some of the claimant's Islamic art was found through the United Nations Recovery of Property ("UNROP") programme on the premises of the Iraqi national museum and identified by museum staff as having been taken from the claimant's home. UNROP subsequently facilitated the return of the items to the claimant, who found that some of them were damaged. He has claimed for the damage to and diminution in value of those items.

40. The evidence also includes witness statements attesting to the claimant's status as one of the best known and most successful owners of race horses in Kuwait, invoices for the purchase of horses, vaccination records and racing publications featuring the claimant and his brother (who owned a 50 per cent share of the horses, for which he has filed a separate claim with the Commission).

41. Having reviewed all the evidence, the Panel finds that the claimant has proven ownership of the property for which he claims.

2. Loss and causation with respect to personal property

42. The claimant's evidence pertaining to loss and causation includes numerous witness statements detailing the invasion of the claimant's home by Iraqi troops and efforts (partially successful) by a friend of the claimant and the claimant's staff to remove some of the claimant's property from his home to prevent its loss, statements from officials of the Kuwait Hunting & Equestrian Club and a former veterinary assistant employed by the Kuwait Ministry of Agriculture regarding the loss of the claimant's horses, and photographs of the claimant's home showing significant damage and vandalism. The Panel has taken into consideration the fact that the claimant was among those named in the decrees of the Iraqi Revolutionary Command Council referred to in paragraph 25 of this report.

43. After considering the evidence, the Panel finds that the claimant's property was stolen or damaged as a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommended award

44. Taking into account the report of the expert consultants and the evidence in support of the claim, and having applied the category "D" methodologies to those aspects of the claim not involving Valuation Items, the Panel recommends that the claimant be awarded a total of USD 43,050,182.93 for all losses.

D. UNCC claim No. 3005324

45. This claim is for D4 (personal property) losses only, comprising USD 1,423,813.03 in household furnishings and USD 38,135,152.58 in jewellery. The jewellery comprises a group of 10 items that the claimant states that her husband purchased as a collection for USD 37 million in Geneva in 1988. The claim also includes a second group of jewellery items for the balance of the claimed amount. The Valuation Items in the claim comprise the entirety of the jewellery.

1. Ownership, loss and causation with respect to personal property

46. With respect to the first group of jewellery claimed, the claimant provided a written statement from the man who allegedly sold the 10 items to the claimant's husband, and bank documents showing the transfer of USD 37 million from one numbered bank account to another. The latter, although they do evidence the transfer of funds, do not state the purpose for which the transfers were made.

47. The claimant and the alleged seller both claimed that the bank transfer was made from the claimant's husband's account to the seller's account in payment for the 10 items. The Panel notes, however, that there is no evidence beyond these statements to link the transfer of funds to the alleged sale of the 10 items to the claimant. The Panel also notes that there is no evidence beyond the statements of the claimant and her husband that the 10 items were ever taken to Kuwait. The Panel issued a procedural order requesting the claimant to provide additional evidence, including Swiss customs documents pertaining to the export of the 10 items from Geneva to Kuwait, which the claimant's husband claimed to have completed when he allegedly took the items to Kuwait in 1988.

Notwithstanding the Panel's request, the claimant did not provide any customs or other acceptable documents.

48. Having considered the claimant's evidence pertaining to these 10 items, the Panel concludes that the claimant has failed to prove that she owned the items. The Panel also concludes that the claimant has failed to prove that the items were located in Kuwait at the time of Iraq's invasion and occupation of Kuwait and, therefore, that they were lost as a direct result thereof.

49. With respect to the second group of jewellery items, the claimant provided invoices relating to all of the items, as well as letters of credit and bank advices. The claimant also provided witness statements attesting to the looting of the claimant's home by Iraqi soldiers. Two of the witnesses state that they personally saw Iraqi soldiers loading the claimant's property onto trucks, and they confirm that the strongroom where the claimant kept her jewellery was found open and apparently broken into after the liberation of Kuwait.

50. The Panel finds that the claimant has proved that she owned the items in the second group of jewellery items and that those items were lost as a direct result of Iraq's invasion and occupation of Kuwait.

2. Recommended award

51. Taking into account the report of the expert consultants and the evidence provided by the claimant, and having applied the category "D" methodologies to those aspects of the claim that are not Valuation Items, the Panel recommends that the claimant be awarded a total of USD 1,564,468.87 for all losses.

E. UNCC claim No. 3005329

52. The claimant seeks compensation in the total amount of USD 21,709,975.78 for D4 (personal property) losses and D7 (real property) repair costs. Of this amount, USD 20,800,173.01 is for D4 (personal property) losses, with items totalling USD 12,802,768.17 being treated as Valuation Items. The Valuation Items include jewellery and paintings.

1. Ownership of personal property

53. Jewellery comprises the vast majority of the claimed amount of the Valuation Items in this claim, and it falls into two groups. The first group comprises 26 individually specified items, while the second group comprises an unspecified number of items with a lump sum claimed amount for which no description has been provided.

54. The claimant provided a written statement from a jeweller confirming the claimant's purchase of the first group of jewellery and providing details of the items. In addition, members of the secretariat and the expert consultants interviewed the jeweller during the technical mission to Kuwait, at which time he verbally confirmed the information in his written statement. The Panel finds that the claimant has demonstrated his ownership of the first group of jewellery.

55. As the claimant neither enumerated nor in any way described any of the items in the second group of jewellery nor provided any form of evidence pertaining to them, the Panel finds that the claimant has failed to demonstrate that he owned these items.

56. Of the paintings in the claim, only one is supported by documentary evidence of purchase and no evidence beyond the claimant's statement was offered to establish ownership of the others. The Panel finds that the claimant has demonstrated ownership of the one painting for which he submitted documentary evidence, but not the others.

2. Loss and causation with respect to personal property

57. In addition to his personal statement, the claimant submitted witness statements from household employees and security guards who were present at the claimant's homes when Iraqi soldiers arrived and who attested to the damage to the claimant's homes. One witness stated that he had been ordered to assist in loading the claimant's property into Iraqi military trucks. The claimant also submitted a video tape showing extensive damage to two of his homes.

58. After considering the evidence, the Panel finds that the claimant suffered the loss of the personal property in the claim as a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommended award

59. Taking into account the views of the expert consultants and the evidence provided by the claimant, and having applied the category "D" methodologies to those aspects of the claim not involving Valuation Items, the Panel recommends that the claimant be awarded a total of USD 7,675,839.60 for all losses. The Panel recommends no compensation in respect of those items for which the claimant has not adduced sufficient evidence of ownership, loss and causation.

F. UNCC claim No. 3005330

60. The claimant seeks compensation in the total amount of USD 54,753,878.89 for D4 (personal property), D4 (motor vehicles) and D7 (real property) losses. Of this amount, USD 13,028,484.43 is for D4 (personal property) losses, with items totalling USD 716,262.98 being treated as Valuation Items. The Valuation Items include chandeliers, antiques and paintings.

1. Ownership of personal property

61. The evidence that the claimant owned the property in the claim includes statements from an interior designer and the proprietor of a retail furnishings outlet testifying that they sold certain items to the claimant and/or saw them in his home. The Panel finds that these statements and the other evidence presented are sufficient to prove that the claimant owned the property for which he claims.

2. Loss and causation with respect to personal property

62. In addition to his personal statement, the claimant submitted a number of witness statements from persons who saw Iraqi troops occupying the claimant's residence and who, upon liberation, found it heavily damaged and looted of nearly all its contents. The claimant also submitted photographs showing substantial damage to his home. The Panel has taken into consideration the fact that the claimant was among those named in the decrees of the Iraqi Revolutionary Command Council referred to in paragraph 25 of this report.

63. After considering the evidence, the Panel finds that the claimant suffered the loss of the property for which he claims as a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommended award

64. Taking into account the views of the expert consultants and the evidence in support of the claim, and having applied the category "D" methodologies to those aspects of the claim not involving Valuation Items, the Panel recommends that the claimant be awarded a total of USD 23,415,224.80 for all losses.

G. UNCC claim No. 3005336

65. The claimant seeks compensation in the total amount of USD 31,487,151.75 for D4 (personal property), D4 (motor vehicles) and D7 (real property) losses. Of this amount, USD 25,919,029.85 is for D4 (personal property) losses, with items totalling USD 16,551,822.39 being treated as Valuation Items. The Valuation Items comprise jewellery, carpets, paintings, guns and armour, medals and decorations, and a fur coat.

1. Ownership of personal property

66. The evidence pertaining to ownership of the jewellery varies. For a first group of jewellery, the claimant provided original invoices and receipts. The Panel finds that the claimant has adequately demonstrated ownership of these items.

67. With respect to a second group of jewellery, the claimant provided as proof of ownership a list of expenditures that had been made from the claimant's account with a Geneva branch of an international bank. The list, which was prepared by the bank, shows amounts paid, dates of payment, dates of the invoices against which payments were made and the names of the payees. However, the list does not identify the item or items for which the payment was made. The claimant maintains that one can tell from the identity of the payee that she purchased jewellery. The Panel finds, however, that as the list does not provide any information of the specific items purchased, it does not constitute sufficient evidence of ownership on its own in respect of those items where the claimant has not provided additional evidence to prove the ownership of the items. The Panel therefore finds that the claimant has failed to demonstrate ownership of the items in this group.

68. A third group of jewellery has no supporting evidence whatsoever. The claim for this group of items is expressed solely in monetary terms and represents a percentage of the jewellery that the claimant documented through invoices or the list provided by the international bank. The claimant bases her claim for these items on her belief that she owned significantly more jewellery than she was able to document. The Panel finds that the claimant has failed to prove her ownership of the items in this third group.

69. The evidence pertaining to the remaining personal property in the claim includes witness statements from persons familiar with the claimant's home and property, letters from vendors, pre-invasion valuations and photographs. The Panel finds that this evidence sufficiently demonstrates the claimant's ownership of these items.

2. Loss and causation with respect to personal property

70. The claimant provided her own personal statement, a number of witness statements attesting to the loss of her property and a number of photographs and a video tape evidencing the invasion of her homes and the substantial damage that they sustained. The Panel has taken into consideration the fact that the claimant was among those named in the decrees of the Iraqi Revolutionary Command Council referred to in paragraph 25 of this report.

71. The Panel finds that the claimant has demonstrated that she lost the property for which she claimed as a direct result of Iraq's invasion and occupation of Kuwait.

3. Recommended award

72. Taking into account the views of the expert consultants and the evidence in support of the claim, and having applied the category "D" methodologies to those aspects of the claim not involving Valuation Items, the Panel recommends that the claimant be awarded a total of USD 11,273,057.26 for all losses. The Panel recommends no compensation in respect of those items for which the claimant has not adduced sufficient evidence of ownership, loss and causation.

H. UNCC claim No. 3005345

73. The claimant is a member of the Kuwaiti royal family and a senior member of the government who seeks compensation in the total amount of USD 80,110,325.26 for D4 (personal property), D4 (motor vehicles) and D7 (real property) losses. Of this amount, USD 66,653,152.25 is for D4 (personal property) losses, with items totalling USD 23,497,958.48 being treated as Valuation Items. The Valuation Items comprise jewellery plus three items of personal effects and household furnishings. In assessing the claimant's D7 (real property) loss, in the amount of USD 13,228,972.32, the Panel had the benefit of a report from a quantity surveyor as an expert consultant.

1. D4 (personal property) loss

(a) Ownership of personal property

74. The evidence considered by the Panel pertaining to ownership includes numerous witness statements including a number from employees of the claimant responsible for the care of his property. These statements provide considerable detail regarding the type and quantity of personal property the claimant owned, although they do not generally identify individual items of property. The evidence also includes numerous statements by vendors of jewellery and other luxury items, many of international renown, attesting to the fact that over the course of many years the claimant purchased many items from them for many millions of dollars. Some of these statements contain descriptions of specific items and some contain estimates of the amount the claimant spent in the declarants' establishments. Others are less detailed. The evidence also includes statements from expert jewellery appraisers who assisted the claimant in making purchases from lesser known vendors. Each of these experts attests to having assisted the claimant to make such purchases over a considerable number of years, and estimates the total value of the items that the claimant purchased when using their services.

75. Having considered all the evidence, the Panel finds that the claimant has demonstrated that he owned the items for which he claims.

(b) Loss and causation with respect to personal property

76. The Panel finds that the evidence regarding loss and causation is substantial. The claimant has provided a number of witness statements from employees and other individuals attesting to the looting of the claimant's residences. All of the witnesses state that following liberation they found the claimant's residences heavily damaged and all of his personal property either lost or destroyed. Two of the witnesses state specifically that they saw Iraqi soldiers occupying the claimant's properties.

77. The evidence also includes a report prepared by the United States Army Corps of Engineers, which conducted a damage assessment of selected buildings in Kuwait, including the claimant's principal residence, in the days after the liberation of Kuwait. The report details extensive damage to the claimant's residence caused by shelling and fire, and specifically notes that "all furnishings [were] either removed or destroyed".

78. The claimant also submitted numerous photographs showing damage to three of his residences. In the Panel's view, these show damage so extensive that it appears unlikely that any personal property that was not looted would have survived intact. The Panel has taken into consideration the fact that the claimant was among those named in the decrees of the Iraqi Revolutionary Command Council referred to in paragraph 25 of this report.

79. On the basis of this evidence, the Panel concludes that the claimant has lost the personal property for which he claims as a direct result of Iraq's invasion and occupation of Kuwait.

2. D7 (real property) loss

80. The claim includes a D7 (real property) claim for repair costs in the amount of USD 13,228,972.32. The claim is unusual in that members of the claimant's family, rather than a general contracting firm, have been overseeing the repairs (although nearly complete, the repairs are ongoing). As a result, the documentation available to the Panel for purposes of assessing the claim differed markedly both in quantity and substance from that which is usually filed by claimants and is generally prepared by building contractors. Therefore, the claim could not readily be valued using the D7 (real property) loss methodology, which relies heavily on the type of documents generated by contractors. Further, while the property at issue is owned by the claimant, it includes an extensive complex of buildings that serve both private and governmental functions. Although the work at issue was undertaken in view of the extensive destruction of the claimant's property during Iraq's invasion and occupation of Kuwait, in the case of the claimant's principal residence, this work was not limited to restoration of the property to its pre-invasion condition and included significant elements of non-compensable improvements. As a result, the claimant has spent substantially more than the amount for which he claims, and the Panel was required to distinguish the wide range and magnitude of compensable repairs from non-compensable improvements.

81. In view of the unusual features of the D7 (real property) loss in this claim, the Panel determined that it was necessary to retain a quantity surveyor to assist the Panel in assessing the compensable loss. Under terms of reference established by the Panel, the quantity surveyor was instructed to examine the work undertaken by the claimant and to separate the repair costs from improvement costs.

82. In November 2002, the quantity surveyor and a member of the secretariat conducted an on-site inspection of the repairs undertaken at the claimant's principal residence. They also examined extensive documentation provided by the claimant in respect of all of his properties, as well as the damage assessment report prepared by the United States Army Corps of Engineers. In addition, they examined a separate assessment of the cost of repairs produced by a firm of engineers that had supervised the construction of the claimant's principal residence but was not involved in any of the repairs undertaken after Iraq's invasion and occupation of Kuwait. On the basis of his investigation, the quantity surveyor produced a report for the Panel's consideration, specifically noting the extent to which the work undertaken by the claimant constituted compensable repairs as against non-compensable improvements. The Panel considered the report and took the opportunity to discuss the basis of his conclusions with the quantity surveyor at its meeting in December 2002.

3. Recommended award

83. Taking into account the views of the expert consultants and the evidence in support of the claim, and having applied the category "D" methodologies to the remaining aspects of the claim, the Panel recommends that the claimant be awarded a total of USD 43,916,447.44 for all losses.

I. UNCC claim No. 3009065

84. The claimant seeks compensation in the total amount of USD 3,497,553.63 for D4 (personal property), D4 (motor vehicles) and D7 (real property) losses. Of this amount, USD 2,465,190.31 is for D4 (personal property) losses. The Valuation Items in this claim consist of a 50 per cent share in the bloodstock identified in paragraph 40 of this report, with a claimed amount of USD 2,203,162.63.

85. Taking into account the views of the expert consultants and the evidence provided by the claimant, and having applied the category “D” methodologies to those aspects of the claim not involving Valuation Items, the Panel recommends that the claimant be awarded a total of USD 2,381,619.12 for all losses.

J. UNCC claim No. 3009633

86. The claimant seeks compensation in the total amount of USD 63,585,878.89 for D4 (motor vehicles) and D7 (real property) losses. This includes D4 (motor vehicles) losses in the amount of USD 149,117.65 and D7 (real property) losses in the amount of USD 39,916,464 for repair costs and USD 23,364,588 for unpaid rent.

87. Although the D7 (real property) amount claimed is significant, the Panel was able to value the claimed repair costs and rental losses using the D7 (real property) loss methodology. The claim was supported by substantial evidence including invoices, receipts, contracts, engineering reports and a loss adjuster’s damage assessment. Having considered the claimant’s evidence and having applied the category “D” methodologies, the Panel recommends that the claimant be awarded a total of USD 35,983,955.13 for all losses.

IV. STAND ALONE CLAIMS

88. The Governing Council determined in decision 123 that stand alone claims are not properly filed in category “C” and category “D” and directed the Commission to identify and transfer such claims to the “E4” Panels for review as Kuwaiti corporate claims. However, pursuant to the terms of decision 123, each claimant who has filed a stand alone claim must first demonstrate that he or she had the authority to act on behalf of the company before the claim is transferred by the “D” Panels to the “E4” Panels for review. If a claimant fails to demonstrate that he or she had authority to act on behalf of the company, the stand alone claim is not reviewed by the “E4” Panels. At a joint meeting held in May 2001, the “D” Panels developed an “authority to act” test pursuant to which a claimant is deemed to have authority to file the claim on behalf of the company where the claimant demonstrates that he or she had authority to manage the business on a day-to-day basis or ownership of the company’s assets.

89. In January 2002, the “D” Panels met jointly to review an initial group of stand alone claims. The “D” Panels determined that these stand alone claims passed the authority to act test because the claimants had produced a range of evidence demonstrating their ownership and/or management of the company including proof that they held a sufficient shareholding interest in the company.

90. In May 2002, the “D” Panels met jointly and determined that if two or more claimants had made claims in relation to the same company and one of those claimants had passed the authority to act test, all of the claims could proceed to the “E4” Panels for review.

91. In respect of those 132 stand alone claims concerning 110 Kuwaiti companies that have been transferred to the “E4” Panels for review, the “D” Panels have jointly determined that all of the claimants have satisfied the authority to act test. The “E4” Panels will review these stand alone claims and make recommendations in respect of these claims during the course of instalment twenty-three (A) of category “E4” claims.

V. CROSS CATEGORY ISSUE

92. Recommended awards in respect of claims in part two of the fifteenth instalment are reported net of category “A”, “B” and “C” approved awards made to the same claimants.¹¹

VI. OTHER ISSUES

A. Exchange rates

93. For purposes 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.

94. In its report and recommendations concerning the third instalment of category “D” claims,¹² 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.”¹³

B. Interest

95. A number of claimants in part two of the fifteenth instalment claim for interest on losses contained in their category “D” claims. For category “D” losses other than loss of business income and incremental costs, the “D” Panels have previously determined that “the date the loss occurred” in Governing Council decision 16 (S/AC.26/1992/16)¹⁴ should be a single fixed date. The “D” Panels determined that 2 August 1990 (the date of Iraq’s invasion and occupation of Kuwait) should serve as the fixed date.¹⁵

96. 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.¹⁶ The “D” Panels also adopted a fixed date of 1 May 1991 as the date of loss for the purpose of calculating interest on awards for claims for incremental costs.¹⁷

C. Claims preparation costs

97. A number of claimants in part two of the fifteenth instalment seek claims preparation costs incurred by them, either for a specific or an unspecified amount.

98. 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.

VII. RECOMMENDED AWARDS FOR CATEGORY “D” CLAIMS

99. The annex hereto lists the awards recommended by the Panel for each Government and international organization for the claims resolved in part two of the fifteenth instalment. Each Government and international organization will be provided with a confidential list containing the individual recommendations made in respect of its claimants. As will be seen from the annex, the total amount claimed is USD 697,487,267.38. Of this total amount claimed, USD 2,740,486.16 is for business losses suffered by Kuwaiti companies that will be severed from the category “D” claims and transferred to the category “E4” Panels for their review pursuant to Governing Council decision 123. As against the net balance of USD 694,746,781.22 claimed, the Panel recommends a total compensation of USD 244,650,884.50.

VIII. SUBMISSION OF THE REPORT

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

Geneva, 28 January 2003

(Signed) R.K.P. Shankardass
Chairman

(Signed) H.M. Joko-Smart
Commissioner

(Signed) M.C. Pryles
Commissioner

Notes

¹ See paragraph 2 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/R.40) (the “Part One, Fifteenth Instalment Report”).

² The UNCC claim No’s. of the eight claims that have been added to the fifteenth instalment since the Part One, Fifteenth Instalment Report are: 3001757, 3002448, 3003070, 3004031, 3004313, 3004363, 3004447 and 3007343.

³ 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) (“Part One, Second Instalment Report”), 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 (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.

⁴ 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, an adjustment may be made by the Panel when finalising its recommendation of the award for the claim to reflect the fact that Iraq did not have an opportunity to comment on the claim.

⁵ 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).

⁶ See note 5 above.

⁷ 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.

⁸ The term "application claims" refers to those claims in respect of which the Panel applied the methodologies that were developed by it or by the "D2" Panel during the course of previous instalments as set out in note 3 above.

⁹ See paragraphs 21-29 of the First "D" Report.

¹⁰ See paragraph 296 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).

¹¹ 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).

¹² "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").

¹³ Paragraph 39 of the Third Instalment Report.

¹⁴ 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."

¹⁵ See paragraphs 64-65 of the First "D" Report with respect to category "D" losses other than individual business losses and paragraphs 225-226 of the Sixth Instalment Report with respect to claims for individual business losses.

¹⁶ See paragraphs 227-228 of the Sixth Instalment Report.

¹⁷ See paragraph 228 of the Sixth Instalment Report.

AnnexSUMMARY RECOMMENDATIONS OF PART TWO OF THE
FIFTEENTH INSTALMENT OF CATEGORY "D" CLAIMS

<u>Submitting entity</u>	<u>Number of claims not recommended for payment</u>	<u>Number of claims recommended for payment</u>	<u>Total amount claimed (USD)</u> ^a	<u>Net amount claimed after severance and transfer of claims (USD)</u>	<u>Amount of compensation recommended (USD)</u>
Australia	0	1	55,000.00	55,000.00	23,949.76
Canada	0	3	1,482,917.16	1,171,498.47	129,988.17
Egypt	7	3	83,106,767.73	83,106,767.73	468,345.93
France	1	2	2,110,751.56	2,110,751.56	248,530.23
Germany	0	1	784,141.49	784,141.49	86,452.36
India	13	26	22,360,353.68	21,336,779.29	2,316,675.82
Israel	0	3	942,200.00	942,200.00	77,209.94
Italy	0	2	2,674,275.50	2,674,275.50	75,158.78
Jordan	3	44	51,229,972.69	50,419,635.32	14,384,359.46
Kuwait	2	62	499,654,605.90	499,654,605.90	222,297,262.08
Lebanon	0	1	260,660.54	260,660.54	17,434.70
Netherlands	0	1	1,531,764.00	1,531,764.00	710,793.87
Pakistan	1	1	2,005,356.40	2,005,356.40	185,666.86
Sudan	1	3	2,190,723.94	2,190,723.94	242,674.69
Syrian Arab Republic	0	1	182,961.94	182,961.94	17,101.18
Turkey	1	0	201,500.00	201,500.00	0.00
United Kingdom	2	10	12,006,293.55	11,411,137.84	666,141.48
United States	0	6	5,323,121.68	5,323,121.68	890,970.32
Yemen	0	11	9,261,615.88	9,261,615.88	1,794,668.87
UNRWA Gaza	1	1	122,283.74	122,283.74	17,500.00
<u>Total</u>	32	182	697,487,267.38	694,746,781.22	244,650,884.50

^a This total amount claimed includes USD 2,740,486.16 for business losses suffered by Kuwaiti companies that will be severed and transferred to the "E4" Panels for review pursuant to Governing Council decision 123.
