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

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Introduction

1. This is the tenth 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). It contains the determinations and recommendations of the Panel in respect of part one of the eighteenth instalment.
2. On 30 January 2003, the Executive Secretary of the Commission submitted the eighteenth instalment of category “D” claims, consisting of 623 claims and alleging losses aggregating approximately USD 978,321,101.19, to the Panel pursuant to article 32 of the Rules. By Procedural Order No. 47, the Panel added 219 claims to the eighteenth instalment. These additional claims comprise: (a) claims from earlier instalments that were deferred to allow for additional claims development that are now ready for reporting; (b) claims having individual losses which have been severed from “overlapping” and “stand alone” claims; and (c) claims from part two of the sixteenth instalment of category “D” claims, as they are ready for reporting at the time of signature of this report.¹
3. Part one of the eighteenth instalment comprises 380 claims. The balance of claims in the instalment will be reported in the Panel’s report concerning part two of the eighteenth instalment of category “D” claims.
4. Included in the 380 claims are 10 claims that contain both individual losses and business losses suffered by Kuwaiti companies. These corporate losses, with an aggregate claimed amount of USD 32,897,110.87, have been severed and transferred by the Executive Secretary to the “E4” Panels of Commissioners in accordance with Governing Council decision 123 (S/AC.26/Dec.123(2001)) as they are “overlapping” claims. The Panel has made recommendations only with respect to the individual losses asserted in these claims.
5. The most common loss type appearing in part one of the eighteenth instalment is D8/D9 individual business losses. Other common loss types are D7 real property losses, D4(PP) personal property losses and D6 loss of income, unpaid salaries and support. The majority of the claims in part one of the eighteenth instalment were submitted by the Governments of Kuwait, Jordan and Yemen.
6. Table 1 below sets out by submitting entity the claims submitted to the Panel and the claims resolved by the Panel in part one of the eighteenth instalment.

Table 1. Summary of claims by submitting entity

<u>Submitting entity</u>	<u>Number of Procedural Order No. 30 claims reviewed by the Panel in part one</u>	<u>Number of claims added to the instalment</u>	<u>Total number of claims resolved by the Panel in part one of the eighteenth instalment</u>
Canada	-	2	2
Egypt	-	7	7
Hungary	-	1	1
India	4	7	11
Ireland	-	1	1
Italy	-	1	1
Jordan	39	33	72
Kuwait	115	31	146
Lebanon	-	10	10
Pakistan	-	5	5
Saudi Arabia	-	12	12
Spain	-	1	1
Sudan	-	1	1
Syrian Arab Republic	-	17	17
Turkey	-	2	2
United Kingdom	2	5	7
United States	1	15	16
Yemen	-	65	65
UNDP Kuwait	-	1	1
UNDP Washington	-	1	1
UNRWA Gaza	-	1	1
<u>Total</u>	161	219	380

I. THE PROCEEDINGS

7. On 30 January 2003, the Panel issued Procedural Order No. 30, in which it gave notice of its intention to complete its review of the claims in the eighteenth instalment and to finalize its report and recommendations to the Governing Council in two parts. The Panel met regularly to consider the claims.

8. In reviewing the claims in part one of the eighteenth instalment, the Panel has taken into account the factual background relating to the Government of the Republic of Iraq (“Iraq”)’s invasion and occupation of Kuwait, as set out in detail in its “Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)” (S/AC.26/2000/24) (the “sixth instalment report”).²

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 a number of submitting entities as well as by Iraq in response to the reports submitted to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules. In addition, the Panel has reviewed the responses of Iraq in connection with six claims that the Panel transmitted to Iraq for comment.³

II. LEGAL FRAMEWORK

A. General legal framework and applicable evidentiary standard

10. The general legal framework and applicable evidentiary standard for the resolution of category “D” claims is set out in chapter III of the sixth instalment report.⁴ As with earlier instalments, the Panel has reviewed the claims in part one of the eighteenth instalment in accordance with article 35 of the Rules, and made its recommendations by assessing documentary and other appropriate evidence, as well as by balancing the interests of claimants who fled from a war zone with the interests of Iraq, which is liable only for direct loss, damage or injury caused by its invasion and occupation of Kuwait.

B. The role of the Panel

11. 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.

12. Taking into account the evidentiary and causation requirements that must be met by claimants in category “D”, and considering the legal principles that must be respected in the valuation of compensable losses, a case-by-case assessment of each claim is required. In summary, the Panel’s objective was to review the claims by applying established principles in a consistent and objective manner.

III. NEW FACTUAL, LEGAL AND VALUATION ISSUES

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

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

14. The Panel reviewed claims that it classified as “unusually large or complex” within the meaning of article 38 of the Rules and for which it engaged the assistance of expert consultants due to the presence in the claims of certain types of D4(PP) personal property that are either of high value and/or unique in nature. At the request of the Panel, the expert consultants were asked to perform a detailed review of each such item and to provide an expert opinion to the Panel as to the lowest replacement value in 1990 for each item.

15. In one “unusually large or complex” claim involving jewellery, the claimant asserts the loss of jewellery in the amount of USD 1,076,576, which includes a diamond necklace with a claimed value of USD 207,612 (the “Valuation Item”). The claimant indicated that the diamond necklace was purchased through a local supplier in Kuwait.

16. The Panel instructed the secretariat to undertake claims development pursuant to article 34 of the Rules with the assistance of the expert consultants with respect to the Valuation Item. In addition, at the direction of the Panel, members of the secretariat and the expert consultants conducted an on-site interview with the claimant during the course of a technical mission to Kuwait. The Panel reviewed the claim as well as the valuation report provided by the expert consultants. As the total claimed amount was below USD 10 million, the Panel did not require a copy of the claim file to be sent to Iraq for comments.

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

1. Ownership

18. The claimant provided an invoice dated April 1990 which contained a brief description of the valuation item and indicated a purchase price of 60,000 Kuwaiti dinars (USD 207,612.46). The claimant indicated that the invoice was a post-invasion reconstructed invoice. Subsequently, the secretariat conducted a telephone interview with the jewellery supplier regarding the reconstructed invoice. The supplier acknowledged that the handwriting on the invoice was hers and that the invoice had been recreated on the basis of existing business records. Based on this information, the Panel determines that the claimant has established her ownership of the Valuation Item.

2. Loss and causation

19. The claimant stated that at the time of Iraq's invasion and occupation of Kuwait, his family was at their summer villa outside of Kuwait City. He further stated that his wife customarily took her jewellery with her to their summer villa. The claimant explained that when news of the invasion broke, the family left for their home in Kuwait City in order to be closer to news sources and they left their jewellery behind in their summer villa, which was shortly thereafter occupied by Iraqi soldiers. According to the claimant, he visited the villa after liberation and saw that it had been looted, including the safe where the Valuation Item was kept. The claimant provided witness statements in support of the loss. The Panel is satisfied that the Valuation Item was lost as a direct result of Iraq's invasion and occupation of Kuwait.

3. Valuation

20. The Panel determines that the value for the Valuation Item should be based on the lesser of the lowest replacement value in 1990 or the amount claimed for the Valuation Item. While the invoice provided by the claimant contained information as to carat size, the Panel finds that the claimant failed to provide sufficient information concerning clarity, cut and color, and as a result the Panel, in consultation with the expert consultants, valued the loss on the basis of stones of the lowest quality. Accordingly, the Panel recommends an award in the amount of USD 25,000 in respect of the Valuation Item.⁵

B. D4(PP) personal property losses: one "unusually large or complex" claim for bloodstock

21. The Panel reviewed one "unusually large or complex" claim involving bloodstock. At the request of the Panel, the expert consultants were asked to perform a detailed review of the bloodstock.

22. The claimant asserts the loss of 270 horses (the "Valuation Items") as a result of Iraq's invasion and occupation of Kuwait, namely 72 racehorses, 140 mares, 50 foals and eight stallions. The Valuation Items represent an amount of USD 15,819,027.68 out of a total amount claimed of USD 16,422,342.56.

23. The Panel instructed the secretariat to undertake claims development with the assistance of the expert consultants with respect to the Valuation Items. In addition, members of the secretariat and the expert consultants conducted on-site interviews with the claimant and with various third parties, as further described below, during a technical mission to Kuwait. The Panel reviewed the claim at several of its meetings, with the expert consultants in attendance at some of the meetings.

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

1. Ownership

25. The claimant alleges that he was involved in the breeding and racing of horses in Kuwait for over twenty years before Iraq's invasion and occupation of Kuwait. According to the claimant, at the

time of Iraq's invasion and occupation of Kuwait, his stables were located in three different areas, including the Kuwait Hunting & Equestrian Club (the "HEC" or "Equestrian Club"), and they were well known within Kuwaiti equestrian circles as being well stocked and having enjoyed considerable success at local race meetings.

26. In his original claim submitted to the Commission, the claimant provided, inter alia, a post-invasion certificate from the Equestrian Club and a post-invasion witness statement from the horse trainer and supervisor of the claimant's stables, both of which attested that the claimant owned 72 racing horses, 140 mares, 50 foals and eight stallions. The claimant also submitted a pre-invasion inoculation certificate from the Public Authority for Agricultural Affairs and Fisheries ("PAAAF") that referred to the vaccination of 200 of the claimant's horses on 15 September 1989.

27. In response to claims development, the claimant explained that the total of 200 horses stated on the inoculation certificate did not include horses under 24 months of age, or horses that may have been previously vaccinated a month or two before, or that were under medical treatment.

28. At the Panel's direction, the secretariat and the expert consultants interviewed the claimant, the former manager of the Equestrian Club, and a former PAAAF assistant veterinarian in the course of a technical mission to Kuwait in February 2002. During his interview, the former PAAAF assistant veterinarian stated that he had vaccinated most of the claimant's horses in May 1990, and he estimated that the claimant owned in excess of 250 horses, not including foals, at that time.

29. Following the technical mission to Kuwait, the claimant provided additional information, mostly in the form of witness statements. With respect to the total number of horses that the claimant owned at the time of Iraq's invasion and occupation of Kuwait, the witnesses gave different estimates, ranging from a low of 258 horses to a high of 325 horses. The witnesses included the previously mentioned assistant veterinarian, the supervisor and horse trainer of the claimant's stables, the registrar of the Equestrian Club, the former manager of the Equestrian Club and various other owners of stables in Kuwait. The claimant also provided a statement from PAAAF to certify the authenticity of the pre-invasion PAAAF inoculation certificate described above.

30. The Panel considers that the best evidence of the claimant's ownership of the Valuation Items is the PAAAF pre-invasion inoculation certificate concerning the vaccination in September 1989 of 200 of the claimant's horses. The Panel accepts the claimant's explanation that the inoculation certificate understates the total number of horses in his stables because horses under 24 months of age or horses that were under medical treatment were not, as a general matter, vaccinated. The Panel also takes into account the statement of the claimant's horse trainer and stables supervisor in which he addresses the number and types of horses in the claimant's stables as of 2 August 1990. The Panel determines, based on the totality of the evidence submitted, that the claimant has established his ownership of 243 horses as of 2 August 1990.

2. Loss and causation

31. The claimant alleges that his horses were taken away by Iraqi forces during the period of Iraq's invasion and occupation of Kuwait. The claimant submitted the witness statement of the horse trainer and supervisor of his stables, who personally witnessed the looting of the claimant's horses stabled at the Equestrian Club. This witness further says that he was forced to divulge information to the Iraqi forces about the other stables of the claimant, which he later found empty of any horses.

32. In its comments, Iraq contends that the claimant's losses resulted from Allied Coalition Forces' bombing, or that the claimant did not provide evidence that the horses were taken outside of Kuwait. With respect to the first point, the Panel notes that, even if Iraq's assertion were factually correct, losses caused by the Allied Coalition Forces in liberating Kuwait are directly linked to Iraq's invasion and occupation of Kuwait and are clearly contemplated as "direct" losses under Governing Council decision 7 (S/AC.26/1991/7/Rev.1) for which Iraq is responsible. With respect to the second point, the Panel notes that Iraq did not submit any specific evidence in support of its assertions, whereas the claimant supported the losses asserted by submitting the witness statement mentioned in paragraph 31 above.

33. The Panel is satisfied that the claimant lost the Valuation Items as a direct result of Iraq's invasion and occupation of Kuwait.

3. Valuation

34. The Panel determines that the value for each of the Valuation Items should be based on the lesser of the lowest replacement value in 1990 or the amount claimed for the Valuation Item. The expert consultants have made their recommendations to the Panel accordingly. Based on the expert consultant's assessment and its own review of the evidence provided by the claimant in support of his losses, the Panel recommends that the claimant be awarded an amount of USD 1,730,000 in respect of the Valuation Items.⁶

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

35. Part one of the eighteenth instalment includes a number of related or competing claims for business losses. In some cases, two or more category "D" claimants filed for losses in connection with the same business. In other cases, a category "D" claimant filed for losses in connection with a business in respect of which a category "C" claimant has already received compensation from the Commission.

36. The claimants' responses to the Panel's request for further information enabled the Panel to resolve competing ownership issues in respect of certain claims. Other claims were resolved based in part on information gathered through interviews with the claimants during a technical mission to Kuwait carried out at the direction of the Panel.

37. For example, the Panel reviewed competing claims for a clothing and accessories business located in Kuwait, sole ownership of which had been independently asserted by a Kuwaiti category

“D” claimant as well as a non-Kuwaiti category “C” claimant. The latter, who had already received a category “C” award for losses of the business, contended that he had been the sole beneficial owner of the business and that he had rented the use of the business licence from the Kuwaiti claimant for a monthly fee.

38. In support of his claim, the non-Kuwaiti claimant provided a lease agreement for the business premises in his name, rent receipts in his name, stock purchase invoices for the business with his name on them and witness statements attesting to his beneficial ownership of the business. He also provided an undated statement that appeared to be signed by the Kuwaiti claimant in which the Kuwaiti claimant acknowledged that the non-Kuwaiti claimant was the true owner of the business and that he rented the business licence to him.

39. The Kuwaiti claimant also provided extensive evidence relating to the business including a business licence in his name, audited accounts for the business, purchase invoices in the name of the business, some of which were in his name, and witness statements. One of the witness statements provided was allegedly from the non-Kuwaiti claimant, in which he referred to himself as the manager of the Kuwaiti claimant’s business. The Kuwaiti claimant also provided rent payment documentation that showed that the non-Kuwaiti claimant had paid the rent for the business premises.

40. In the course of a technical mission to Kuwait, the Kuwaiti claimant was questioned about the non-Kuwaiti claimant’s role in his business. The Kuwaiti claimant stated that the non-Kuwaiti claimant did not work for his business but rather for his wife’s business. When asked about the witness statement he provided in which the non-Kuwaiti claimant extensively referred to himself as the manager of the Kuwaiti claimant’s business, the Kuwaiti claimant stated that he had not reviewed the witness statement closely before including it in his claim. The Panel notes that the non-Kuwaiti claimant disputes the authenticity of the witness statement allegedly provided by him. When asked why the rent documentation showed that the non-Kuwaiti claimant had paid rent for the business, the Kuwaiti claimant stated that he may have paid the rent but was subsequently reimbursed. When asked about the attestation provided by the non-Kuwaiti claimant in which the Kuwaiti claimant acknowledges the non-Kuwaiti claimant’s ownership of the business, the Kuwaiti claimant stated that the signature looked like his but was a forgery.

41. After a thorough review of the evidence, the Panel determines that the Kuwaiti claimant has not provided a satisfactory explanation for the various evidentiary inconsistencies and finds that the Kuwaiti claimant is only entitled to compensation for any non-duplicative losses claimed. As all of the losses claimed were found to be duplicative, the Panel recommends that the Kuwaiti category “D” claimant be awarded no compensation for losses relating to the clothing and accessories business.

42. The Panel also reviewed competing claims for a car retail business filed by a non-Kuwaiti category “D” claimant and a Kuwaiti category “C” claimant. The Kuwaiti claimant has previously been compensated in category “C” for the losses of this business. Each claimant asserted sole ownership of the business. The non-Kuwaiti claimant stated that the Kuwaiti claimant had merely been the holder of the business licence with whom he had entered into a rent-a-permit agreement. While each claimant submitted lease contracts and witness statements supporting their respective

assertions of ownership, the non-Kuwaiti claimant also provided a substantial amount of other documentary evidence of daily business operations, as well as a rent-a-permit contract between the two parties, which strongly corroborated his assertion of ownership. The Kuwaiti claimant provided very limited documentation, stating that all relevant documents had been destroyed during Iraq's invasion and occupation of Kuwait.

43. In an interview during the technical mission to Kuwait, the Kuwaiti claimant's husband, who had been authorized to manage the business operations, stated that the non-Kuwaiti claimant had worked for him as the general manager of the business and had been permitted, in exchange, to buy and sell cars using the name of the business to conduct a side business of his own. He explained that the non-Kuwaiti claimant only had authority to purchase vehicles on behalf of the side business that only had three or four cars at the time of Iraq's invasion and occupation of Kuwait. The Panel did not find these contentions credible given the substantial and persuasive evidence provided by the non-Kuwaiti claimant, and the inability of the Kuwaiti claimant to explain the existence of, and the non-Kuwaiti claimant's possession of, such evidence, which demonstrated a much higher volume of trade.

44. The Panel finds that the non-Kuwaiti category "D" claimant has established that he was the sole beneficial owner of the business at 2 August 1990 under a rent-a-permit arrangement and recommends an award of compensation for the demonstrated losses of the business.

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

45. The awards of compensation recommended by the Panel are reduced by the amount of any category "A", "B" and "C" awards for the same losses. In some cases, the deduction of a category "C" award constitutes a deduction of a prorated amount. This occurs where there are multiple category "C" loss elements, and the category "C" award was capped at USD 100,000. In such cases, the category "C" award is prorated back to the category "C" loss elements to reach an amount that can be deducted from the corresponding category "D" award.

IV. OTHER ISSUES

A. Currency exchange rate

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

47. 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.⁷ 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

48. In its decision 16 (S/AC.26/1992/16), the Governing Council specified that it will consider the methods of calculation and of payment of interest at a future date. Accordingly, the Panel makes no recommendation with respect to these matters, and the only task for the Panel is to identify the date of loss. Decision 16 specifies that “[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award.” For category “D” loss types other than individual business losses, “the date the loss occurred” under Governing Council decision 16 is a single fixed date, being 2 August 1990 (the date of Iraq’s invasion and occupation of Kuwait).⁸ 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.⁹

C. Claims preparation costs

49. 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.

V. RECOMMENDED AWARDS

50. Table 2 below lists the awards recommended by the Panel for each submitting entity with claimants included in part one of the eighteenth instalment. Each submitting entity will be provided with a confidential list containing the individual recommendations made in respect of its claimants. With reference to paragraph 4 above, USD 32,897,110.87 is claimed by 10 claimants in respect of business losses that the claimants assert were suffered by Kuwaiti companies. The Executive Secretary has severed and transferred the corporate losses to the “E4” Panels of Commissioners in accordance with Governing Council decision 123. This results in a net total claimed amount, i.e. net also of the claimed amounts of USD 251,432.04 for interest and USD 172,784.51 for claims preparation costs, of USD 479,190,427.82 for the 380 claims resolved in part one of the eighteenth instalment. As will be seen from the table below, the Panel recommends a total of USD 83,823,300.71 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</u>	<u>Amount of compensation claimed (USD)</u>	<u>Net amount of compensation claimed (USD) ^a</u>	<u>Amount of compensation recommended (USD)</u>
Canada	2	0	2,121,988.00	2,121,988.00	412,691.55
Egypt	4	3	4,971,854.68	3,637,598.62	112,149.16
Hungary	1	0	240,230.80	240,230.80	97,221.81
India	7	4	14,381,518.17	14,381,518.17	4,808,787.48
Ireland	0	1	89,923.95	89,923.95	0.00
Italy	0	1	159,579.06	159,579.06	0.00
Jordan	63	9	219,099,744.33	190,099,949.35	11,001,626.36
Kuwait	146	0	108,150,639.67	107,989,657.80	48,853,165.98
Lebanon	10	0	6,887,053.40	6,887,053.40	2,049,060.64
Pakistan	5	0	1,240,795.85	1,240,795.85	600,104.11
Saudi Arabia	3	9	92,595,190.46	92,587,179.78	469,102.35
Spain	1	0	186,851.21	186,851.21	69,522.04
Sudan	0	1	750,000.00	750,000.00	0.00
Syrian Arab Republic	16	1	7,325,801.03	7,325,801.03	1,827,301.13
Turkey	0	2	454,889.97	454,889.97	0.00
United Kingdom	4	3	1,221,000.89	1,220,204.56	157,438.22
United States	14	2	15,724,194.48	12,910,498.94	3,736,713.94
Yemen	59	6	35,368,381.74	35,364,589.78	9,269,339.72
UNDP Kuwait	1	0	179,989.52	179,989.52	114,672.02
UNDP Washington	1	0	688,010.38	688,010.38	146,746.76
UNRWA Gaza	1	0	674,117.65	674,117.65	97,657.44
<u>Total</u>	338	42	512,511,755.24	479,190,427.82	83,823,300.17

^a This amount claimed is net of the amounts of USD 251,432.04 for interest and USD 172,784.51 for claims preparation costs. It is also net of USD 32,897,110.87 for business losses allegedly suffered by Kuwaiti companies that will be transferred to the "E4" Panels of Commissioners for review pursuant to Governing Council decision 123.

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

Geneva, 28 July 2003

(Signed) K. Hossain
Chairman

(Signed) I. Suzuki
Commissioner

(Signed) N. Comair-Obeid
Commissioner

Notes

¹ The panel report with respect to part two of the sixteenth instalment is scheduled to be signed in September 2003.

² See in particular chapters II and III.

³ The claims selected by the Panel for transmission to Iraq satisfied the following criteria. The amount claimed exceeded USD 10 million and either the verification and quantification of the claim was deemed by the Panel to require more than 180 days, or the Panel determined that the views of Iraq may be of assistance to the Panel for the review of the claim. In addition, the Panel considered a claim for transmission to Iraq if Iraq was a party to a contract forming part of the subject matter of the claim, or if the situs of the alleged loss was in Iraq.

⁴ See also articles 35(1) and 35(3) of the Rules.

⁵ Out of the total amount claimed of USD 2,431,487.51, USD 1,121,146.68 was claimed in respect of D4(PP) personal property losses and USD 1,310,340.83 was claimed in respect of D7 real property losses. Out of the total amount claimed of USD 1,121,146.68 in respect of D4(PP) personal property losses, USD 319,336.07 is recommended.

⁶ Out of the total amount claimed of USD 16,422,342.56, USD 16,049,363.32 was claimed in respect of D4(PP) personal property losses (which includes the bloodstock claim), USD 48,442.91 was claimed in respect of D4(MV) motor vehicle losses and USD 324,536.33 was claimed in respect of D7 real property losses. Out of the total amount claimed of USD 16,049,363.32 in respect of D4(PP) personal property losses, USD 1,857,921.49 is recommended.

⁷ 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.

⁸ Ibid., paragraphs 64-65. The “D2” Panel adopted this decision in the sixth “D” report at paragraph 226.

⁹ 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.26/1994/4), paragraph 230.
