



**Security Council**

Distr.  
GENERAL

S/AC.26/2004/5  
2 July 2004

Original: ENGLISH

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UNITED NATIONS  
COMPENSATION COMMISSION  
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE "D2" PANEL OF COMMISSIONERS  
CONCERNING PART TWO 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 twelfth 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). This report contains the determinations and recommendations of the Panel in respect of part two of the eighteenth instalment, submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules.
2. The Panel commenced its review of the eighteenth instalment in January 2003. Pursuant to Procedural Order No. 30 signed on 30 January 2003, the Panel notified all Governments with claims in the eighteenth instalment of its intention to complete its review of the instalment in two parts. The Panel completed its review of 380 claims in part one of the eighteenth instalment in July 2003. The present report contains the Panel’s determinations and recommendations on 383 claims in part two of the instalment. The Panel notes, however, that due to events in Iraq during the course of the review of the instalment that resulted in the loss of certain claim files that had been transmitted to Iraq for its comments, the Government of the Republic of Iraq (“Iraq”) was unable to provide its written comments on certain claims in time for inclusion in this report. The Panel will therefore consider 41 claims in part three of the eighteenth instalment to provide Iraq sufficient time to respond to the claims.<sup>1</sup> The Panel will complete its review of claims in part three of the eighteenth instalment in April 2004.
3. As set out in the eighteenth instalment report, part one,<sup>2</sup> there were 623 claims in the eighteenth instalment at the time of its submission to the Panel (the “procedural order claims”). A total of 443 claims have been added to the instalment since the Panel commenced its review of the claims. These additional claims comprise: (a) claims from other instalments that had been deferred awaiting the receipt of additional information from the claimants or pending receipt of comments from Iraq; (b) claims that are related to claims originally included in the eighteenth instalment; (c) claims having individual losses which have been severed from “overlapping” and “stand alone” claims (as defined in paragraph 4 below); (d) claims deferred from category “C” as claims with corporate losses but which were subsequently determined to be for losses other than the losses of a corporation (as described in paragraphs 16 to 17 below); and (e) claims from part two of the sixteenth instalment that were moved forward to part one of the eighteenth instalment as they were ready for reporting at the time of signature the eighteenth instalment report, part one.<sup>3</sup>
4. Included in the 623 procedural order claims, were 32 claims identified as “stand alone” or “overlapping” claims containing both individual losses suffered by the claimants and business losses suffered by Kuwaiti companies. On 15 March 2001, the Governing Council determined in decision 123 (S/AC.26/Dec.123(2001)) 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 to be reviewed as “overlapping” claims in cases where the Kuwaiti company has also filed a claim with the Commission (“overlapping claims”), or as “stand alone” claims where no such

corporate claim existed (“stand alone claims”). These corporate losses, with an aggregate claimed amount of USD 42,318,440.38, were severed and transferred by the Executive Secretary to the “E4” Panels in accordance with Governing Council decision 123. One further procedural order claim was found to include the losses of a non-Kuwaiti company. The corporate losses of USD 26,383.06 were severed and transferred by the Executive Secretary to category “E”. The Panel has made recommendations only with respect to the personal losses asserted in these claims.<sup>4</sup>

5. Since the signing of the eighteenth instalment report, part one, 150 procedural order claims in the eighteenth instalment that would have been included in the eighteenth instalment report, part two, were moved forward to earlier category “D” reports.<sup>5</sup>

6. As a result of these additions, deferrals and transfers, part two of the eighteenth instalment comprises 383 claims, including 6 withdrawn claims.

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

8. Table 1 below sets out by submitting entity the claims submitted to the Panel and the claims resolved by the Panel in the eighteenth instalment reports, parts one and two, as well as the claims to be resolved in the eighteenth instalment report, part three.

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

| <u>Submitting entity</u> | <u>Procedural order claims in the instalment</u> | <u>Claims added to part one of the instalment</u> | <u>Claims added to parts two and three of the instalment</u> | <u>Procedural order claims in earlier “D” instalments or transferred to category “E”<sup>a</sup></u> | <u>Claims resolved by the Panel in part one of the instalment</u> | <u>Claims resolved by the Panel in part two of the instalment<sup>b</sup></u> | <u>Claims to be resolved by the Panel in part three of the instalment</u> |
|--------------------------|--------------------------------------------------|---------------------------------------------------|--------------------------------------------------------------|------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|-------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| Algeria                  | -                                                | -                                                 | 1                                                            | -                                                                                                    | -                                                                 | 1                                                                             | -                                                                         |
| Argentina                | -                                                | -                                                 | 1                                                            | -                                                                                                    | -                                                                 | 1                                                                             | -                                                                         |
| Austria                  | 2                                                | -                                                 | -                                                            | 2                                                                                                    | -                                                                 | -                                                                             | -                                                                         |

<sup>a</sup> Of the 262 claims, 107 claims relate to claims that were transferred by the Executive Secretary to the “E4” Panels in accordance with Governing Council decision 123.

<sup>b</sup> This includes 6 withdrawn claims, which were submitted through the following submitting entities: Kuwait (3), Jordan (3).

| <u>Submitting entity</u> | <u>Procedural order claims in the instalment</u> | <u>Claims added to part one of the instalment</u> | <u>Claims added to parts two and three of the instalment</u> | <u>Procedural order claims in earlier "D" instalments or transferred to category "E" <sup>a</sup></u> | <u>Claims resolved by the Panel in part one of the instalment</u> | <u>Claims resolved by the Panel in part two of the instalment <sup>b</sup></u> | <u>Claims to be resolved by the Panel in part three of the instalment</u> |
|--------------------------|--------------------------------------------------|---------------------------------------------------|--------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|--------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| Bahrain                  | -                                                | -                                                 | 2                                                            | -                                                                                                     | -                                                                 | 2                                                                              | -                                                                         |
| Bangladesh               | 1                                                | -                                                 | -                                                            | 1                                                                                                     | -                                                                 | -                                                                              | -                                                                         |
| Canada                   | 5                                                | 2                                                 | 7                                                            | 3                                                                                                     | 2                                                                 | 9                                                                              | -                                                                         |
| Cyprus                   | -                                                | -                                                 | 1                                                            | -                                                                                                     | -                                                                 | 1                                                                              | -                                                                         |
| Denmark                  | 1                                                | -                                                 | -                                                            | -                                                                                                     | -                                                                 | 1                                                                              | -                                                                         |
| Egypt                    | 9                                                | 7                                                 | 16                                                           | 9                                                                                                     | 7                                                                 | 9                                                                              | 7                                                                         |
| France                   | 2                                                | -                                                 | -                                                            | -                                                                                                     | -                                                                 | 2                                                                              | -                                                                         |
| Germany                  | 3                                                | -                                                 | 1                                                            | 2                                                                                                     | -                                                                 | 1                                                                              | 1                                                                         |
| Greece                   | 1                                                | -                                                 | 1                                                            | -                                                                                                     | -                                                                 | 2                                                                              | -                                                                         |
| Hungary                  | -                                                | 1                                                 | -                                                            | -                                                                                                     | 1                                                                 | -                                                                              | -                                                                         |
| India                    | 8                                                | 7                                                 | 9                                                            | 2                                                                                                     | 11                                                                | 10                                                                             | 1                                                                         |
| Islamic Republic of Iran | 1                                                | -                                                 | -                                                            | 1                                                                                                     | -                                                                 | -                                                                              | -                                                                         |
| Ireland                  | -                                                | 1                                                 | -                                                            | -                                                                                                     | 1                                                                 | -                                                                              | -                                                                         |
| Italy                    | -                                                | 1                                                 | 1                                                            | -                                                                                                     | 1                                                                 | -                                                                              | 1                                                                         |
| Japan                    | -                                                | -                                                 | 1                                                            | -                                                                                                     | -                                                                 | 1                                                                              | -                                                                         |
| Jordan                   | 218                                              | 33                                                | 80                                                           | 125                                                                                                   | 72                                                                | 125                                                                            | 9                                                                         |
| Kuwait                   | 330                                              | 31                                                | 53                                                           | 98                                                                                                    | 146                                                               | 158                                                                            | 12                                                                        |
| Lebanon                  | 2                                                | 10                                                | 4                                                            | -                                                                                                     | 10                                                                | 3                                                                              | 3                                                                         |
| Pakistan                 | 8                                                | 5                                                 | 3                                                            | 1                                                                                                     | 5                                                                 | 9                                                                              | 1                                                                         |
| Russian Federation       | 1                                                | -                                                 | -                                                            | 1                                                                                                     | -                                                                 | -                                                                              | -                                                                         |
| Saudi Arabia             | -                                                | 12                                                | 5                                                            | -                                                                                                     | 12                                                                | 4                                                                              | 1                                                                         |
| Somalia                  | -                                                | -                                                 | 1                                                            | -                                                                                                     | -                                                                 | 1                                                                              | -                                                                         |

| <u>Submitting entity</u>  | <u>Procedural order claims in the instalment</u> | <u>Claims added to part one of the instalment</u> | <u>Claims added to parts two and three of the instalment</u> | <u>Procedural order claims in earlier "D" instalments or transferred to category "E" <sup>a</sup></u> | <u>Claims resolved by the Panel in part one of the instalment</u> | <u>Claims resolved by the Panel in part two of the instalment <sup>b</sup></u> | <u>Claims to be resolved by the Panel in part three of the instalment</u> |
|---------------------------|--------------------------------------------------|---------------------------------------------------|--------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|--------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| Spain                     | -                                                | 1                                                 | -                                                            | -                                                                                                     | 1                                                                 | -                                                                              | -                                                                         |
| Sudan                     | -                                                | 1                                                 | 2                                                            | -                                                                                                     | 1                                                                 | 2                                                                              | -                                                                         |
| Syrian Arab Republic      | 6                                                | 17                                                | 2                                                            | 5                                                                                                     | 17                                                                | 3                                                                              | -                                                                         |
| Tunisia                   | -                                                | -                                                 | 1                                                            | -                                                                                                     | -                                                                 | 1                                                                              | -                                                                         |
| Turkey                    | 1                                                | 2                                                 | -                                                            | 1                                                                                                     | 2                                                                 | -                                                                              | -                                                                         |
| United Kingdom            | 9                                                | 5                                                 | 11                                                           | 4                                                                                                     | 7                                                                 | 11                                                                             | 3                                                                         |
| United States             | 8                                                | 15                                                | 7                                                            | 4                                                                                                     | 16                                                                | 10                                                                             | -                                                                         |
| Yemen                     | 2                                                | 65                                                | 10                                                           | 1                                                                                                     | 65                                                                | 9                                                                              | 2                                                                         |
| UNDP Kuwait               | -                                                | 1                                                 | 1                                                            | -                                                                                                     | 1                                                                 | 1                                                                              | -                                                                         |
| UNDP United Arab Emirates | -                                                | -                                                 | 1                                                            | -                                                                                                     | -                                                                 | 1                                                                              | -                                                                         |
| UNDP Washington           | 5                                                | 1                                                 | -                                                            | 2                                                                                                     | 1                                                                 | 3                                                                              | -                                                                         |
| UNHCR Canada              | -                                                | -                                                 | 1                                                            | -                                                                                                     | -                                                                 | 1                                                                              | -                                                                         |
| UNRWA Gaza                | -                                                | 1                                                 | 1                                                            | -                                                                                                     | 1                                                                 | 1                                                                              | -                                                                         |
| <u>Total</u>              | 623                                              | 219                                               | 224                                                          | 262                                                                                                   | 380                                                               | 383                                                                            | 41                                                                        |

9. In addition to its work on the eighteenth instalment, the Panel applied the "authority to act" test to a total of 137 category "C" and category "D" claims in relation to 123 Kuwaiti companies to identify those claims to be transferred to the "E4" Panels as stand alone claims in accordance with decision 123. A summary of the "authority to act" test and of the "D2" Panel's work in respect of these "stand alone" claims is set out in section VI below.

## I. THE PROCEEDINGS

10. 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. The Panel met regularly to consider the claims.

11. In reviewing the claims in part two of the eighteenth instalment, the Panel has taken into account the factual background relating to Iraq's invasion and occupation of Kuwait, as set out in its report on the sixth instalment.<sup>6</sup>

12. The Panel has also taken into consideration other relevant material, including information accompanying the submission of these claims provided by the Executive Secretary pursuant to article 32 of the Rules. In addition, the Panel has considered information and views presented by 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. Finally, the Panel has reviewed the responses of Iraq in connection with those claims that the Panel transmitted to Iraq for comment.<sup>7</sup>

## II. LEGAL FRAMEWORK

### A. General legal framework and applicable evidentiary standard

13. The general legal framework and applicable evidentiary standard for the resolution of category "D" claims is set out in section III of the sixth instalment report.<sup>8</sup> As with earlier instalments, the Panel has reviewed the claims in part two of the eighteenth instalment in accordance with article 35 of the Rules, and made its recommendations by assessing documentary and other appropriate evidence.

### B. The role of the Panel

14. The Governing Council has entrusted three tasks to the Panel. First, the Panel must determine whether an alleged loss falls within the jurisdiction of the Commission and is compensable in principle. Second, the Panel must verify whether the loss was actually suffered by the claimant. Third, the Panel must determine the amount of any compensable loss suffered by the claimant and recommend an award in respect thereof.

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

## III. THE PANEL'S REVIEW AND RECOMMENDATIONS IN RESPECT OF CLAIMS DEFERRED FROM CATEGORY "C"

16. During its review of claims, the category "C" Panel of Commissioners identified 103 claims for "C8" business losses that appeared to relate to the losses of an incorporated entity. As claims for

corporate losses could not be reviewed in category “C”, as its mandate was limited to the review of individual claims for personal damages up to USD 100,000, the category “C” Panel recommended that the corporate loss portions of the 103 claims be severed and transferred to another claims category. These claims were initially transferred to category “D”, pending a decision by the Governing Council on how these claims were to be treated.<sup>9</sup> The majority of these claims were subsequently transferred to and processed either by the “E2” Panel, as claims for the losses of non-Kuwaiti corporations, or by the “E4” Panels, as claims for the losses of Kuwaiti corporations pursuant to Governing Council decision 123.

17. After claim development, 23 of the 103 deferred claims were found to contain non-corporate losses that could have been reviewed in category “C”. As these claims, or portions of claims,<sup>10</sup> had in fact been correctly filed in category “C”, the Panel considers that the appropriate verification and valuation procedures to be applied to these claims are those that were developed by the category “C” Panel for such claims and has made its recommendations accordingly. Fifteen of these category “C” claims are included in this report.<sup>11</sup>

#### IV. “UNUSUALLY LARGE OR COMPLEX” CLAIMS FOR D8/D9 BUSINESS LOSSES

##### A. UNCC claim Nos. 4000281 and 4000287

18. The Panel reviewed two claims,<sup>12</sup> filed by the same non-Kuwaiti claimant in category “E”, which were transferred to category “D” as they are claims for individual business losses. Each claim relates to the loss of one of the claimant’s two large vessels, both of which were allegedly blown up by Iraqi troops on 2 August 1990.

19. The claimant asserted that he leased both vessels to an Iranian merchant until 30 April 1990, after which time he was unable to find another lessee. The claimant therefore decided to use the vessels for his own business activities and requested that the Iranian merchant purchase carpets and foodstuffs on his behalf to be shipped on the vessels from Iran for delivery to a merchant in Kuwait. According to the claimant, the goods left Bushehr port in Iran on 28 July 1990 and arrived in Ahmadi port in Kuwait on 2 August 1990, at which time Iraqi soldiers boarded the vessels, looted the cargo and destroyed the vessels. The claimant seeks compensation for the loss of the vessels, the loss of the stock on board, which he had allegedly paid for, and the loss of business income.

20. The evidence submitted by the claimant included ownership documents for the vessels, a witness statement from the captain of the vessels, a lease contract with the Iranian merchant, sales invoices and a manifest relating to the exported goods from Iran. The claimant also provided post-invasion documents showing the cancellation of his vessel registrations in Bahrain and said that the registrations were cancelled because of the destruction of the vessels.

21. At the request of the Panel, the secretariat contacted the Permanent Mission of Bahrain to request confirmation regarding the vessel registrations and details of the subsequent cancellations and the Permanent Mission of the Islamic Republic of Iran to request confirmation of the authenticity of the manifest document. The Panel further instructed the secretariat to contact the Public Authority for

Assessment of Compensation for Damages Resulting from Iraqi Aggression (“PAAC”) to confirm the presence of the vessels in Ahmadi port on 2 August 1990 and to verify the destruction of the vessels.

22. The Bahraini response stated that the claimant had requested the cancellation of the vessels’ registrations in September 1994 and indicated that the Bahraini authorities had no knowledge as to why the claimant chose to cancel the registrations at that time. The response from the Islamic Republic of Iran stated that the vessels were not in the Iranian port on the date alleged by the claimant and that the documents alleging such presence had been falsified. It also indicated that the manifest document was not authentic. No response was received from PAAC.

23. On the basis of the totality of the evidence, the Panel finds that the claimant has not established the loss of the vessels and thus has not established the related stock and profits losses. The Panel recommends no award of compensation in respect of the claimed losses.

#### B. UNCC claim No. 3004520

24. The Panel reviewed the claim of a non-Kuwaiti claimant for the losses of a stationary and office supplies business in Kuwait. The claimant provided evidence of the existence and his ownership of this business, including a “rent-a-permit” agreement between the claimant and the Kuwaiti licence holder stating that the claimant was the owner of the business and insurance policies for the business valid as of 2 August 1990 listing the claimant as the beneficiary. However, the Panel noted that the business was not listed as an asset in the claimant’s immigration application, which was submitted to the Canadian authorities less than two months before Iraq’s invasion of Kuwait. In his application, the claimant was required to declare his personal and business affairs. Although the claimant disclosed two other businesses and submitted documentary evidence of their value, he did not mention the stationary and office supplies business.

25. As the total claimed amount exceeded USD 10 million, the Panel instructed the secretariat to transmit a copy of the claim file to Iraq for comments. Iraq commented on the lack of disclosure of the business in the Canadian immigration application.

26. The Panel directed the secretariat to independently verify the authenticity of the insurance policies provided by the claimant to show the value of the assets of the business as at the date of Iraq’s invasion and occupation of Kuwait. The secretariat contacted the insurance company in Kuwait and forwarded the insurance policies for comment. The insurance company replied stating that it had no record of any policies issued either in the name of the claimant’s alleged business or for the benefit of the claimant and that the policy numbers listed on the documents did not conform with the numbering system utilized by the insurance company. The insurance company also stated that its insurance policies were issued only on white paper and that the policies submitted by the claimant were on blue paper.

27. As a result of these discrepancies relating to the insurance policies and the claimant’s immigration application, the Panel finds that the claimant has not established any losses relating to the

stationary and office supplies business. The Panel therefore recommends no award of compensation in respect of these losses.

#### V. D8/D9 INDIVIDUAL BUSINESS LOSSES: RELATED OR COMPETING CLAIMS FOR THE OWNERSHIP OF A BUSINESS

28. The Panel is aware of the fact that the Governing Council has under its review the issue of duplication of awards resulting from, inter alia, related or competing claims for the ownership of a business. Part two of the eighteenth instalment contains a substantial number of competing claims for the losses of the same unincorporated business in Kuwait, some of which involve previously awarded claims. In most cases, these claims compete with previously awarded category “C” claims. In a few cases, the claims compete with previously awarded category “D” and “E” claims.

29. In category “D”, competing claims are identified after conducting extensive database cross-checks on claimant names, partner names, business names, civil identification numbers, business licence numbers, chamber of commerce identification numbers and other identifying data. Some of these identifiers are included in the initial claim form submitted by the claimant; the remaining data are taken from the evidence provided by a claimant either in the original claim or in response to claim development.

30. Although the category “D” Panels have identified several hundred competing claims where two or more claimants have filed claims in category “D” for the same unincorporated business, most of these claims are identified before either of the competing claims is resolved and the Panel is able to review the claims simultaneously, based on the evidence provided by all claimants. In a few cases, the matches were not identified until after one of the category “D” claims was reviewed by the Panel and included in a report. This generally occurs when the information provided on the D8 page of a claim form is incomplete or inaccurate. The D8 page contains business names and numeric identifiers. The information provided on the claim form was entered into the database by a data-entry company before any claims were reviewed by the Panel. During claims review, the information contained in the database is expanded by the secretariat to include identifiers noted in the evidence submitted by the claimants (this evidence is either attached to the original claim form or provided in response to claim development). The information in the database is also corrected in the event of misspellings or other errors. If the initial claim form of either of the competing claims had material omissions or errors, the relationship between the competing claims could not be identified until the database information was perfected through the individual review of the claims. As the category “D” Panels reviewed approximately 6,000 claims for business losses in instalments over a five-year period, payments to successful claimants would have been unduly delayed if all claims had to be reviewed before any claimant could be paid. The Panel notes that all of the timely-filed category “D” claims have now been reviewed and that the claims discussed in this report in paragraphs 52 to 76 are the only claims involving duplication between a category “D” claim under review and a previously awarded category “D” claim.

31. The majority of the competing claims in the instalment involve previously awarded category “C” claims. The category “C” Panel completed its review of claims for business losses before the

category “D” Panels began their review of category “D” claims for business losses. As extensive cross-checks on business identifiers were not part of the expedited review procedures used in category “C”, these claims were not identified as competing until the category “D” claims were reviewed. Once identified by the category “D” Panels, the category “C” claimants were asked to comment on the assertions and evidence provided by the category “D” claimants in respect of their ownership of the business.

32. After extensive claim development, including technical missions by the secretariat to interview claimants at the request of the Panel, the Panel was able to resolve the approximately 100 competing claims in the instalment. A discussion of the competing claims resolved by the Panel in this report that raise the issue of duplication is provided below.

A. UNCC claim No. 3001941

33. In the first set of competing claims, a Kuwaiti claimant and a non-Kuwaiti claimant filed separate claims in categories “C” and “D” respectively for the losses of the same jewellery business in Kuwait. Each claimant asserts sole ownership of the business as at 2 August 1990.

34. The category “C” Panel reviewed the category “C” claim in the seventh instalment of category “C” claims and recommended an award of USD 79,560.86 for the losses of the business.<sup>13</sup> This recommendation was subsequently approved by the Governing Council and the award was paid to the Kuwaiti claimant. The claim of the non-Kuwaiti is now before the Panel.

35. The non-Kuwaiti claimant asserts that the Kuwaiti claimant had no ownership interest in the business and was merely the business licence holder with whom he had entered into a “rent-a-permit” agreement. He provided an undated attestation to this effect, allegedly written by the Kuwaiti claimant’s father, as well as some 1990 rent receipts and a lease agreement in his name.

36. According to the Kuwaiti claimant, she owned the business and the non-Kuwaiti claimant was her employee. However, the Panel notes that the pre-invasion business invoices provided by the Kuwaiti claimant, together with a Ministry of Commerce and Industry certificate to receive and deliver gold, are in the non-Kuwaiti claimant’s name. The Kuwaiti claimant denied having provided any attestation to the non-Kuwaiti claimant.

37. During the course of a technical mission to Kuwait undertaken at the instruction of the Panel, the secretariat interviewed the Kuwaiti claimant in the presence of her brother and father. She did not appear to have detailed knowledge of the business nor of jewellery making. When interviewed, the Kuwaiti claimant’s father admitted that the signature and stamp on the attestation were his but stated that he had no recollection of having signed the document. He contended that the non-Kuwaiti claimant had asked him to sign a blank piece of paper.

38. On the basis of the totality of the evidence, the Panel finds that the non-Kuwaiti claimant has demonstrated his ownership interest in the business at the date of Iraq’s invasion and occupation of

Kuwait. The Panel therefore recommends that the non-Kuwaiti claimant be compensated for the demonstrated losses of the business.

B. UNCC claim No. 3000550

39. In the second set of competing claims, a Kuwaiti claimant and a non-Kuwaiti claimant filed separate claims in categories “C” and “D” respectively for the losses of the same clothing business in Kuwait. Each claimant asserts that he was the sole owner of the business as at 2 August 1990.

40. The category “C” Panel reviewed the category “C” claim in the seventh instalment of category “C” claims and recommended an award of that USD 56,738.89 for the losses of the business.<sup>14</sup> This recommendation was subsequently approved by the Governing Council and the award was paid to the Kuwaiti claimant. The claim of the non-Kuwaiti is now before the Panel.

41. The non-Kuwaiti claimant asserts that he was the sole owner of the business and that he used the business licence of the Kuwaiti claimant. He provided extensive documentation relating to the existence and ownership of this business, including a 1986 acknowledgement from the Kuwaiti claimant as to the ownership of the business by the non-Kuwaiti claimant.

42. The Kuwaiti claimant provided a business licence, registration certificate, lease agreement, rental receipts and witness statements attesting to his ownership of the business.

43. At the instruction of the Panel, the secretariat interviewed both the Kuwaiti claimant and the non-Kuwaiti claimant during technical missions. Each claimant was asked to comment on the assertions and evidence submitted by the other competing claimant. The non-Kuwaiti claimant reiterated that he was the owner of the business. He acknowledged that the business-related documents provided by the Kuwaiti claimant, such as the business licence and registration, were valid business documents but emphasized that the Kuwaiti claimant did not own the business and had applied for the licence and registration for the purpose of renting out the business licence. The Kuwaiti claimant denied the authenticity of the documents provided by the non-Kuwaiti claimant. He recognized his signature on the acknowledgment, but denied that he was aware of the text of the document.

44. On the basis of the totality of the evidence, the Panel finds that the non-Kuwaiti claimant has proved his ownership of the clothing business. The Panel therefore recommends that he be compensated for the demonstrated losses of the business.

C. UNCC claim No. 3000626

45. In the third set of competing claims, a Kuwaiti claimant and a non-Kuwaiti claimant filed separate claims with the Commission in categories “C” and “D” respectively for the losses of a clothing business in Kuwait. Each claimant asserts that she was the sole owner of the business as at 2 August 1990.

46. The category "C" Panel reviewed the category "C" claim in the seventh instalment of category "C" claims and recommended an award of USD 76,897.80 for the losses of the business.<sup>15</sup> This recommendation was subsequently approved by the Governing Council and the award was paid to the Kuwaiti claimant. The claim of the non-Kuwaiti claimant is now before the Panel.

47. The non-Kuwaiti claimant asserts that she was the 100 per cent owner of the business and that she used the business licence of the Kuwaiti claimant to operate the business. The non-Kuwaiti claimant provided documentation in her name supporting her ownership of this business, including debit insurance notices, lease agreements, rental receipts, purchase invoices, bank statements and witness statements attesting to her ownership of the business.

48. The Kuwaiti claimant asserted that she was the 100 per cent owner of the business and that she subleased the business premises from the non-Kuwaiti claimant. The Kuwaiti claimant provided a business licence, registration certificate, sublease agreement, rental receipt, purchase invoices and witness statements attesting to her ownership of the business.

49. At the instruction of the Panel, the secretariat interviewed both the Kuwaiti claimant and the non-Kuwaiti claimant. Each claimant was asked to comment on the assertions and evidence submitted by the other competing claimant. The non-Kuwaiti claimant explained that she rented a business premises to start a clothing store but needed a business licence. The Kuwaiti claimant allegedly agreed to apply for a licence for the use of the non-Kuwaiti claimant. For the purpose of preparing the application for the business licence, the non-Kuwaiti claimant and the Kuwaiti claimant entered into a sublease agreement for the business premises so that a lease document could be attached to the licence application. The non-Kuwaiti claimant reviewed the purchase invoices provided by the Kuwaiti claimant and stated that they were forged.

50. According to the Kuwaiti claimant, the non-Kuwaiti claimant entered into a lease agreement for the business premises, but shortly thereafter subleased the premises to her due to financial problems. When asked to explain the evidence submitted that showed that the non-Kuwaiti claimant paid insurance premiums for the business until the date of Iraq's invasion and occupation of Kuwait, the Kuwaiti claimant stated that the non-Kuwaiti claimant continued to pay the insurance premiums on the business despite the fact that the business was no longer hers.

51. On the basis of the totality of the evidence, the Panel finds that the non-Kuwaiti claimant has proved her ownership interest in the clothing business. The Panel therefore recommends that she be compensated for the demonstrated losses of the business.

#### D. UNCC claim No. 3003937

52. In the fourth set of competing claims, two category "D" claimants, one Kuwaiti and one non-Kuwaiti, filed separate claims with the Commission for the losses arising from an electrical appliance business in Kuwait. Each claimant asserts that he was the sole owner of the business as at 2 August 1990.

53. The Panel reviewed the claim filed by the Kuwaiti claimant in part one of the fourteenth instalment of category “D” claims and recommended that USD 84,700.35 be awarded to the claimant in respect of the losses sustained by the business.<sup>16</sup> This recommendation was subsequently approved by the Governing Council and the award was paid to the Kuwaiti claimant. The Panel identified the competing claim upon its review of the non-Kuwaiti claim, which is now before the Panel.

54. The non-Kuwaiti claimant asserts that he was the 100 per cent owner of the business and that he rented his business licence from the Kuwaiti claimant. The non-Kuwaiti claimant provided extensive documentation in his name supporting his ownership of this business, including a power of attorney from the Kuwaiti claimant, an acknowledgement of the “rent-a-permit” agreement signed by the Kuwaiti claimant, insurance policies for the business in his name and statements from former suppliers attesting to his ownership of the business.

55. In response to questions from the secretariat after the identification of the competing claim, the Kuwaiti claimant stated for the first time that an equal partnership had existed with the non-Kuwaiti claimant but that the partnership had been dissolved in July 1990. He provided a partnership agreement and a liquidation report in support of his assertions. He also alleged for the first time that the business stock was stolen by the non-Kuwaiti claimant. In his original filing, the Kuwaiti claimant stated that Iraqi soldiers looted his business.

56. At the instruction of the Panel, the secretariat interviewed both claimants during the course of technical missions. Each claimant was asked to comment on the assertions and evidence submitted by the other competing claimant. The non-Kuwaiti claimant affirmed that he was the sole owner of the business and that there was never a partnership and subsequent dissolution as alleged by the Kuwaiti claimant. He stated that his signature on the partnership agreement was forged and that the documents provided to show the alleged liquidation did not bear his signature.

57. As the Kuwaiti claimant was unable to provide satisfactory explanations for why the audited financial statements submitted in his original claim file did not reflect the alleged partnership arrangement or the alleged dissolution of the partnership and as the dissolution documents were not signed by both parties, the Panel finds that it is unable to rely on these documents. The Panel notes that the claimant’s written statements regarding the loss of the stock of the business and his statements regarding his ownership percentage were inconsistent.

58. On the basis of the totality of the evidence, the Panel finds that the non-Kuwaiti claimant has proved his ownership interest in the electrical appliance business. The Panel therefore recommends that he be compensated for the demonstrated losses of the business.

#### E. UNCC claim No. 3004851

59. In the fifth set of competing claims, a Kuwaiti claimant and a non-Kuwaiti claimant filed separate claims with the Commission seeking compensation for the losses arising from a foodstuff and household goods business in Kuwait. The non-Kuwaiti claimant filed a claim on behalf of himself and his three partners in category “D”, while the Kuwaiti claimant filed claims in both categories “C” and

“D”. The non-Kuwaiti claimant asserts that he and his three non-Kuwaiti partners were the owners of the business as at 2 August 1990 whereas the Kuwaiti claimant asserts that she was the sole owner of the business as at that date.

60. The category “C” Panel reviewed the Kuwaiti claimant’s category “C” claim for damages up to USD 100,000 in the seventh instalment of category “C” claims and recommended an award of USD 75,377.47 for the losses of the business.<sup>17</sup> The Panel reviewed the Kuwaiti claimant’s losses over USD 100,000 in the twelfth instalment of category “D” claims and recommended that USD 251,595.16 be awarded to the Kuwaiti claimant in respect of these losses.<sup>18</sup> These recommendations were subsequently approved by the Governing Council and the awards were paid to the Kuwaiti claimant. The claim of the non-Kuwaiti claimant is now before the Panel.

61. The Panel notes that the documentary evidence submitted by the non-Kuwaiti claimant included a lease agreement, insurance policy and financial statements, showing that he (and his three partners) were the actual owners of the business and that the Kuwaiti claimant was only the business licence holder under a “rent-a permit” arrangement between the parties. The non-Kuwaiti claimant also submitted documentation from his partners authorizing him to file on their behalf for the losses of the business.

62. The documentary evidence submitted by the Kuwaiti claimant included financial statements that had apparently been prepared by the same accountants as the financial statements submitted by the non-Kuwaiti claimant, but that indicated that the Kuwaiti claimant was the owner of the business.

63. At the instruction of the Panel, the secretariat interviewed both claimants in the course of technical missions. Each claimant was asked to comment on the assertions and evidence submitted by the other competing claimant. The non-Kuwaiti claimant reiterated that he and his partners rented a business licence from the Kuwaiti claimant and that they were the actual owners of the business. The Kuwaiti claimant asserted that she did not rent her business licence to the non-Kuwaiti claimant. The Panel finds that the Kuwaiti claimant was unable to explain the numerous pieces of documentary evidence submitted by the non-Kuwaiti claimant to establish his (and his partners’) ownership of the business. In particular, the Kuwaiti claimant was unable to account for the existence of the financial statements submitted by the non-Kuwaiti claimant that were almost identical to the financial statements she submitted but that stated that the non-Kuwaiti claimant and his partners were the owners of the business under a “rent-a-permit” arrangement.

64. During the technical mission to Kuwait, the accountants who had prepared the financial statements of the business were shown copies of the financial statements submitted by each claimant and were asked to comment on such documents. After a review of their archives, the accountants stated that the financial statements submitted by the Kuwaiti claimant had been altered and that the non-Kuwaiti claimant had submitted authentic financial statements.

65. On the basis of the totality of the evidence, the Panel finds that the non-Kuwaiti claimant has proved his ownership interest (jointly with his business partners) in the foodstuff and household goods

business. The Panel therefore recommends that the non-Kuwaiti claimant be compensated for the demonstrated losses sustained by the business.<sup>19</sup>

#### F. UNCC claim No. 3004863

66. In the sixth set of competing claims, two non-Kuwaiti category “D” claimants sought compensation for the losses suffered by the same video business that operated in Kuwait prior to Iraq’s invasion and occupation of Kuwait. Each claimant asserts that he was the sole owner of the business as at 2 August 1990.

67. The Panel reviewed the first claim in part one of the twelfth instalment and recommended that USD 273,335.64 be awarded to the claimant in respect of the losses sustained by the business.<sup>20</sup> This recommendation was subsequently approved by the Governing Council and the award was paid to the claimant. The second claim is now before the Panel.

68. The second claimant contends that he owned the assets of the business as of the date of Iraq’s invasion and occupation of Kuwait. He alleges that he subleased the business premises, including all assets and the use of the business licence, to the first claimant for a monthly fee. In support of his ownership interest, he submitted the original “rent-a-permit” agreement with the Kuwaiti licence holder of the business and the original sublease agreement signed by the first claimant. According to the sublease agreement, the first claimant ran the business and was entitled to the profits of the business but did not own the tangible assets of the business. The second claimant asserts that these documents demonstrate that the first claimant is entitled to claim for loss of profits only. The second claimant also provided original inventory lists detailing the tangible property subleased to the first claimant, including the first claimant’s signed attestations that he took custody of these items.

69. When asked to comment, the first claimant asserted that in 1988 he bought out his partner, the second claimant, and became the 100 per cent owner of the business. The first claimant was unable to provide any clear documentary evidence to corroborate this assertion.

70. On the basis of the totality of the evidence submitted, the Panel finds that the second claimant has proved ownership of the tangible assets of the video business while the first claimant has demonstrated entitlement to the profits of the business only. The Panel therefore recommends that second claimant be compensated for the demonstrated tangible property losses sustained by the business.

#### G. UNCC claim No. 3004710

71. In the seventh set of competing claims, two category “D” claimants, one Kuwaiti and one non-Kuwaiti, filed separate claims for the losses of a computer studies business that operated in Kuwait prior to Iraq’s invasion and occupation of Kuwait. Each claimant asserts that he was the sole owner of the business as at 2 August 1990 and has claimed for the tangible property of the business.

72. The Panel reviewed the Kuwaiti claim in the tenth instalment and recommended that USD 120,619.38 be awarded to the claimant in respect of the losses sustained by the business.<sup>21</sup> This

recommendation was subsequently approved by the Governing Council and the award was paid to the claimant. The Panel identified the competing claim upon its review of the non-Kuwaiti claim, which is now before the Panel.

73. The Kuwaiti claimant stated that he had employed the non-Kuwaiti claimant as his business manager for a three-year period, which he remembered as being between 1980 and 1985, but then fired the non-Kuwaiti claimant because he stole money from the business. In support of his claim, the Kuwaiti claimant has submitted, *inter alia*, the relevant business licence and approvals, a rent receipt, an insurance policy, a maintenance contract and business invoices.

74. The non-Kuwaiti claimant stated that he owned three computer-related businesses before Iraq's invasion and occupation of Kuwait. He provided evidence of his ownership of the two uncontested businesses. In regard to the contested business, the non-Kuwaiti claimant asserts that since 1987 he rented the business licence for the contested business from the Kuwaiti claimant for an annual fee. He stated that the Kuwaiti claimant had no ownership interest or other role in the business. In support of his ownership of the business, the non-Kuwaiti claimant provided a 1987 lease contract for the business in his name, invoices showing purchases of business assets and payment of business expenses over the period 1987 to 1990, and third-party documents that refer to the non-Kuwaiti claimant as the manager and owner of the business at issue, including witness statements from prior customers and employees. The non-Kuwaiti claimant has also submitted an undated attestation, allegedly signed by the Kuwaiti claimant, declaring that the business was the "sole property" of the non-Kuwaiti claimant. The Kuwaiti claimant has denied the authenticity of this attestation.

75. The Panel observes that the Kuwaiti claimant's statement that the non-Kuwaiti claimant's relationship to the contested business ended in 1985 is contradicted by the business invoices issued in the name of the non-Kuwaiti over the period 1987 to 1990. The Panel notes that the business did not resume after the liberation of Kuwait. The non-Kuwaiti claimant explains that this was because he did not remain in Kuwait post-liberation.

76. On the basis of the totality of the evidence, the Panel finds that the non-Kuwaiti claimant has proved his ownership interest in the business. The Panel therefore recommends that he be compensated for the demonstrated losses sustained by the business.

#### H. UNCC claim No. 3004840

77. In the eighth set of competing claims, a Kuwaiti claimant and a non-Kuwaiti claimant filed separate claims seeking compensation for the losses arising from a gift shop business that operated in Kuwait. The Kuwaiti claimant is a corporate entity that filed a claim in category "E". The claim was submitted by the owners of the corporate entity (the "Kuwaiti owner"). The corporate entity's business consisted of various shops, including shops 242 and 243. The non-Kuwaiti claimant filed claims in categories "C" and "D" for 50 per cent of the losses of shops 242 and 243, which he stated were owned by him and the Kuwaiti owner as equal partners as at 2 August 1990. The non-Kuwaiti claimant did not claim an ownership interest in the corporate entity itself. The Kuwaiti owner asserted that he was the owner of the corporate entity, which included shops 242 and 243, as at 2 August 1990.

78. The “E4A” Panel reviewed the Kuwaiti claimant’s category “E” claim in the sixteenth instalment of “E4” claims and recommended that USD 253,589 be awarded to the claimant in respect of the losses sustained by the entire corporate entity.<sup>22</sup> The recommendation was subsequently approved by the Governing Council and the award was paid to the Kuwaiti claimant. The claim of the non-Kuwaiti claimant is now before the Panel.

79. The documentary evidence submitted by the non-Kuwaiti claimant included a partnership agreement dated 1 January 1980 and signed by the Kuwaiti owner that stated that the non-Kuwaiti claimant and the Kuwaiti owner were equal partners with respect to shop 243. The non-Kuwaiti claimant also submitted lease agreements and rent receipts for shop 243 and an insurance policy for the partnership that bore the names of both the non-Kuwaiti claimant and the Kuwaiti owner.

80. The documentary evidence submitted by the Kuwaiti claimant included rent receipts for shops 242 and 243 that only bore the name of the Kuwaiti owner.

81. At the instruction of the Panel, the secretariat interviewed both claimants in the course of technical missions. Each claimant was asked to comment on the assertions and evidence submitted by the other competing claimant. The non-Kuwaiti claimant reiterated that he and the Kuwaiti owner owned shops 242 and 243 as equal partners and stated that such shops were operated under the business name of the corporate entity. The Kuwaiti owner on behalf of the corporate entity asserted that shops 242 and 243 were solely owned by the corporate entity. However, the Kuwaiti owner acknowledged the authenticity of the partnership agreement submitted by the non-Kuwaiti claimant and admitted that he in his personal capacity conducted some business together with the non-Kuwaiti claimant. He also admitted that he and the non-Kuwaiti claimant had a joint bank account.

82. During a technical mission to Kuwait, the landlord of shops 242 and 243 was shown copies of the lease agreements and rent receipts submitted by the non-Kuwaiti and Kuwaiti claimants, respectively, and asked to comment on such documents. The landlord confirmed that the non-Kuwaiti claimant and the Kuwaiti owner were joint tenants of shops 242 and 243 and stated that they appeared to be business partners. The landlord further commented that a rent receipt submitted by the Kuwaiti claimant may have been forged.

83. On the basis of the totality of the evidence, the Panel finds that the non-Kuwaiti claimant has proved a 50 per cent interest in a partnership with the Kuwaiti owner with respect to shops 242 and 243. The Panel therefore recommends that the non-Kuwaiti claimant be compensated for 50 per cent of the demonstrated losses sustained by the business.

#### I. UNCC claim No. 3003764

84. In the ninth set of competing claims, two non-Kuwaiti claimants and one Kuwaiti claimant filed a total of four claims in categories “C” and “D” seeking compensation for the losses of an import and export business in Kuwait. One of the non-Kuwaiti claimants submitted two claims, one each in categories “C” and “D” (the “non-Kuwaiti claimant”). The other non-Kuwaiti claimant submitted a

category “C” claim only (the “non-Kuwaiti ‘C’ claimant”). The Kuwaiti claimant submitted a category “C” claim (the “Kuwaiti claimant”).

85. In relation to the category “C” claims of the Kuwaiti claimant and the non-Kuwaiti “C” claimant, the category “C” Panel recommended awards of USD 57,541.83 and USD 56,103.73 respectively for the losses of the business in the seventh instalment of category “C” claims.<sup>23</sup> The Governing Council subsequently approved the recommendations relating to the claims and the awards were paid to the claimants. The category “D” claim of the non-Kuwaiti claimant is now before the Panel.

86. The non-Kuwaiti claimant supported his claim by producing an agreement with the Kuwaiti claimant confirming that the non-Kuwaiti claimant rented the business licence from the Kuwaiti claimant for KWD 600 per year. The non-Kuwaiti claimant also submitted an authorization that enabled him to act on behalf of the Kuwaiti claimant in relation to the business, audited financial statements for the business and a lease for the business premise in his own name.

87. In his category “C” claim, the Kuwaiti claimant asserted sole ownership of the business and produced a copy of the licence for the business in his name. He also produced a copy of a certificate for the business from the Kuwaiti Chamber of Commerce, an authorization to sign on behalf of the business and witness statements attesting to his ownership of the business. The Kuwaiti claimant did not respond to a claim development notification regarding the competing claims nor did he appear for an interview in Kuwait, as requested by the secretariat at the instruction of the Panel.

88. At the instruction of the Panel, the non-Kuwaiti “C” claimant was interviewed by the secretariat during a technical mission. He stated that he had no ownership interest in the import and export business. He also stated that he had not intended to make a claim for business losses but rather, as he was an employee of the business, had only intended to make a claim for loss of salary.

89. On the basis of the totality of the evidence, and applying the evidentiary standard applicable to category “D” claims, the Panel finds that the non-Kuwaiti claimant is the owner of the import and export business at the date of Iraq’s invasion and occupation of Kuwait. The Panel therefore recommends that the non-Kuwaiti claimant be compensated for the demonstrated losses of the business.

#### J. UNCC claim No. 3004103

90. In the tenth set of competing claims, a Kuwaiti claimant and a non-Kuwaiti claimant filed separate claims seeking compensation for the losses of vehicles arising from a new and used car business that operated in Kuwait. The Kuwaiti claimant is a corporate entity that filed a claim in category “E”, while the non-Kuwaiti claimant filed his claim in category “D”.

91. The “E4A” Panel reviewed the Kuwaiti claimant’s category “E” claim in the fourth instalment of “E4” claims and recommended that USD 311,889 be awarded to the claimant in respect of the vehicle losses sustained by the corporate entity.<sup>24</sup> The recommendation was subsequently approved by

the Governing Council and the award was paid to the Kuwaiti claimant. The claim of the non-Kuwaiti claimant is now before the Panel.

92. The non-Kuwaiti claimant asserted that he was the owner of the assets held in the name of the corporate entity at 2 August 1990 based on a “rent-a-permit” agreement dated 15 August 1985. While the Kuwaiti claimant has acknowledged the existence of the “rent-a-permit” agreement, he has denied that the non-Kuwaiti claimant had any right to claim for losses with respect to the assets held in the name of the corporate entity at 2 August 1990, because the “rent-a-permit” agreement had expired at the end of its four-year term, i.e. 15 August 1989 and was not renewed as a result of the alleged failure of the non-Kuwaiti claimant to pay the rental fee.

93. In support of the claim, the non-Kuwaiti claimant has provided the following documents: the “rent-a-permit” agreement dated 15 August 1985 whereby the non-Kuwaiti claimant rented the corporate entity’s business licence, a letter dated 17 September 1989 whereby the corporate entity acknowledged the claimant’s signature as its legal representative, an insurance policy dated 7 March 1990 for assets of the corporate entity in which the non-Kuwaiti claimant was named as a beneficiary, and bank statements and purchase orders dated July 1990.

94. The documentary evidence provided by the Kuwaiti claimant included de-registration certificates issued by the Kuwaiti authorities for each vehicle claimed.

95. The Kuwaiti claimant did not provide proof of the alleged 15 August 1989 termination of the “rent-a-permit” agreement. Under clause eight of the “rent-a-permit” agreement, the “rent-a-permit” agreement was automatically renewed unless expressly terminated by either party. The Panel notes that the termination of the agreement appears to be contradicted by both the insurance policy for the vehicles dated 7 March 1990 that names the non-Kuwaiti claimant as the beneficiary and the letter from the corporate entity dated 17 September 1989 in which the non-Kuwaiti claimant is acknowledged as the corporate entity’s legal representative.

96. On the basis of the totality of the evidence, the Panel finds that the non-Kuwaiti claimant was the owner of the new and used car business operated under the corporate entity’s business licence at the date of Iraq’s invasion and occupation. The Panel therefore recommends that the non-Kuwaiti claimant be compensated for the loss of the business vehicles.

## VI. AUTHORITY TO ACT

97. The Governing Council determined in decision 123 that stand alone claims are not properly filed in categories “C” or “D” and directed the Commission to identify and transfer such claims to the “E4” Panels for review as Kuwaiti corporate claims. However, pursuant to the terms of decision 123, each claimant who has filed a stand alone claim must first demonstrate that he or she had the authority to act on behalf of the company in filing a claim before the claim is transferred to the “E4” Panels for review. If the claimant fails to demonstrate that he or she had such authority to act, the stand alone claim is not reviewed by the “E4” Panels. The “D” Panels have previously developed an “authority to act” test pursuant to which a claimant is deemed to have authority to file the claim on behalf of the

company where the claimant demonstrates that he or she had authority to manage the business on a day-to-day basis or had a “not insubstantial” ownership interest in the company.<sup>25</sup>

98. The “E4” Panels will review and make recommendations with respect to 68 individual stand alone claims concerning 57 Kuwaiti companies in the twenty-eighth instalment of “E4” claims. The “E4A” Panel will review and make recommendations with respect to 137 individual stand alone claims concerning 123 Kuwaiti companies in the twenty-ninth instalment of “E4” claims. In respect of these claims 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.

## VII. OTHER ISSUES

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

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

### B. Currency exchange rate

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

101. 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.<sup>26</sup> For claims stated in Kuwaiti dinars, the currency exchange rate to be applied is the rate of exchange in effect immediately prior to Iraq’s invasion and occupation of Kuwait (i.e. 1 August 1990) for converting Kuwaiti dinars into United States dollars. For claims stated in currencies other than Kuwaiti dinars or United States dollars, the currency exchange rate to be applied is the average rate in effect for the month of August 1990 for converting those currencies into United States dollars as indicated in the United Nations Monthly Bulletin of Statistics.

### C. Interest

102. 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).<sup>27</sup> 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 therefore 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.<sup>28</sup>

#### D. Claims preparation costs

103. A number of category “D” claimants have made claims for claims preparation costs incurred by them, either in amounts specified on the claim form or in general terms. The Panel has been informed by the Executive Secretary of the Commission that the Governing Council intends to resolve the issue of claims preparation costs in the future. Accordingly, the Panel makes no recommendations with respect thereto.

### VIII. RECOMMENDED AWARDS

104. Table 2 below lists the awards recommended by the Panel for each submitting entity with claimants included in part two 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 42,318,440.38 is claimed by 32 claimants in respect of business losses that the claimants assert were suffered by Kuwaiti companies. The Executive Secretary has severed and transferred these corporate losses to the “E4” Panels in accordance with Governing Council decision 123. Further, USD 26,383.06 is claimed by one claimant in respect of business losses that the claimant asserts were suffered by a non-Kuwaiti company. The Executive Secretary has severed and transferred the corporate losses to category “E” as the appropriate category to consider this claim. The amounts of USD 3,763,671.64 and USD 245,206.99 are claimed for interest and for claims preparation costs, respectively. Accordingly, the total amount claimed net of the corporate losses, interest and claims preparation costs in respect of the claims in part two of the eighteenth instalment is USD 441,171,478.92. As shown in table 2 below, the Panel recommends a total of USD 127,220,880.00 against this net total amount claimed.

Table 2. Recommended awards by submitting entity

| <u>Submitting entity</u> | <u>Number of claims not recommended for payment</u> | <u>Number of claims recommended for payment</u> | <u>Amount of compensation claimed (USD)</u> | <u>Net amount of compensation claimed (USD)<sup>a</sup></u> | <u>Amount of compensation recommended (USD)</u> |
|--------------------------|-----------------------------------------------------|-------------------------------------------------|---------------------------------------------|-------------------------------------------------------------|-------------------------------------------------|
| Algeria                  | 1                                                   | 0                                               | 517,301.02                                  | 517,301.02                                                  | 0                                               |
| Argentina                | 0                                                   | 1                                               | 555,873.00                                  | 555,873.00                                                  | 148,555.62                                      |
| Bahrain                  | 2                                                   | 0                                               | 5,997,440.00                                | 5,997,440.00                                                | 0                                               |
| Canada                   | 2                                                   | 7                                               | 17,405,356.23                               | 4,375,940.66                                                | 805,685.77                                      |
| Cyprus                   | 1                                                   | 0                                               | 5,222,000.00                                | 5,222,000.00                                                | 0                                               |
| Denmark                  | 0                                                   | 1                                               | 724,242.21                                  | 87,044.98                                                   | 13,829.47                                       |
| Egypt                    | 1                                                   | 8                                               | 42,137,666.62                               | 42,137,666.62                                               | 2,381,964.58                                    |
| France                   | 1                                                   | 1                                               | 1,203,223.96                                | 1,176,840.90                                                | 56,085.46                                       |
| Germany                  | 0                                                   | 1                                               | 682,803.71                                  | 682,803.71                                                  | 10,600.00                                       |
| Greece                   | 1                                                   | 1                                               | 971,583.47                                  | 971,583.47                                                  | 47,299.88                                       |
| India                    | 3                                                   | 7                                               | 12,525,280.06                               | 12,523,464.06                                               | 3,239,303.85                                    |
| Japan                    | 0                                                   | 1                                               | 326,025.95                                  | 326,025.95                                                  | 66,232.84                                       |
| Jordan                   | 21                                                  | 104                                             | 167,917,777.85                              | 144,039,926.93                                              | 21,914,073.85                                   |
| Kuwait                   | 33                                                  | 125                                             | 174,266,497.43                              | 170,489,243.64                                              | 83,921,501.49                                   |
| Lebanon                  | 1                                                   | 2                                               | 1,393,359.28                                | 1,393,359.28                                                | 545,671.48                                      |
| Pakistan                 | 1                                                   | 8                                               | 3,638,434.27                                | 3,638,434.27                                                | 358,711.40                                      |
| Saudi Arabia             | 2                                                   | 2                                               | 1,229,175.44                                | 1,229,175.44                                                | 81,376.28                                       |
| Somalia                  | 0                                                   | 1                                               | 184,221.45                                  | 184,221.45                                                  | 123,796.82                                      |
| Sudan                    | 0                                                   | 2                                               | 3,832,114.57                                | 3,832,114.57                                                | 108,096.23                                      |
| Syrian Arab Republic     | 0                                                   | 3                                               | 1,845,629.34                                | 1,658,778.13                                                | 1,049,310.69                                    |

<sup>a</sup> This amount claimed is net of the amounts of USD 3,763,671.64 for interest and USD 245,206.99 for claims preparation costs. It is also net of USD 42,344,823.44 for business losses allegedly suffered either by Kuwaiti companies which have been transferred to the "E4" Panels for review pursuant to Governing Council decision 123, or by non-Kuwaiti companies (which have been transferred to category "E" as the appropriate category to consider these losses).

| <u>Submitting entity</u>  | <u>Number of claims not recommended for payment</u> | <u>Number of claims recommended for payment</u> | <u>Amount of compensation claimed (USD)</u> | <u>Net amount of compensation claimed (USD)<sup>a</sup></u> | <u>Amount of compensation recommended (USD)</u> |
|---------------------------|-----------------------------------------------------|-------------------------------------------------|---------------------------------------------|-------------------------------------------------------------|-------------------------------------------------|
| Tunisia                   | 0                                                   | 1                                               | 6,404,375.00                                | 6,404,375.00                                                | 227,975.30                                      |
| United Kingdom            | 3                                                   | 8                                               | 5,852,972.51                                | 5,180,231.51                                                | 1,255,163.53                                    |
| United States             | 2                                                   | 8                                               | 9,480,118.41                                | 9,177,311.07                                                | 2,747,393.77                                    |
| Yemen                     | 1                                                   | 8                                               | 12,315,558.93                               | 12,311,683.50                                               | 5,083,057.03                                    |
| UNDP Kuwait               | 0                                                   | 1                                               | 207,311.42                                  | 207,311.42                                                  | 86,837.11                                       |
| UNDP United Arab Emirates | 0                                                   | 1                                               | 4,440,170.00                                | 4,440,170.00                                                | 2,790,246.86                                    |
| UNDP Washington           | 1                                                   | 2                                               | 425,167.82                                  | 350,167.82                                                  | 48,695.77                                       |
| UNHCR Canada              | 0                                                   | 1                                               | 5,703,085.82                                | 1,940,575.30                                                | 99,138.10                                       |
| UNRWA Gaza                | 0                                                   | 1                                               | 120,415.22                                  | 120,415.22                                                  | 10,276.82                                       |
| <u>Total</u>              | 77                                                  | 306                                             | 487,525,180.99                              | 441,171,478.92                                              | 127,220,880.00                                  |

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

Geneva, 30 January 2004

(Signed) K. Hossain  
Chairman

(Signed) I. Suzuki  
Commissioner

(Signed) N. Comair-Obeid  
Commissioner

Notes

<sup>1</sup> The claims to be included in the eighteenth instalment, part three, are: UNCC claim Nos. 3002455, 3002464, 3002467, 3002470, 3002491, 3002505, 3002516 (common issue with 3002464 and 3002467), 3000942, 3001798, 3004358, 3004410, 3010718, 3004587, 3004786, 3004842, 3004881, 3005016, 3003884, 3005736, 3007938, 3009142, 3009261, 3009331, 3009524, 3005341, 3005349, 3009662, 3009693, 3009825, 3010489, 3000655, 4001106, 4001107, 4005776 (related to 4002385), 3010623, 3002394, 3002441, 4002385, 3003106, 4005973 and 4000383.

<sup>2</sup> “Report and recommendations made by the ‘D2’ Panel of Commissioners concerning part one of the eighteenth instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)” (S/AC.26/2003/18)(the “eighteenth instalment report, part one”), paragraph 2.

<sup>3</sup> The eighteenth instalment report, part one, was signed on 28 July 2003 while the “Report and recommendations made by the “D2” Panel of Commissioners concerning part two of the sixteenth instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)” (S/AC.26/2003/R.xx) (the “sixteenth instalment report, part two”) was signed on 16 October 2003.

<sup>4</sup> In respect of the stand alone claims and the Panel’s findings as to the individual claimant’s authority to act on behalf of the Kuwaiti company, see paragraphs 97 to 98 of this report.

<sup>5</sup> One hundred and thirty-eight procedural order claims were included in the sixteenth instalment report, part two, which was signed on 16 October 2003, and twelve procedural order claims were included in the “Report and recommendations made by the ‘D1’ Panel of Commissioners concerning part two of the nineteenth instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)” (S/AC.26/2003/R.xx), which was signed on 17 December 2003.

<sup>6</sup> “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”). See in particular sections II and III.

<sup>7</sup> 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.

<sup>8</sup> See also articles 35(1) and 35(3) of the Rules.

<sup>9</sup> See paragraphs 343 to 346 of “Report and recommendations made by the Panel of Commissioners concerning the seventh instalment of individual claims for damages up to US\$100,000 (category ‘C’ claims)” (S/AC.26/1999/11) (the “seventh ‘C’ report”).

<sup>10</sup> Where the claim was partly for the losses of a corporation and partly for personal losses, the portion that related to the losses of a corporate entity were severed and transferred to the appropriate category “E” Panel for processing.

<sup>11</sup> The Panel previously made recommendations in respect of one of the 23 claims in its “Report and recommendations made by the ‘D2’ Panel of Commissioners concerning part one of the sixteenth instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)” (S/AC.26/2003/9), and in respect of seven of these claims in the sixteenth instalment report, part two.

The recommendations for each of these claims was based on the verification and valuation procedures used by the category “C” Panel.

<sup>12</sup> UNCC claim Nos. 4000281 and 4000287.

<sup>13</sup> See the seventh “C” report.

<sup>14</sup> See the seventh “C” report.

<sup>15</sup> See the seventh “C” report.

<sup>16</sup> See the “Report and recommendations made by the ‘D2’ Panel of Commissioners concerning part one of the fourteenth instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)” (S/AC.26/2002/21).

<sup>17</sup> See the seventh “C” report.

<sup>18</sup> See “Report and recommendations made by the Panel of Commissioners concerning part one of the twelfth instalment of individual claims for damages above US\$100,000 (category ‘D’ claims)” (S/AC.26/2002/10) (the “twelfth instalment report, part one”).

<sup>19</sup> In arriving at its recommendation, the Panel deducted the amount of 49,178.613 Kuwaiti dinars (KWD) (USD 170,168.21) from the non-Kuwaiti’s claimed amount for stock, as the Kuwaiti claimant submitted evidence that after liberation she made payment in such amount in connection with a debt owed by the business. The deduction was made to reflect the risk that the debt was for unpaid stock that was included in the non-Kuwaiti claimant’s stock claim.

<sup>20</sup> See the twelfth instalment report, part one.

<sup>21</sup> See “Report and recommendations made by the Panel of Commissioners concerning the tenth instalment of individual claims for damages above US\$100,000 (category ‘D’ claims)” (S/AC.26/2002/1).

<sup>22</sup> See “Report and recommendations made by the Panel of Commissioners concerning the sixteenth instalment of ‘E4’ claims,” (S/AC.26/2001/23).

<sup>23</sup> See the seventh “C” report.

<sup>24</sup> See the “Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of ‘E4’ claims” (S/AC.26/1999/18).

<sup>25</sup> See the “Report and recommendations made by the ‘D2’ Panel of Commissioners concerning part two of the fourteenth instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)” (S/AC.26/2003/7), paragraphs 65 to 67, and the “Report and recommendations made by the ‘D1’ Panel of Commissioners concerning part two of the fifteenth instalment of individual claims for damages above USD 100,000 (category ‘D’ claims)” (S/AC.26/2003/8), paragraphs 88 to 91.

<sup>26</sup> 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 to 63.

<sup>27</sup> *Ibid.*, paragraphs 64 to 65. The “D2” Panel adopted this decision in the sixth instalment report at paragraph 226.

<sup>28</sup> This is consistent with the practice of other panels. See, for example, “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘E4’ claims,” (S/AC.26/1999/4), paragraph 230.

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