



**Security Council**

Distr.  
GENERAL

S/AC.26/2005/9 \*  
8 July 2005

Original: English

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UNITED NATIONS  
COMPENSATION COMMISSION  
GOVERNING COUNCIL

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

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\* Reissued for technical reasons.

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### Introduction

1. This is the fourteenth report of the “D2” Panel of Commissioners submitted to the Governing Council of the United Nations Compensation Commission (the “Commission” or the “UNCC”) pursuant to article 38(e) of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the “Rules”). The “D2” Panel of Commissioners is 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 findings and recommendations of the “D2” Panel of Commissioners in respect of its review of those category “D” claims previously determined to be eligible for inclusion in the Palestinian “late claims” programme.
2. At its forty-second session held on 11-13 December 2001, the Governing Council established a “late claims” programme for Palestinians who could demonstrate that they did not have a full and effective opportunity to file claims with the Commission during the Commission’s period for filing individual claims, from 1 January 1992 to 1 January 1996 (the “regular filing period”). A Panel of Commissioners (the “Palestinian Panel”) was constituted from among the category “D” Commissioners to conduct the threshold eligibility assessment directed by the Governing Council in respect of each Palestinian “late claim” to determine whether claimants demonstrated that they did not have a full and effective opportunity to file claims during the regular filing period.
3. The Palestinian Authority filed a total of 2,374 category “D” claims under the programme. The Palestinian Panel reviewed the category “D” claims to determine whether the claimants demonstrated that they did not have a full and effective opportunity to file claims during the regular filing period. The Palestinian Panel determined that 404 of the claims were eligible for inclusion in the programme.<sup>1</sup> The total claimed amount with respect to these 404 claims is USD 866,199,856.81.
4. In accordance with the Governing Council’s instructions, these eligible claims were reviewed by the “D2” Panel of Commissioners (the “Panel”). During the course of the Panel’s review, two claims with a total claimed amount of USD 162,456.74 were withdrawn, leaving a remaining total claimed amount of USD 866,037,400.07.<sup>2</sup>
5. Also included in this report are one “overlapping claim” and 19 category “C” Palestinian “late claims” that the merged “E4” Panel of Commissioners and the Palestinian Panel were unable to process prior to the conclusion of their respective work programmes. These 20 claims were transferred to the Panel for review. The “overlapping claim” is addressed in paragraph 164 and the 19 category “C” Palestinian “late claims” at paragraphs 165-170 below.

### I. THE PROCEEDINGS

6. On 8 October 2004, the Panel issued Procedural Order No. 64 in which it gave notice of its intention to complete its review of the claims in this instalment and to prepare its report and recommendations to the Governing Council within 12 months. The Panel reviewed the claims at meetings and teleconferences held on 6-8 October 2004, 18-19 November 2004, 13-15 December

2004, 1-4 February 2005, 15 March 2005, 20-24 March 2005, 18-22 April 2005, 6 May 2005, 12 May 2005 and 23 May 2005.

7. In reviewing the claims, the Panel has taken into account comments received from the Government of the Republic of Iraq (“Iraq”). In accordance with the criteria established by the Panel, 16 claim files were transmitted to Iraq for its comments. These included six of the seven claims in this instalment designated by the Panel as “unusually large or complex” within the meaning of article 38(d) of the Rules, as the claimed amount for each exceeds USD 10 million. The seventh claim file was not transmitted to Iraq as the claimant objected to such transmission. They also included nine claims where the situs of all or some of the losses was Iraq and one claim where the losses related to an invoice issued by an Iraqi party. Iraq provided written comments on 14 of the 16 claims.

8. The statistics relating to the claims in this instalment were reported in article 16 report nos. 41, 43, 45, 46 and 47.

## II. LEGAL FRAMEWORK

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

9. The general legal framework and applicable evidentiary standard for the resolution of category “D” claims is set out in chapter III of the Panel’s Sixth Instalment Report.<sup>3</sup> In reviewing the claims in this instalment, the Panel has also taken note of the observations of the Palestinian Panel contained in its four reports on the Palestinian “late claims” programme.<sup>4</sup>

10. As with earlier instalments of category “D” claims, the Panel has reviewed the claims in this 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

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

12. Taking into account the evidentiary and causation requirements that must be met by claimants in category “D”, and considering the legal principles that must be respected in the verification and 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, having regard to the particular features of this claims population.

### III. FEATURES OF THE CATEGORY “D” PALESTINIAN “LATE CLAIMS”

13. Soon after the Panel commenced its review of the eligible category “D” Palestinian “late claims”, it became apparent that this claims population exhibits certain features that were not present in the claims in the regular category “D” claims programme or, if present, were not present to the same degree. The Panel finds that these features give rise to a heightened risk of overstatement of the claims. The features are as follows:

(a) The average number of loss types per claim is higher in this instalment than for claims in the regular category “D” claims programme as a whole. The average number of loss types is 3.14 for the claims in this instalment, compared with 2.01 for all claims in the regular category “D” claims programme, 1.93 for Jordanian claims and 1.71 for Kuwaiti claims. The pattern is especially evident for D1 (mental pain and anguish)(“MPA”), D1 (departure), D2 (personal injury) and D8/D9 (individual business) losses;

(b) The average and median amounts claimed in this instalment are higher than for all claims in the regular category “D” claims programme. The average amount claimed for the claims in this instalment is about USD 2 million, compared to about USD 820,000 for all claims, about USD 934,000 for Jordanian claims and about USD 861,000 for Kuwaiti claims in the regular category “D” claims programme. The median amount claimed is about USD 470,000 for claims in this instalment, compared with about USD 263,000 for all claims, about USD 335,000 for Jordanian claims and about USD 276,000 for Kuwaiti claims in the regular category “D” claims programme;

(c) Approximately 75 per cent of the claims in this instalment contain D8/D9 business losses in relation to unincorporated establishments in Kuwait. This compares with an incidence of 48 per cent in the regular category “D” claims programme as a whole; 69 per cent in the regular category “D” claims filed by Jordan and 44 per cent in the regular category “D” claims filed by Kuwait. D8/D9 business loss claims typically constitute the most complex category “D” loss type to verify and value;

(d) Many of the claimants stayed in or returned to Kuwait following its liberation and therefore had an opportunity to access primary business records where they still existed;

(e) A number of the claimants provided audited financial statements in support of the asserted business losses, often in response to notifications issued pursuant to article 34 of the Rules, although it was not a legal requirement in Kuwait that unincorporated businesses maintain such statements. In some instances, these audited financial statements are provided as the sole documentary evidence in support of the business losses, in lieu of primary and contemporaneous business records;

(f) Many of the claims contain “irregularities” in the documents supporting the asserted losses;

(g) Many of the claimants engaged private “claim preparers” in Jordan or Kuwait to assist them with the preparation of their claims and/or their article 34 responses;

(h) A significant number of claimants asserted currency-related losses with respect to the forced exchange of Kuwait dinars for Iraqi dinars; and

(i) Individuals who are not eligible to participate in the Palestinian “late claims” programme may have attempted to assert losses through Palestinian claimants.

14. Concerned that these features give rise to a heightened risk of overstatement, the Panel undertook appropriate measures to assist in the verification and valuation of the claims. These measures included a careful examination of the evidence provided by each of the claimants in support of his or her asserted losses to assess its probative value and identify irregularities, a close scrutiny of the largest of the claims and those that appear to present a particular risk of overstatement, verification of documents through independent third parties such as insurance companies, suppliers, customers and government entities, and technical missions by the secretariat to Kuwait and Jordan to gather information for the Panel on a number of matters. Each of these measures is discussed in greater detail below in the context of the issues to which they relate.

#### IV. INCREASE IN LOSS TYPES PER CLAIM AND CLAIMED AMOUNTS

15. As stated above, the eligible category “D” Palestinian “late claims” have a higher number of loss types per claim and substantially higher amounts claimed than claims in the regular category “D” claims programme. The Panel considers that these features of the claims population give rise to a potential risk of overstatement of the claims. To address this risk, in addition to its individual review of the claims, and recalling that the Palestinian Panel applied a global downward adjustment to its recommended awards of compensation in respect of the category “C” Palestinian “late claims”, the Panel considered whether a similar global adjustment was appropriate for the category “D” claims. After considering the results of statistical analyses of the claims, and after individual review of the claims in the instalment, the Panel decides that no such global adjustment is necessary. A more detailed discussion of the results of the statistical analyses and the Panel’s reasoning is set out in chapter XII below.

#### V. STREAMING

16. Approximately 88 per cent of the eligible category “D” Palestinian claimants remained in or returned to Kuwait for a considerable period of time following its liberation and therefore had an opportunity to access primary business records where they still existed. This is relevant to the issue of “streaming” of claimants. The Panel recalls that in its Sixth Instalment Report it identified three “streams” of claimants in order to address the varying circumstances of claimants, in particular the quality and quantity of business records available to support individual claims.<sup>5</sup> The streams were designed to allocate different values to certain types of evidence depending upon the obstacles faced by claimants in obtaining access to documentary evidence.

17. The Panel was concerned that claimants in this instalment, who learned of their eligibility to file a claim more than a decade after Iraq’s invasion and occupation of Kuwait, would face unique obstacles in accessing primary business records, as these records may have been discarded or lost years ago. To address this concern, the Panel reviewed the types of evidence provided by claimants in this instalment who remained in or returned to Kuwait for a considerable period following its liberation. The Panel noted that these claimants generally provided documentary evidence such as

business licences, “rent-a-permit” agreements, insurance policies, purchase and sales invoices and audited financial statements in support of their business losses. Accordingly, the Panel finds that these claimants should be placed in Stream 1. The Panel finds that the remaining claimants, who did not return to Kuwait and are residing in places such as Gaza or the West Bank, should be placed in Stream 2. None of the claimants in this instalment fall into Stream 3.

## VI. AUDITED FINANCIAL STATEMENTS

18. Approximately one quarter of the claimants in this instalment provided audited financial statements for some or all of the period between 1987 and 1993 in support of their claims for business losses, although under Kuwaiti law there was no legal requirement for individuals owning an unincorporated establishment to maintain audited accounts.<sup>6</sup> Most of the auditors’ reports were dated within a few months of the subject financial year, although a few were undated. Most claimants alleged that these financial statements were original and/or contemporaneous documents that either had survived Iraq’s invasion and occupation of Kuwait or were reissued by the auditors for the purpose of submission to the Commission, based on the auditing firms’ pre-invasion records.

19. The Panel recognizes that audited accounts are generally considered reliable evidence of the value of business assets on the date of audit. The audit certificate accompanying each audited financial statement typically certifies the procedures undertaken in relation to the audit and authenticates the financial statements. If the financial statements appear to be reliable, and are consistent with the other evidence submitted by the claimant, the Panel’s verification and valuation of the asserted losses is relatively straightforward.

20. Upon review of the claims in this instalment for which audited financial statements were provided, the Panel became concerned about the authenticity of the allegedly contemporaneous audited accounts. The reasons for its concern are as follows.

21. First, the Panel noted that in some cases claimants clearly stated in their original claim submissions that they did not maintain audited financial statements, yet submitted audited financial statements in response to claim development notifications issued under the Rules. For example, in UNCC claim No. 3012105, the claimant did not include audited accounts in his original claim submission. In response to a business notification issued by the secretariat, the claimant stated that he did not have audited financial statements prior to Iraq’s invasion and occupation of Kuwait because his business was unincorporated and audited accounts were not required by law in Kuwait. However, in response to a further notification, the claimant submitted audited financial statements for the years 1987-1991 that he asserted were contemporaneous. When interviewed and asked to explain this inconsistency, the claimant first asserted that his original statement to the Commission was correct, and then said that the audited financial statements had been prepared for an application for immigration to Canada that he made prior to Iraq’s invasion and occupation of Kuwait. However, the Panel reviewed the investment proposal provided by the claimant in connection with the immigration application and noted that the audited financial statements were neither attached to nor referenced therein.

22. Second, the Panel noted that four Kuwaiti auditing firms provided pre-invasion audited financial statements in relation to various businesses that, according to the records of the Kuwait Ministry of Commerce and Industry, either did not exist or only started operations after the liberation of Kuwait.

23. Third, the Panel noted that two claimants who filed competing claims for the same business provided audited financial statements from the same auditing firm for the same year with different figures.

24. Fourth, in some instances the information contained in the audited accounts was inconsistent with other evidence proffered by the claimants.

25. Fifth, for some claims in this instalment the audited financial statements were the only third party evidence submitted to substantiate the existence and ownership of the business and the quantum of the asserted losses.

26. Sixth, the Panel noted that some claims with implausibly high claimed amounts have audited financial statements supporting what appeared to be inflated losses. For example, in UNCC claim No. 3012210 the claimant, who was 22 years old at the time of the invasion, asserted tangible property and profit losses totalling USD 5.6 million for his auto repair shop in Kuwait. He provided audited financial statements for the years 1988-1993 that showed that he held over USD 3 million in tangible property and that his net annual profits were in excess of USD 2.5 million. While possible, the Panel considered that close scrutiny of the audit working papers and procedures was warranted.

27. Circumstances such as those described above raised concerns for the Panel about the evidentiary value of the audited financial statements provided in support of the claims in this instalment. In order to gather additional information about the preparation of audited financial statements for claimants in this instalment, the Panel directed the secretariat to undertake a technical mission to Kuwait in December 2004 to meet with some of the auditing firms involved in the preparation of the accounts, with the Kuwait Ministry of Commerce and Industry, which licenses auditing firms, and with the Kuwait Association of Accountants and Auditors.

28. Claimants asserting large claims for business losses supported by audited financial statements were also interviewed during the course of the mission to Kuwait and during a further technical mission to Jordan in January 2005.

29. During the interviews of the auditors and in follow-up communications, all of the audited financial statements were presented to the auditing firms to confirm their authenticity. In some cases, the auditing firms denied having prepared financial statements bearing their name and asserted that they did not know the claimant or did not recognize the accounts as their work product.

30. In several instances, the auditing firms asserted that the financial statements were authentic and contemporaneous. However, during their interviews the claimants admitted that they were not contemporaneous, but were prepared recently for submission to the Commission.

31. One auditing firm maintained that it had computer diskettes that were salvaged before its office was looted during Iraq's invasion and occupation of Kuwait. The firm stated that it was able to reissue pre-invasion accounts for clients based on these electronic records. However, the auditor was unwilling to retrieve the electronic data in relation to any of the claimants in this instalment for which the firm allegedly reissued contemporaneous pre-invasion audited financial statements despite several requests by the mission team.

32. One group of claimants submitted financial statements from an auditing firm that, according to the Kuwait Ministry of Commerce and Industry, was not a licensed auditor in Kuwait and could not be located despite appeals in newspaper advertisements. Claimants who provided accounts from this "auditor" were unable to provide contact details.

33. Following the technical missions, the Panel checked whether the auditing firms had themselves filed claims with the Commission. In those cases where they had, the information provided during the interviews was cross-checked against the contents of the claim files.

34. The Panel noted that several of the auditors had included pre-invasion client lists in support of their claims. The Panel found that there were no matches between the client lists and the claimants in this instalment who provided pre-invasion accounts purportedly prepared by these auditors.

35. The Panel also noted that the dates of the audit certificates provided by some claimants in relation to post-liberation audited financial statements predated the auditing firm's resumption of operations after the liberation of Kuwait. For example, in UNCC claim No. 3011313 the claimant supported his claim for business losses with audited financial statements for the fiscal year 1990 with an audit certificate dated 25 March 1991. The auditor's claim file stated that its audit activities did not resume until August 1991, more than four months after the date of the allegedly contemporaneous audit certificate.

36. Finally, the Panel compared the auditors' interview statements with the information in their claims files regarding their record keeping policies and the destruction of their records during Iraq's invasion and occupation of Kuwait. One firm stated in its interview that the audited financial statements of their pre-invasion clients were kept on computer diskettes, however, there was no reference to computers in its own inventory of pre-invasion assets. Another firm indicated that its working papers were stolen during the invasion, however, in its claim file the firm had stated that no documents had been stolen or destroyed.

37. In summary, the Panel looked at the circumstances surrounding the preparation of the audited financial statements submitted by the claimants in this instalment to determine what, if any, weight they should be given. While the Panel considered the facts of each claim individually, generally the Panel was not persuaded that the financial statements were authentic and contemporaneous. In such cases, the Panel found that the financial statements had no probative value and disregarded them.

## VII. IRREGULARITIES

38. Recalling the experience of the Palestinian Panel during its review of the category “C” Palestinian “late claims”, and having been provided with information by the Palestinian Panel concerning specific irregularities in certain category “D” claims, the Panel closely examined the evidence submitted by claimants in this instalment for irregularities. In many instances, the Panel found that the supporting documents provided by claimants have been altered or fabricated.

39. For example, some claimants inserted their names on invoices that were not issued to them. In one case, UNCC claim No. 3011337, all 55 purchase invoices provided by the claimant in support of his loss of stock claim were so altered. Other claimants backdated post-invasion documents to make them appear to have been created pre-invasion. Still other claimants took documents from the early 1980s and altered the dates to place the documents closer in time to Iraq’s invasion and occupation of Kuwait. The Panel is of the view that these alterations were designed to increase the claimants’ recovery by bolstering the evidence supporting the asserted losses.

40. In other instances, the Panel found that supporting documents appeared to be fabricated. For example, the Panel noted that some documents that purported to be original pre-invasion documents were in pristine condition, although they ostensibly were more than a decade old. The Panel also noted during the course of its individual review of the claims that some documents had World Wide Web and/or e-mail addresses or mobile telephone numbers on their letterhead, despite the fact that these technologies either did not exist or were not widely available in Kuwait prior to 2 August 1990.<sup>7</sup>

41. The prevalence of these actual or potential irregularities led the Panel to adopt additional measures to verify the claims. These measures are described immediately below.

### A. Verification of business licences

42. At the direction of the Panel, all business licences submitted by claimants as proof of the existence of a business in Kuwait were forwarded to the Kuwait Ministry of Commerce and Industry for verification. As this was a substantial undertaking, a technical mission team was sent to Kuwait in January 2005 to work with the Kuwait Ministry of Commerce and Industry. The Panel is grateful for the assistance provided by the Kuwait Ministry of Commerce and Industry.

43. The Kuwait Ministry of Commerce and Industry advised that of the 169 business licences checked, 26 were altered or did not exist and eight were issued for the first time following the liberation of Kuwait. For example, in UNCC claim No. 3011745 the claimant seeks compensation of USD 1,176,470.59 in relation to two businesses and submitted a licence for each business. The Kuwait Ministry of Commerce and Industry advised that the issuance dates had been altered; the first licence was backdated from 1993 to 1983 and the second licence was backdated from 1991 to 1986.

44. In reviewing the claims with altered licences, the Panel noted that most of them had other evidence that appeared to be irregular. In the absence of satisfactory evidence of the existence of the

business as at 2 August 1990, the Panel recommends no awards of compensation for the asserted business losses in these claims, which total approximately USD 45 million.

#### B. Verification of insurance documents

45. The Panel instructed the secretariat to forward each insurance policy submitted by the claimants in this instalment to the issuing insurer in Kuwait for verification. A total of 43 policies were forwarded for verification and 37 responses were received. The Panel appreciates the assistance provided by these Kuwaiti insurers in reviewing their archived records. To the extent that records were available, the insurers provided information regarding the accuracy of the contents of the policies. While the insurers verified most of the policies, a few were stated to be fabricated or suspect.

46. For example, in UNCC claim No. 3012259 the claimant seeks compensation of USD 4,930,795 for business losses. The claimant submitted a copy of an insurance policy, ostensibly valid as at 2 August 1990, providing business insurance coverage for 820,000 Kuwaiti dinars (KWD) (USD 2,837,370). The insurer indicated that the policy schedule format and numbering on the submitted policy were not introduced by the company until 1997 or 1998, while the letterhead on the policy was not in use in 1990. In reviewing the remaining evidence on the file, the Panel noted that a number of letters from suppliers and contractors were not on letterhead, nor did they identify the signatory. The Panel also noted that a number of the purchase invoices, bearing various dates in 1990, showed mobile telephone numbers, although mobile phones were not widely used in Kuwait at that time. In the light of these irregularities, the Panel finds that the claimant has failed to prove his claim for business losses and recommends no award of compensation.

47. The Panel noted that in cases where the insurers verified the policies, claimants frequently claimed for amounts significantly in excess of the insured figures. While it is possible that claimants were underinsured, the Panel finds that the insured amounts in the verified policies provide reliable evidence of the value of stock and other tangible property held by a business as at the date of Iraq's invasion and occupation of Kuwait. Unless a claimant was able to provide satisfactory evidence of stock or tangible assets in excess of the insured amounts, the Panel reduced the claimed amount for such stock or tangible assets to the insured level and then applied standard adjustments such as for obsolescence and depreciation.

#### C. Other verification measures

48. At the direction of the Panel, the secretariat also contacted various third parties including suppliers, employers, business licence holders and witnesses, to verify the authenticity of documents submitted by the claimants. These additional verification measures were generally undertaken in circumstances where there was a risk of overstatement as a result of a high claimed amount or in cases where the Panel questioned the credibility of the claimant as a result of potential irregularities noted in the documentary evidence. Where the third party was unable to verify the documents proffered by the claimant or provided statements inconsistent with the information provided by the claimant, the Panel finds the evidence submitted by the claimant to be unreliable.

49. For example, in UNCC claim No. 3012083 the claimant asserts a business loss in the amount of KWD 150,000 (USD 519,031) allegedly resulting from Iraq's directive criminalizing the use of the Kuwaiti dinars during the occupation period. The claimant stated that he completed the installation of a computer network for a Kuwaiti company in July 1990 and that at the time of Iraq's invasion and occupation of Kuwait, he was owed KWD 150,000 for his services. The company paid him the outstanding contract balance in Iraqi dinars that he alleges were worthless after the liberation of Kuwait. In support of this loss, the claimant provided the Iraqi dinars and the ostensibly original 1990 transaction documents, which appeared pristine.

50. As a result of this potential irregularity, the Panel sought to verify the particulars of this transaction. The Panel checked the Kuwaiti company's own claim filed during the regular claims programme and noted that the company consisted of a small clothing store and a tailor shop with modest losses that did not include a computer network. At the Panel's direction, the company was contacted regarding the claimant's alleged loss. While the company's representative indicated that the documents provided by the claimant corresponded with the company's records, the Panel finds such statement to be unreliable, as the company's claim file indicates that all of its business documents were destroyed. The representative was also unable to credibly explain why the computer network was not listed as an asset of the business in the Kuwaiti company's 1990 audited financial statements. After considering all of the evidence provided, the Panel determines that the claimant has failed to prove the alleged loss and recommends no award of compensation.

#### VIII. EVIDENCE "SHARING"

51. The Panel noted that certain claimants submitted very similar documents in support of the existence and ownership of their respective businesses. The documents comprised business licences, investment contracts between the claimant and the Kuwaiti licence holder, attestations from the licence holder and lease agreements. It appeared to the Panel that these documents had been generated from word processor templates as the documents had virtually identical text and formatting.

52. While the Kuwait Ministry of Commerce and Industry confirmed that the business licences for most of these claims had been altered, a few claims in this group had authentic business licences. At the direction of the Panel, interviews were scheduled with the majority of these claimants. The Panel notes that a number of these claimants did not appear for interview, while those who did appear were unable to explain why the remaining evidence on their claim files was virtually identical to that of other claimants.

53. For example, in UNCC claim Nos. 3013925, 3012838 and 3012847 the claimants seek compensation of USD 3,360,294, USD 3,891,003 and USD 6,221,107, respectively, for losses relating to three separate businesses. The Panel notes that the investment contracts, attestations from the Kuwaiti licence holders, supplier statements and estimates from real estate offices provided in support of these claims are virtually identical. The Panel finds that such "sharing" of evidence seriously undermines the credibility of these claimants. Notwithstanding the verified business licences, the Panel recommends no award of compensation for the asserted business losses in each of these three claims.

## IX. CLAIM PREPARERS

54. The Panel noted similarities in documents, responses or presentations among certain claim files that appeared to be attributable to the use of common claim preparers. Some claimants who previously asserted that they did not have certain types of supporting documents produced them after engaging the services of a claim preparer. The claim preparers were often listed as the contact persons in the claim files and some claim files included attestations from the claim preparers opining on the merits of the claim. As the role of the claim preparers in the preparation of claims appeared to warrant further scrutiny, at the Panel's instruction, a number of claim preparers were interviewed during the technical mission to Jordan in January 2005.

55. The claim preparers came from a variety of professional backgrounds such as law, financial consulting, accounting and business administration. They either operated individually or as part of a consulting office. Some claim preparers indicated that claimants were referred by employees of the Jordanian Ministry of Labour or the Amman office of the Palestinian Authority. Others stated that claimants contacted them through word of mouth. Some claimants indicated that they engaged a claim preparer after seeing advertisements placed in Kuwaiti newspapers offering assistance with the filing of Palestinian "late claims".

56. The Panel notes that common traits displayed by these claim preparers include their command of the English language and familiarity with the Commission's claim development procedures and jurisprudence from the regular claims programme. In addition to initial fees and disbursements, claim preparers often charged contingency fees based on the outcome of the claims.

57. Claim preparers often attended interviews with claimants and frequently acted as interpreters. At times the claim preparers appeared to be more familiar with the claims than the claimants. In a number of instances, claimants appeared not to recognize the types of losses or amounts claimed in their claims or some of the documents provided in support of their claims. In some cases, claimants made contradictory statements during their interviews or contradicted earlier written statements.

58. During their interviews, the claim preparers denied that they fabricated or altered evidence to bolster a claim or assisted claimants without valid losses to fabricate claims. They asserted that their role was to assist claimants in presenting their losses in English and in accordance with the notification requirements of the Commission. While services such as translation can help claimants, the Panel notes that claim preparers have done a grave disservice to their clients if they have encouraged them to inflate their claims or fabricate or alter documents, or if they themselves have procured or submitted altered or fabricated documents on behalf of their clients.

59. For example, in UNCC claim No. 3012049 a claimant asserted losses in the amount of USD 265,034 in connection with a spare parts business. In the original claim file, the claimant submitted limited documentation including a personal statement, handwritten lists of spare parts, 1987 lease contracts for two stores and a rental receipt for each store dated in 1991. The Panel notes that these documents would have been sufficient to establish the existence and ownership of the business. However, in a subsequent submission, the claimant provided a business licence, an investment

contract between himself and the Kuwaiti licence holder and an attestation from the licence holder as to the claimant's ownership of the business. The Panel found that these documents contained obvious alterations and were very similar to documents provided by other claimants. The Kuwait Ministry of Commerce and Industry confirmed that the file number, date of issue and expiry, as well as other data on the licence had been altered. During his interview, the claimant expressed surprise to see the licence, investment contract and attestation and asserted that it was not his signature on the investment contract. He stated that he had provided a power of attorney to his lawyer to respond to the Commission's notifications and was unaware of the new documents submitted to the Commission. While the Panel noted that the claimant had not signed the submission that included the fabricated documents, the Panel finds that the claimant is responsible for the evidence submitted to the Commission by his authorized representative. The Panel finds that the claimant has failed to prove his claim for business losses and recommends no award of compensation.

#### X. CURRENCY EXCHANGE LOSSES

60. A significantly greater number of claimants in this instalment than in the regular category "D" claims programme filed for losses resulting from Iraq's criminalization of the use of the Kuwaiti dinars and the imposition of the Iraqi dinars as the official currency of Kuwait during the occupation period.

61. Claimants asserting this loss as a D4 (personal property) loss allege that during the period of Iraq's invasion and occupation of Kuwait they were forced to exchange their Kuwaiti dinars for Iraqi dinars at the rate of one-to-one. Claimants asserting this loss as a D8/D9 (individual business) loss allege that they were required to accept Iraqi dinars as payment for goods or services at Iraq's imposed exchange rate. Following the liberation of Kuwait and the reinstatement of the Kuwaiti dinars, these claimants were left with Iraqi dinars that at best could be exchanged on the unofficial market at de minimus rates.

62. The Panel notes that, according to various reports, the unofficial exchange rate or "market rate" prior to Iraq's invasion of Kuwait was approximately 11 Iraqi dinars to one Kuwaiti dinar.<sup>8</sup> The Panel recalls that the Commission has consistently recognized that losses resulting from the forced exchange of Kuwaiti dinars into Iraqi dinars or the receipt of Iraqi dinars in lieu of Kuwaiti dinars at the exchange rate of one-to-one are compensable losses directly resulting from Iraq's invasion and occupation of Kuwait.<sup>9</sup>

63. While the Panel finds that these losses are compensable in principle, the Panel notes that currency losses generally, and particularly currency losses relating to Iraqi dinars, are particularly difficult to verify.<sup>10</sup> Ownership of currency is generally proven through possession of the currency. As a starting point, the Panel requires claimants to submit the Iraqi dinars to the Commission. Only claimants who have provided actual Iraqi dinar banknotes have potentially compensable claims. However, the Panel finds that submission of the banknotes alone is insufficient to prove the loss, as the Panel also requires credible evidence of loss and causation.

64. The Panel is of the view that there is a risk that some claimants in this instalment may have recently collected Iraqi dinar notes dated prior to 1991 expressly for submission to the Commission, alleging that the banknotes were received during the period of Iraq's occupation of Kuwait. To address this concern, the Panel carefully examined the facts and circumstances surrounding the receipt of Iraqi dinars to satisfy itself that the loss claimed is directly attributable to Iraq's invasion and occupation of Kuwait.

65. In many cases the Panel was not satisfied that the currency was received during the relevant period or pursuant to the rate imposed by Iraq. For example, in UNCC claim No. 3011398 the claimant advanced a large currency loss for invalid Kuwaiti dinars and worthless Iraqi dinars totalling USD 311,418 relating to insurance premiums that he asserted he was required, as an insurance broker, to collect during Iraq's occupation of Kuwait. The Panel sought additional information as to whether insurance companies in Kuwait required policyholders to pay premiums during this period. Written inquiries were sent to seven insurers in Kuwait with whom the claimant had brokerage relations. Two insurers responded. Both confirmed the brokerage arrangements with the claimant, but only one addressed the issue of liability for premiums. That insurer stated that its insurance brokers were not required to collect and remit premiums during the period of Iraq's occupation of Kuwait and that, to the best of its knowledge, no insurance company in Kuwait collected premiums during that period. In the light of this information, the Panel recommends no award of compensation for the alleged currency loss despite the fact that the claimant submitted the banknotes to the Commission.

66. For the claims for Iraqi dinar losses that the Panel finds to be compensable, the Panel has valued the loss at the exchange rate of one Iraqi dinar to one Kuwaiti dinar, as this is the rate that the claimants were forced to accept at the time of the exchange.

#### XI. LOSSES OF THIRD PARTIES

67. The Panel is of the view that in a "late claims" programme, there is a risk that third parties not eligible for late filing may attempt to claim their own losses through claimants in this instalment. Mindful of this risk, the Panel has only recommended compensation for losses that are either personal to the claimant in this instalment or advanced on behalf of eligible family members or eligible business partners.

68. For example, in UNCC claim No. 3011224 the claimant asserted, in addition to her own losses, a salary loss on behalf of her husband. The Panel, noting that the husband is not Palestinian and thus is ineligible to participate in this "late claims" programme, recommends no award of compensation for his losses.

69. With respect to business loss claims, the analysis is more complex. During the regular category "D" claims programme, non-Kuwaiti claimants asserted losses in relation to businesses they owned and operated under "rent-a-permit" agreements with the licence holders. These non-Kuwaiti claimants generally had other pre-invasion documents in their names such as business premise leases or purchase invoices. If non-Kuwaiti claimants provided these documents to the Commission and no competing claims for the business were identified after database cross-checks, the Panel was generally satisfied

that the non-Kuwaiti claimant was the true owner of the business. The fact that the licence holder did not file a claim for the business tended to confirm an assertion by a non-Kuwaiti claimant that he or she was the beneficial owner of the business.

70. With respect to the claims in this instalment, the Panel notes that in some cases the only credible evidence of the claimant's ownership of the business is either a pre- or post-invasion attestation from the licence holder attesting to the claimant's ownership of the business. Some of these ostensibly pre-invasion "rent-a-permit" agreements appeared to be recently created. As non-Palestinian claimants are not eligible to participate in this "late claims" programme, the Panel was concerned that business owners who failed to file in the regular claims programme may have provided fabricated ownership documents establishing "rent-a-permit" agreements with Palestinian claimants with the understanding that the parties would share in any award of compensation.

71. In UNCC claim No. 3011755 the claimant seeks compensation for the losses of a jewellery and money exchange business in Kuwait. While the claimant submitted an attestation from the Kuwaiti licence holder regarding his ownership of the business, the bank statements and purchases invoices were in the name of the business, the Kuwaiti licence holder or the Kuwaiti license holder's husband. Moreover, the claimant submitted a power of attorney from the Kuwaiti licence holder authorising her husband to manage the business. At his interview, the claimant was unable to describe the operations of the business and made several statements that were inconsistent with his claim file. In contrast, the husband of the Kuwaiti licence holder, when interviewed, demonstrated knowledge of the business activities and provided statements consistent with the claim file. The Panel concludes that the claimant has not demonstrated that he was the owner of the business and therefore recommends no award of compensation for the alleged business losses.

## XII. REVIEW OF ISSUES BY LOSS TYPE

72. As stated above, the eligible category "D" Palestinian "late claims" have a higher incidence of loss types and higher amounts claimed than claims in the regular category "D" claims programme, giving rise to a potential risk of overstatement of the claims.

73. The Panel recalls that the Palestinian Panel, when faced with the same issue in regard to the category "C" claims, adopted a global downward adjustment of awards in relation to all loss types exhibiting this trend.<sup>11</sup> This global approach was suited to the specifics of category "C" claims processing, as category "C" claims are subject to mass claims processing procedures and are not subject to extensive individual review or claim development.

74. The Panel initially considered applying a global adjustment tailored to the aspects of the Palestinian "D" claims that appeared most susceptible to overstatement. At the direction of the Panel, a statistical analysis of each loss type was undertaken for the purpose of identifying what loss types were most susceptible to overstatement. This statistical analysis showed that the loss types with the greatest increases in amounts claimed were D1 (MPA), D1 (departure), D2 (personal injury) and D8/D9 (individual business) losses. After a review of the statistical data, the Panel decided that a

decision regarding any global adjustment should be deferred until after the individual review of the claims, to determine whether such review was sufficient to adjust or eliminate overstated claims.

75. Upon conclusion of its individual review of the claims in this instalment, the Panel requested a further statistical analysis to determine whether the proposed average and median recommended awards were increased as a result of the high claimed amounts. The results of this analysis showed that the proposed average and median recommended awards for claims in this instalment were lower than those for comparable claimants in the regular category “D” claims programme. In the light of these findings, the Panel determines that a global downward adjustment is not warranted.

76. A discussion of the Panel’s specific findings in regard to each loss type follows.

A. D1 (departure) and D1 (MPA) losses

77. The Panel reviewed approximately 100 claims for D1 (departure) losses and 80 claims for D1 (MPA) losses relating to forced hiding, illegal detention and hostage taking. In 75 per cent of the D1 (departure) claims and 35 per cent of the D1 (MPA) claims, claimants failed to prove the essential legal requirements of ownership, loss or causation.

78. With respect to the D1 departure claims, the Panel noted that the data indicated that claimants in this instalment claimed for this loss type more frequently than claimants in the regular claims programme and had higher average and median claimed amounts and higher average and median recommended awards. With respect to D1 forced hiding, illegal detention and hostage taking claims, the Panel also noted that the incidence of loss was higher among the claimants in this instalment, although they claimed compensation for fewer days in instances of forced hiding and illegal detention.

79. After reviewing all of the statistical data, the Panel decided against an adjustment to the D1 loss type. The Panel notes that the higher incidence of loss among the Palestinian category “D” claimants may be explained by the fact that many Palestinians do not hold other passports and would have been more likely to remain in Kuwait during the invasion and occupation period due to a lack of a viable alternative. The Panel observes that D1 claims are typically for small amounts and that the risk of overstatement is minimal. Finally, in regard to the D1 (MPA) claims for forced hiding, illegal detention and hostage taking, the Panel notes that these proposed awards were calculated in accordance with Governing Council decision 8 (S/AC.26/1992/8), including the capped limit on awards prescribed therein.

B. D2 (personal injury) and D3 (death) losses

80. The Panel reviewed 117 claims with D2 (personal injury) or D3 (death) losses. While the claimants in this instalment claimed for D2 and D3 losses more frequently than claimants in the regular category “D” claims programme and asserted higher claimed amounts, 103 of the 117 claims are not recommended for compensation as the claimants failed to prove the essential requirements of ownership, loss or causation. Accordingly, the Panel finds that the individual review procedures, in

conjunction with the capped limit on awards prescribed in Governing Council decision 8, were sufficient to address any risk of overstatement.

81. With respect to the claims for which the Panel recommends no award of compensation, the Panel notes that most of these claimants did not submit the requisite medical reports or death certificates to prove the fact of injury or death. Other claimants did not provide sufficient evidence to prove that the injury or death occurred as a direct result of Iraq's invasion and occupation of Kuwait. Other claims failed as the medical reports appeared to contain alterations to the date of injury or were otherwise considered to be unreliable. The following claims are illustrative of the types of D2 and D3 losses reviewed by the Panel.

1. UNCC claim No. 3012161

82. The claimant asserted that he, his wife and their three children boarded a bus in Kuwait on 9 February 1991 to travel to Jordan and that near the Kuwaiti-Iraqi border the bus was struck by a missile. As a result, the claimant's wife and daughter were killed and he and his two surviving children were injured.

83. In support of his claim for D2 (personal injury) losses, the claimant provided medical reports evidencing that he and his two children suffered injuries as a result of a missile attack during Iraq's invasion and occupation of Kuwait. The Panel is satisfied that the claimant and his two children suffered injuries as a direct result of Iraq's invasion and occupation of Kuwait and recommends an award of compensation for medical expenses and MPA.

84. In support of his claim for D3 (death) losses, the claimant provided death certificates for his wife and daughter confirming that their deaths were caused by a missile attack on 9 February 1991. The Panel recommends compensation in relation to the claim for loss of support and MPA. The loss of support claim in relation to the claimant's wife was valued on the basis of a letter from her employer confirming her employment as an administrative manager as at the date of the invasion and her salary of KWD 400 per month. As the claimant's daughter was five years old at the time of her death and thus had no documentary evidence regarding her future earning potential, the Panel recommends compensation of a lump sum in accordance with the amounts set out in the First Instalment Report.<sup>12</sup> The overall recommended award for D2 (personal injury) and D3 (death) losses is USD 294,619 out of a claimed amount of USD 1,056,667.

2. UNCC claim No. 3011290

85. The claimant alleged that he suffered post-traumatic stress disorder as a result of Iraq's invasion and occupation of Kuwait and that his wife had a difficult delivery of their child during the invasion and occupation period. He seeks compensation in the amount of USD 228,374. The claimant did not provide any medical evidence to prove his post-traumatic stress disorder or an injury to his wife. The Panel finds that the claimant has failed to prove any direct loss and therefore recommends no award of compensation for D2 (personal injury) losses.

3. UNCC claim No. 3011328

86. The claimant asserted that he was detained for 33 days and beaten by Iraqi soldiers during Iraq's invasion and occupation of Kuwait and that as a result he suffered high blood pressure, diabetes and eye problems. The claimant seeks compensation for these personal injuries in the amount of USD 100,000. The claimant provided witness statements attesting to his detention and abuse by Iraqi soldiers. However, the only medical evidence provided by the claimant to prove his personal injury losses was a medical report dated 23 March 2003 indicating that he had eye surgery to remove cataracts. As the report did not identify the cause of the medical condition nor link the condition to the alleged beating and detention, the Panel recommends no award of compensation for D2 (personal injury) losses.

C. D4 (personal property) and D4 (motor vehicle) losses

87. The Panel reviewed approximately 160 D4 (personal property) claims and 70 D4 (motor vehicles) claims in this instalment. The Panel reviewed the statistical data and noted that the average and median claimed amounts are generally lower than amounts claimed in the regular category "D" claims programme and the average proposed awards for these losses are also lower than the awards in the regular claims programme. The Panel therefore decides that there is no basis for applying an adjustment to these loss types.

D. D5 (bank accounts and securities) losses

88. The Panel reviewed approximately 30 claims for D5 (bank accounts and securities) losses in this instalment. These claims were typically for the loss of funds in bank accounts in Kuwait or Iraq or for uncashed cheques or payable promissory notes. Claimants asserted that they were unable to retrieve the funds, cash the cheques or obtain payment on the notes as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that each of these claims fails because the claimants failed to prove the essential legal requirements of ownership, loss or causation.<sup>13</sup>

E. D6 (salary, support, other) losses

89. The Panel reviewed approximately 150 claims for D6 (salary, support, other) losses in this instalment, typically in respect of salary that was not paid as a result of Iraq's invasion and occupation of Kuwait. The Panel reviewed the statistical data and noted that the average and median claimed amounts are generally lower than amounts claimed in the regular category "D" claims programme and the average proposed awards for these losses are similar to the awards in the regular category "D" claims programme. Based on the foregoing, the Panel determines that there is no basis for applying an adjustment to the D6 loss type.

F. D7 (real property) losses

90. The Panel reviewed two claims for D7 (real property) losses in this instalment. One claim was for an unspecified property loss and the other was for property purchased in Iraq in 1993. The Panel

finds that both claims fail because the claimants failed to prove the essential legal requirements of ownership, loss or causation.

#### G. D8/D9 (individual business) losses

91. The Panel reviewed approximately 300 claims for D8/D9 (individual business) losses in this instalment. Approximately 25 per cent have no recommended awards of compensation, because the claimant either failed to establish the existence of or his or her ownership of the business as at 2 August 1990 or provided insufficient evidence to prove the quantum of the loss.

92. The Panel reviewed the statistical data indicating that these claimants claimed more frequently for business losses and for substantially higher amounts than claimants in the regular category “D” claims programme. The Panel found that additional measures were required to verify the claims. These measures are described in paragraphs 18-59 above. The Panel also subjected claims for business losses over USD 1,000,000 to heightened scrutiny. A discussion of the Panel’s review of the largest claims for D8/D9 business losses is set out in chapter XIII below.

93. The Panel is satisfied that its individual review of the claims in this instalment has adequately addressed the risk of overstatement in relation to the D8/D9 loss type. The statistical data shows that while the average and median claimed amounts for business losses are substantially higher than for claims in the regular category “D” claims programme, the average and median recommended awards are generally lower than awards in the regular category “D” claims programme. The Panel notes that the low recovery rate is attributable to the presence of a high number of non-compensable losses and the prevalence of irregular documents provided in support of apparently inflated losses.

#### H. D10 (payment or relief to others) losses

94. The Panel reviewed 18 claims for D10 (payment or relief to others) losses in this instalment. They typically arose from the alleged payment or provision of relief to others as a direct result of Iraq’s invasion and occupation of Kuwait. Of these claims, the Panel recommends awards of compensation for two claims, while no awards are recommended for the remaining 16 claims. The Panel has made specific adjustments to the two compensable claims. Based on the foregoing, the Panel determines that there is no basis for applying an adjustment to the D10 loss type.

#### I. D (other) losses

95. The Panel reviewed approximately 60 claims for D (other) losses in this instalment. The Panel finds that each of these losses fails, as claimants have either failed to clearly describe a loss or to prove the essential legal requirements of ownership, loss or causation.

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

96. This instalment contains seven “unusually large or complex” claims within the meaning of the Rules, with a total amount claimed of USD 428,417,393. After its individual review of these claims,

the Panel recommends compensation in the total amount of USD 461,806. The results of the Panel's review of each of these claims are set out below.

A. UNCC claim No. 3010941

97. The claimant seeks USD 13,192,938 for personal property losses and business losses sustained in connection with five scrap and auto parts businesses in Kuwait. The claimant allegedly operated four of the five businesses under "rent-a-permit" agreements with various Kuwaiti licence holders; the claimant stated that the fifth business operated without a business licence prior to 2 August 1990.

98. As described above, the business licences were forwarded to the Kuwait Ministry of Commerce and Industry for verification. The Kuwait Ministry of Commerce and Industry advised that the four business licences had either been altered or did not exist as at 2 August 1990.

99. After considering all of the evidence, the Panel finds that the claimant failed to prove the existence or his ownership of any of the five businesses as at 2 August 1990. The Panel therefore recommends no award of compensation in respect of business losses.

100. The Panel also recommends no compensation for the personal property loss alleged as the claimant made inconsistent statements regarding how the loss occurred and did not provide sufficient credible evidence to prove his ownership of the personal property.

B. UNCC claim No. 3011574

101. The claimant asserts personal losses and business losses allegedly sustained in connection with a contracting business in Kuwait in the amount of USD 22,262,837. Of this amount, more than USD 12 million relates to interest and claim preparation costs.

102. The non-business losses included the cost of food purchased as relief to others and transported from Jordan to Kuwait on 21 October 1990, 11 days of forced hiding in Kuwait, personal injuries allegedly suffered as a result of being thrown off a balcony by Iraqi forces and from epilepsy triggered by the trauma experienced during the period of Iraq's invasion and occupation of Kuwait, personal property losses, and losses resulting from the claimant's inability to support his family members as a result of his unemployment.

103. At the Panel's direction, the claimant was interviewed during the technical mission to Kuwait in December 2004.

104. The Panel finds that the claimant has not provided sufficient evidence of the food purchases and recommends no award of compensation for that loss. The Panel finds that the claimant has proven forced hiding and recommends an award of compensation in the amount of USD 1,900 pursuant to Governing Council decision 8. The Panel notes that the claimant provided inconsistent descriptions of his personal property losses and finds that he has failed to prove the existence of these losses. Accordingly, the Panel recommends no award of compensation for this loss type.

105. The Panel noted that the medical evidence provided in support of the claimant's personal injuries indicates that the injuries, although sustained during the occupation period, were work-related and not suffered as a direct result of Iraq's invasion and occupation of Kuwait. The Panel finds that the medical evidence submitted was insufficient to prove that the claimant's epilepsy was caused by Iraq's invasion and occupation of Kuwait. Finally, the Panel recommends no award of compensation with respect to the support losses, as it is only the recipients of such support who are able to claim for such losses.

106. With respect to the business losses, the Panel finds that while the claimant is able to establish the existence and his ownership of a business as at 2 August 1990, the evidence is insufficient to support most of the amount claimed. After adjustments for evidentiary deficiencies, the Panel recommends an award of compensation for business income only, in the amount of USD 17,500.

#### C. UNCC claim No. 3011731

107. The claimant advances a claim totalling USD 12,256,896 for departure-related losses and business losses allegedly sustained in connection with two clothing businesses in Kuwait.

108. At the Panel's direction, the claimant was interviewed during the technical mission to Kuwait in December 2004. Iraq also provided comments on this claim. Iraq stated that the claimant did not provide sufficient evidence to support his ownership of the businesses and failed to fully support the amounts claimed for both businesses.

109. The Panel finds that the claimant has proven his departure from Kuwait on 25 September 1990, and therefore recommends an award of compensation in the amount of USD 2,500 pursuant to Governing Council decision 8.

110. With respect to the first business, the Panel finds that the evidence does not support the claimant's ownership of the business as at 2 August 1990. The "rent-a-permit" agreement provided to establish the claimant's beneficial ownership of the business is undated and appears to be new. The claimant provided no other documents that established his connection to the business prior to 2 August 1990. The Panel notes that the police report provided that describes a fire that consumed the business during the period of Iraq's occupation of Kuwait clearly indicates that the owner of the business was the Kuwaiti licence holder.

111. With respect to the second business, the Panel finds that the claimant has provided insufficient evidence to prove its existence as at 2 August 1990, as all documents referencing the business are dated after the liberation of Kuwait. Nor has the claimant provided any credible evidence of his ownership of the business as at 2 August 1990. Indeed, the evidence suggests to the Panel that the Kuwaiti licence holder was the owner of the business if it existed on 2 August 1990.

112. As a result of these findings, the Panel recommends no award of compensation for the asserted business losses.

D. UNCC claim No. 3012801

113. The claimant alleges losses in the amount of USD 155,990,800 for personal property, lost wages and losses in respect of personal injuries allegedly sustained as a result of his arrest in Kuwait by Iraqi soldiers and his subsequent incarceration in an Iraqi prison from September 1990 to October 1997. The evidence provided in support of the incarceration and injuries included a 1991 Iraqi court judgment describing the claimant's conviction for allegedly aiding the Kuwaiti resistance during the occupation period, a certificate issued by the International Committee of the Red Cross ("ICRC") stating that the claimant had been registered and visited by ICRC delegates at Abu Ghraib prison until February 1993, and numerous medical reports describing the claimant's injuries and ascribing them to his incarceration. The claimant objected to the transmittal of his claim file to Iraq for comments on security grounds.<sup>14</sup>

114. The claimant was interviewed during the technical mission to Jordan in January 2005. The Panel also sought third-party confirmation that the documentary evidence submitted by the claimant was authentic and that the information on the ICRC certificate was valid.

115. The Panel notes that largest portion of the claim (USD 70,000,000) is for "punitive damages," which are not compensable in principle pursuant to Security Council resolution 687 (1991), which limits compensation to direct loss, damage or injury. The next largest losses relate to the mental pain and anguish associated with the claimant's detention (USD 25,790,000) and the personal injuries the claimant suffered during and as a result of his imprisonment (USD 60,000,000), including claims for medical expenses, lost future earnings and mental pain and anguish associated with the injuries. The claimant also seeks compensation for lost personal property, lost wages, and losses associated with his release from prison.

116. The Panel finds that the claimant has established that he was arrested, imprisoned and suffered personal injuries and other losses as a direct result of Iraq's invasion and occupation of Kuwait. The Panel recommends an award of compensation in the amount of USD 328,322, consisting of USD 273,276 for medical expenses and loss of future earnings, USD 30,000 for MPA, USD 13,316 for personal property and motor vehicle losses, USD 10,900 for loss of salary during the invasion and occupation period and USD 830 for other losses relating to his incarceration.

E. UNCC claim No. 3010785

117. This claimant seeks compensation in the amount of USD 171,000,600 for D8/D9 business losses allegedly sustained by his unincorporated business as a direct result of Iraq's invasion and occupation of Kuwait. The nature of the business was electro-mechanical contracting and engineering, specialising in exporting, building and commissioning water treatment facilities. At the time of the invasion, the business conducted its activities primarily in Iraq, where the claimant was building and/or commissioning water treatment projects under contract with Iraq. Given the amount claimed, the fact that the situs of the alleged losses was Iraq and that Iraq was a party to the contracts that are the subject of some portions of the claim, the Panel directed that the claim file be transmitted

to Iraq for comments. In its review of the claim, the Panel has taken into consideration Iraq's comments together with the evidence adduced by the claimant.

118. Having considered all of the evidence, the Panel is satisfied that the claimant has established the existence and his ownership of the business as at 2 August 1990.

119. The claimant asserted his claim on the category "D" claim form as follows: USD 112,600,000 for loss of tangible business property, USD 54,725,600 for loss of business income and USD 3,675,000 for payment of relief to others. In his accompanying personal statement, the claimant described the tangible business property as a fleet of heavy and specialised machinery, vehicles and equipment situated in Iraq and used to carry out the projects. He described the claim for loss of business income as a claim for unpaid instalments due and owing for works already carried out in connection with the projects. He explained that the claim for the payment of relief related to the costs he incurred in evacuating foreign nationals employed in Iraq during the period from December 1990 to February 1991 and in compensating Iraqi employees who remained in Iraq.

120. In his response to a notification issued under articles 15 and 34 of the Rules, the claimant substantially re-characterised his claim. The USD 112,600,000 amount for the loss of tangible business property was re-allocated as follows: business general assets, loss of cash, loss of stock, loss of raw materials, pre-paid expenses, loss of profits on contracts, loss of business income over five years and loss of goodwill. The USD 54,725,600 amount, originally described as relating to receivables, was re-allocated as follows: loss of profits and interest. The USD 3,675,000 amount for payment of relief was re-allocated between actual payments and interest on the amounts paid.

121. The Panel finds that this re-characterisation of the claim gives rise to limitation of action issues. The Panel recalls that the filing deadline for Palestinian "late claims" was 30 September 2002. Having carefully examined the manner in which the claimant originally presented and described his claim and the manner in which he re-characterized it in his article 15/34 response, the Panel is of the view that the claimant is attempting to advance a number of new claims after the filing deadline. The Panel finds that, with respect to the claim for the loss of tangible business property, all of the re-allocated elements except for "business general assets" in the amount of USD 12,051,323 are inconsistent with the claim as described by the claimant in his personal statement and are in fact new claims that are time-barred. The Panel further finds that the claimant's re-characterization of the claim for the loss of business income from unpaid amounts due and owing for work performed to loss of profits on contracts constitutes an attempt to advance a new claim after the filing deadline. Accordingly, the claim for loss of profits on contracts is time-barred and the Panel has considered the original claim for the loss of receivables.

122. Turning to the claim for business general assets, the Panel notes that the evidence proffered by the claimant to prove that the loss of such property was a direct result of Iraq's invasion and occupation of Kuwait consists primarily of two witness statements from the employees who were assigned to oversee the claimant's warehouse and project site following the departure of the claimant's foreign employees from Iraq. The Panel finds that that evidence does not establish that the alleged theft of the property occurred within the Commission's jurisdictional period, from 2 August 1990 to 2

March 1991. Moreover, the Panel notes that Iraq included with its comments a copy of a presidential confiscation order dated in April 1992 and another confiscation order from the Iraqi Council of Ministers dated in September 1992, directing the military authorities to confiscate the claimant's assets in Iraq. Having regard to the totality of the evidence, the Panel finds that the claimant has not established the loss of tangible business property as a direct result of Iraq's invasion and occupation of Kuwait. Accordingly, the Panel recommends no award of compensation for this component of the claim.

123. With respect to the claim for receivables, the Panel finds that the evidence adduced by the claimant in support of this component of the claim is insufficient to demonstrate the circumstances and quantum of any loss.

124. With respect to the claim for the payment of relief, the Panel has reviewed the supporting evidence provided by the claimant, which consists primarily of a list of foreign nationals, the audited financial statements and witness statements. The Panel is satisfied that the claimant did in fact incur costs in assisting 352 of his foreign employees to leave Iraq between December 1990 and February 1991, within the jurisdictional period. The Panel finds that such expenditure is compensable in principle pursuant to Governing Council decision 7 (S/AC.26/1991/7/Rev.1). In accordance with established Commission jurisprudence, however, only that portion of the repatriation costs that would not have been incurred in any event at the natural conclusion of the foreign nationals' employment is compensable as a temporary and extraordinary payment. The evidence adduced by the claimant does not permit the Panel to verify and value that amount precisely. However, the Panel recognizes the importance of employers accepting responsibility for assisting their staff out of the situation then prevailing in Iraq and in all of the circumstances recommends the sum of USD 250 per person, for a total recommended award of USD 88,000. The Panel finds that the other components of the claim for the payment of relief are not compensable. The Panel's total recommended amount of compensation in respect of this claim is USD 88,000.

#### F. UNCC claim No. 3012091

125. The claimant seeks compensation for losses suffered in connection with a wholesale food business located in Kuwait in the amount of USD 24,763,322. The claimant states that the business operated pursuant to a "rent-a-permit" agreement with the Kuwaiti licence holder.

126. At the Panel's direction, an interview was requested with the claimant during the technical mission in December 2004. However, as the claimant was alleged to be out of Kuwait at the time, the claimant's daughter appeared on his behalf. Subsequently, two telephone interviews were conducted with the claimant.

127. Iraq commented that the claimant did not provide records showing the quantity of goods that he claims were looted. Iraq alleged that the claimant did not object to the confiscation of his stock by Iraqi authorities and that the claimant may have been a collaborator with Iraqi forces. Iraq further stated that the claimant could have exchanged his invalid Kuwaiti dinars for USD at market rates following the liberation of Kuwait.

128. The largest part of the claimant's asserted losses relates to KWD 4,772,030 (USD 16,512,214) for Kuwaiti dinars that the claimant says that he received in trading his stock during the invasion and occupation period. The claimant asserts that the currency received was cancelled by an Emiri decree issued on 7 October 1990 by the Kuwait Government in exile, after the Iraqi authorities removed Kuwaiti currency, including newly minted, uncirculated notes, from the Central Bank of Kuwait and placed this currency into circulation. The claimant provided confirmation from an independent auditing firm that the claimant holds currency to the amount of KWD 4,740,102, all of which bear serial numbers that were cancelled by the Central Bank of Kuwait. The claimant indicated that this currency represented the sale of stock worth KWD 1,220,200 and profit on its sale of KWD 3,551,830.

129. The Panel notes that the claim for cancelled Kuwaiti dinars is significantly larger than similar claims the regular category "D" claims programme. Accordingly, the Panel carefully examined the facts and circumstances surrounding the receipt of the cancelled Kuwaiti dinar banknotes to satisfy itself that the losses are directly attributable to Iraq's invasion and occupation of Kuwait. The Panel finds that the evidence as to the volume of stock held at the date of the invasion does not support the amount of stock that the claimant says was stolen, confiscated or sold during the period of Iraq's invasion and occupation. Nor does the amount of stock, totalling USD 10.9 million, asserted by the claimant appear to be consistent with the capacity of the storage facilities of the business. Further, the Panel is concerned about the authenticity of copies of letters of credit provided to support his pre-invasion stock levels. The Panel notes that the letters of credit do not indicate the goods purchased with the degree of specificity that might be expected in such documents. It also appears to the Panel that various letters of credit may have been created by photocopying and altering one original document. The Panel finds that the claimant has not provided sufficient evidence of his stock and recommends no award of compensation for this loss.

130. With respect to the claims for loss of tangible business property and loss of business income, the Panel finds that the evidence supports recommended awards of compensation in the respective amounts of USD 7,005 and USD 17,500.

#### G. UNCC claim No. 3010883

131. The claimant asserts losses totalling USD 28,950,000, of which USD 27,200,000 relates to losses allegedly sustained in connection with a business in Iraq that imported and exported heavy equipment and USD 1,750,000 relates to personal losses including mental pain and anguish suffered as a result of being unemployed from 1990 to 1998 and payments allegedly made to secure his own release and that of his children from an Iraqi prison.

132. The claimant asserted that Iraq charged him with bribery and placed a hold on his tangible business property in 1986. He stated that he was eventually acquitted of the bribery charge but by the time Iraq agreed to return the confiscated property, the invasion of Kuwait had commenced. The claimant asserted that Iraq offered him other items of equivalent value as compensation for his losses, such as crude oil, leather products, wheat and barley. Due to the economic sanctions placed on Iraq, the claimant would not have been able to legally export the items from Iraq. In support of his claimed

business losses, the claimant provided documents evidencing post-liberation efforts to regain his property.

133. Iraq commented that the business losses occurred before the Commission's jurisdictional period and are therefore not compensable. Iraq stated that the claimant did not provide proof of his alleged personal losses.

134. The Panel agrees that the claimant did not provide any evidence in support of his personal losses, such as court documents noting the date of or basis for the alleged incarceration, and therefore recommends no award of compensation for these losses. With respect to the claimant's tangible property, the Panel finds that the evidence indicates that it was confiscated in 1986, prior to Iraq's invasion of Kuwait. The claimant's subsequent inability to export the items offered as compensation was due solely to the economic sanctions in place following the liberation of Kuwait and is thus not compensable pursuant to Governing Council decision 15 (S/AC.26/1992/15). Accordingly, the Panel recommends no award of compensation for business losses.

#### XIV. OTHER CLAIMS FOR WHICH THE SITUS OF THE LOSS IS IRAQ

135. As indicated earlier, nine claim files were transmitted to Iraq because the situs of all or some of the claimed losses was in Iraq, and one claim was transmitted to Iraq because the claimant claimed for losses relating to an invoice issued by an Iraqi party. Iraq provided comments on all of these claims and the Panel has taken these comments into account in its review of the claims. The total amount claimed in relation to these 10 claims is USD 8,975,019 and the total amount recommended by the Panel is USD 438,848.

136. Several of the claims were filed by claimants who lived in Iraq and worked or had business interests in Iraq and who departed from Iraq either during or after the jurisdictional period. In each case, the Panel reviewed the evidence to determine whether the claimant established that the losses were a direct result of Iraq's invasion and occupation of Kuwait. In those instances where claimants did not provide specific information concerning what happened to their personal or tangible business property, or where the losses related to their departure from Iraq after the jurisdictional period, or where the losses resulted from the economic situation in Iraq after the jurisdictional period, the Panel recommends no award of compensation, as the claimants have failed to establish that the losses were a direct result of Iraq's invasion and occupation of Kuwait.

#### XV. COMPETING CLAIMS FOR THE OWNERSHIP OF A BUSINESS

137. The Panel is aware that the Governing Council is considering the issue of duplication of awards resulting from, *inter alia*, related or competing claims for the ownership of a business. This instalment contains a number of competing claims for the losses of the same unincorporated business in Kuwait, some of which involve previously awarded claims.

138. 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 claim form submitted by the claimant; the remaining data is taken from the evidence provided by a claimant either in the original claim or in response to claim development notifications. As the category “D” Palestinian “late claims” were not filed until the end of the regular category “D” work programme, matches between regular and Palestinian category “D” claims were identified upon review of the latter claims.

139. After extensive claim development and the verification measures described earlier in this report, the Panel was able to resolve the competing claims in the instalment. In a number of cases the Panel found that the claimant in this instalment is not the owner of the subject business and therefore the issue of potential competition with a previously paid claim is resolved.

140. With respect to four claims, however, the Panel found that the claimants in this instalment proved their ownership of the businesses. One of these claims competes with a previously paid category “C” claim; the others compete with previously paid category “D” claims. These claims are discussed below.

A. UNCC claim No. 3012104

141. In the first set of competing claims, a Palestinian claimant and a Kuwaiti claimant filed separate claims in categories “D” and “C” respectively for the losses of the same car repair business in Kuwait. Each claimant asserts that he was the sole owner of the business as at 2 August 1990.

142. The category “C” Panel reviewed the category “C” claim in the Seventh “C” Report<sup>15</sup> and recommended an award of USD 58,805 for the losses of the business. The Governing Council approved the recommendation and the award has been paid to the Kuwaiti claimant. The claim of the Palestinian claimant is now before the Panel.

143. Both the Kuwaiti claimant and the Palestinian claimant were interviewed during the technical mission to Kuwait in 2004 and each claimant was asked to comment on the assertions and evidence submitted by the other.

144. The Panel notes that the Palestinian claimant produced several large binders of original, yellowed documents including receipts issued to him by the Kuwaiti claimant for payments pursuant to the “rent-a-permit” agreement, rent receipts, sales ledgers, and purchase invoices. He was also able to describe in detail the operations of the business and the nature of the asserted losses. The Panel further notes that the Kuwaiti claimant was unable to explain how the business operated or what equipment he had, and he also made contradictory statements concerning his relationship with the Palestinian claimant, the nature of his business and the documentary support for his claim. Moreover, the Kuwaiti claimant appeared to have little or no knowledge of the documentary evidence filed in support of his claims.

145. Having considered all of the evidence, the Panel finds that the Palestinian claimant was the owner of the business as at 2 August 1990 and therefore recommends an award of compensation for the demonstrated losses of the business.

B. UNCC claim No. 3011345

146. In the second set of competing claims, a Palestinian claimant and a Kuwaiti claimant filed separate claims in category “D” for the losses of a printing business in Kuwait. The Kuwaiti claimant asserted that he was the sole owner of the entire business as at 2 August 1990 and claimed for tangible property, stock and loss of profits. The Palestinian claimant asserted that as at 2 August 1990 he rented the licence and the equipped printing press from the Kuwaiti claimant to operate his own business. The Palestinian claimant asserted losses relating to stolen raw materials, loss of profits and relief payments to his employees. The Palestinian claimant did not claim for the printing press and other fixed assets of the business as he acknowledged that the Kuwaiti licence holder was the owner of these assets.

147. The Panel reviewed the Kuwaiti claimant’s claim in the eleventh instalment of category “D” claims and recommended an award of USD 379,782 for the losses of the printing business. The Governing Council approved this recommendation and the award was paid to the Kuwaiti claimant. The claim of the Palestinian claimant is now before the Panel.

148. In support of his claim, the Palestinian claimant submitted an original “rent-a-permit” agreement with the Kuwaiti claimant, original sales invoices dated February, April and May 1989, certificates from suppliers attesting to pre-invasion raw material purchases and a copy of a fire insurance policy in the name of the business issued 10 December 1989 and valid until 9 December 1990, insuring both equipment and raw materials.

149. In support of his claim the Kuwaiti claimant submitted consolidated audited accounts for his businesses including the printing business as at 31 December 1989 and 1 August 1990, a copy of the same insurance policy submitted by the Palestinian claimant, a copy of a rent receipt for business premises dated 22 July 1990, a copy of a receipt from the Kuwaiti Chamber of Commerce for licensing fees dated 18 April 1990, a copy of a renewed business licence in the Kuwaiti claimant’s name dated 9 April 1989, copies of replacement invoices for equipment dated May 1993, a loss adjuster’s report and two witness statements.

150. Both the Kuwaiti claimant and the Palestinian claimant were interviewed during the December 2004 technical mission to Kuwait and each claimant was asked to comment on the assertions and evidence submitted by the other. During the interview the Palestinian claimant provided detailed answers regarding the business activities. In contrast, the Kuwaiti claimant was only able to provide general statements regarding the business activities and provided inconsistent statements regarding the origin of some of his evidence. The Panel notes that most of the evidence provided by the Palestinian claimant was original while the Kuwaiti claimant provided copies only.

151. Having considered all of the evidence, the Panel finds that the Palestinian claimant has established that he rented the equipped printing press business from the Kuwaiti claimant as at 2 August 1990 and recommends that he be compensated for his demonstrated stock and profit losses only.

C. UNCC claims Nos. 3012936 and 3012945

152. In the third group of competing claims, two Palestinian claimants, a Kuwaiti claimant and a Jordanian claimant filed category “D” claims for the losses of a group of lighting businesses in Kuwait. The Palestinian and Jordanian claimants each asserted a one-sixth interest in the businesses as at 2 August 1990 while the Kuwaiti claimant asserted that she was their sole owner.

153. The Panel reviewed the Kuwaiti claim in the tenth instalment of category “D” claims and recommended an award of USD 1,444,446 for business losses. The Governing Council approved the recommendation and the award has been paid to the Kuwaiti claimant. The claim of the Palestinian claimant is now before the Panel.

154. All of the competing claimants were interviewed during the technical missions to Kuwait and Jordan.

155. The Palestinian claimants and the Jordanian claimant each stated that they were partners in a lighting consortium prior to Iraq’s invasion and occupation of Kuwait and that the Kuwaiti claimant’s husband was one of the partners. They alleged that on 1 January 1990 six partners, including the Palestinian claimant, the Jordanian claimant and the Kuwaiti claimant’s husband, entered into a new partnership agreement with four additional partners to expand the lighting partnership. After the liberation of Kuwait, the six partners bought out the interests of the four partners. As the six partners made the initial sale payment but not the final payment, the four partners successfully sued them for final payment. In the court proceedings, the Kuwaiti claimant is referred to as the licence holder only while the partners, including the Kuwaiti claimant’s husband, are referred to as the users of the licence.

156. During her interview, the Kuwaiti claimant and her husband maintained that her businesses and those claimed for by the non-Kuwaiti claimants and included in the 1990 partnership agreement were distinct. Upon review of all documents submitted by the competing claimants, the Panel was unable to find any evidence that supported this contention. The partnership agreement referenced in the court documents is signed by the Kuwaiti claimant’s husband and specifically refers to the business that the Kuwaiti claimant claimed for in her claim.

157. The Kuwaiti claimant also contended that in her capacity as the owner of these separate and distinct lighting businesses, she bought out the stock of the partnership lighting businesses after the liberation of Kuwait for KWD 360,000 (KWD 60,000 for each of the six partners). The Panel requested that she provide banking records documenting withdrawals or transfers of this magnitude in the relevant time period, however, she did not do so.

158. The Panel is persuaded by the authenticity of the 1 January 1990 partnership agreement and by the court documents showing that six of the partners bought out the four partners in the post-liberation period. As the documents demonstrate that the Palestinian claimants had an ownership interest in the lighting businesses as at 2 August 1990, and as the Kuwaiti claimant has not established that she purchased their ownership interest and their right to claim for compensation in the post-liberation period, the Panel finds that the Palestinian claimants are entitled to claim for their percentage of the losses of the lighting businesses and should be compensated for their demonstrated losses.

## XVI. ISSUES RELATING TO CORPORATE LOSSES

159. Governing Council decision 123 (S/AC.26/Dec.123(2001)) provides that claims filed by individuals in category “C” and category “D” for losses sustained by Kuwaiti companies should be transferred to the category “E4” Panels for review as overlapping claims in cases where the Kuwaiti companies have also filed claims with the Commission (“overlapping claims”), or as stand alone claims where the Kuwaiti companies did not file claims and where the claimant has demonstrated his or her authority to act on behalf of the Kuwaiti company (“stand alone claims”).

160. This instalment included claims with corporate losses totalling USD 24,235,642.50, which were severed and transferred to the merged “E4” Panel of Commissioners.<sup>16</sup> The Panel has made recommendations with respect to the remaining personal losses asserted in these claims.

### A. Stand alone claims

161. The Governing Council determined in decision 123 that a claim can only be found to be a stand alone claim if the claimant first demonstrates that he or she had the authority to act on behalf of the Kuwaiti company in filing a claim. If the claimant fails to demonstrate such authority to act, the stand alone claim fails and is not processed further. The category “D” Panels developed an “authority to act” test pursuant to which a claimant is deemed to have authority to act 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>17</sup>

162. The Panel has reviewed 19 category “D” and five category “C” stand alone claims to determine if the claimants had the requisite authority to act. With one exception, the Panel confirms that these claimants demonstrated that they had authority to file the claim on behalf of the company. Accordingly, all but one of these claims were transferred to the merged “E4” Panel of Commissioners for review as stand alone claims in accordance with decision 123.<sup>18</sup>

163. With respect to the remaining claim,<sup>19</sup> the only evidence provided by the claimant to prove his authority to file a claim on behalf of the company was a business card describing the claimant as “Executive Director – Partner” and a lease in the name of three individuals who the claimant described as the corporate shareholders. The Panel does not consider this evidence to be sufficient to meet the requirements of the “authority to act” test. Accordingly, this claim was not transferred to the merged “E4” Panel of Commissioners for substantive review; rather, the claim fails.

### B. Overlapping claim

164. This instalment also includes one category “C” overlapping claim<sup>20</sup> filed under the Palestinian “late claims” programme that was reviewed by the Panel as the merged “E4” Panel had concluded its work programme. The claim of the Kuwaiti company, Al Nadaw International General Trading and Contracting Co W.L.L., was reviewed by the “E4” Panel and an award of compensation in the amount of KWD 130,224 (USD 450,602) was recommended and approved by the Governing Council.<sup>21</sup> The Panel reviewed the overlapping claims together to determine which of the losses claimed by the category “C” claimant should be consolidated with the “E4” claim for review. The Panel increased the amount claimed in respect of the corporate losses by KWD 50,000 (USD 173,010) to reflect the claim of the category “C” claimant. Following the consolidation of the losses, the Panel applied the claims review procedures developed by the category “E4” Panels, taking into consideration that the individual claimant may not have been able to provide the same level of documentary evidence in support of the losses asserted as could be provided by the “E4” claimant.<sup>22</sup> The Panel finds that the category “C” claimant did not assert any losses additional to those previously claimed by the “E4” claimant and did not provide any new evidence. The Panel considers that the totality of the evidence presented supports the earlier award of compensation and recommends that no adjustment be made to this award.

### XVII. CATEGORY “C” PALESTINIAN “LATE CLAIMS”

165. There are 19 category “C” Palestinian “late claims” included in this report. These claims could not be included in the fourth and final report of the Palestinian Panel because of pending issues. Of the 19 claims, 18 were deferred for determinations in respect of stand alone, overlapping and competing business claim issues and for investigation of potential irregularities in the documentation provided by claimants in support of their asserted business losses. The remaining claim was deferred pending the receipt of a response to a request for information concerning the identity and evidence of authority of the individual who filed a claim on behalf of a deceased person. The due date for the response fell after processing of the fourth instalment claims was completed.

166. The Palestinian Panel made determinations concerning the eligibility of the 19 claims and conveyed these determinations to the Panel for inclusion in this report. The Palestinian Panel determined that 17 of the 19 claims were eligible for inclusion in the Palestinian late claims programme.

167. The two ineligible claims contained formal deficiencies that were not corrected by the claimants concerned although they were given an opportunity to do so. As stated in paragraph 165 above, a request for information concerning the identity and evidence of authority to file a claim on behalf of a deceased person was issued in one claim. No response was received. The other claim did not contain the claimant’s affirmation concerning the losses claimed although the claimant was given an opportunity to remedy this formal deficiency. Therefore the Palestinian Panel determined that these two claims were ineligible for inclusion in the Palestinian “late claims” programme.

168. The Panel reviewed the 17 eligible category “C” claims in accordance with the relevant evidentiary standard and methodologies for category “C” Palestinian “late claims”. The Panel recommends no award of compensation for three claims. The Panel finds that two of the claims do not meet the criteria for compensability of the asserted losses, while another is a duplicate claim. The Panel recommends a total of USD 568,296.05 in compensation in respect of the eligible category “C” claims in this instalment.

169. The Panel’s recommendations are summarized as follows:

Table 1. Recommended awards for category “C” claims

<u>Submitting entity</u>	<u>Number of category “C” claims in instalment</u>	<u>Total amount claimed (USD)</u>	<u>Number of eligible claims</u>	<u>Number of ineligible claims</u>	<u>Total amount claimed for eligible claims (USD)</u>	<u>Total recommended amount for eligible claims (USD)</u>
Palestinian Authority	19	3,109,352.93	17	2	2,922,847.74	568,296.05

170. The Palestinian Authority will be provided with reports setting out the determinations in respect of each of the 19 category “C” Palestinian “late claims” reported in this instalment.

## XVIII. OTHER ISSUES

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

171. 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

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

173. 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>23</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

174. In its decision 16 (S/AC.26/1992/16), the Governing Council specified that it would consider the methods of calculation and of payment of interest at a future date. Therefore in its previous reports and recommendations, the Panel only identified the date of loss from which interest on any award of compensation could run. The Panel notes that at its fifty-fifth session held on 8-10 March 2005, the Governing Council determined that it would not set a rate for the payment of interest on awards of compensation and, in the result, interest will not be paid on awards of compensation.

### D. Claims preparation costs

175. 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.

## XIX. RECOMMENDED AWARDS

176. The total claimed amount with respect to the 404 category “D” claims transferred by the Palestinian Panel to the Panel for its review is USD 866,199,856.81. The total net amount claimed for the category “D” claims in this instalment is USD 836,915,789.40. This amount is net of USD 162,456.74 relating to withdrawn claims, USD 28,644,101.99 for interest and USD 477,508.68 for claims preparation costs.

177. This amount does not include the USD 24,235,642.50 referred to in paragraph 160 above relating to business losses allegedly suffered by Kuwaiti companies as these losses were transferred to the merged “E4” Panel for review pursuant to Governing Council decision 123.

178. As shown in table 2 below, the Panel recommends a total of USD 25,872,466.70.

Table 2. Recommended awards for category “D” claims

<u>Submitting entity</u>	<u>Number of claims recommended for payment</u>	<u>Number of claims not recommended for payment</u>	<u>Amount of compensation claimed (USD)</u>	<u>Net amount of compensation claimed (USD)</u>	<u>Amount of compensation recommended (USD)</u>
Palestinian Authority	296	108	866,199,856.81	836,915,789.40	25,872,466.70

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

Geneva, 17 May 2005

(Signed) K. Hossain  
Chairman

(Signed) I. Suzuki  
Commissioner

(Signed) N. Comair-Obeid  
Commissioner

Notes

<sup>1</sup> The Palestinian Panel subsequently notified the “D2” Panel that 14 of the eligible claims, which had already been transferred to the “D2” Panel, were in fact ineligible and requested that the “D2” Panel take this into consideration in its review of these claims. The reasons for the ineligible status include: failure to establish residency between 1992-1996 (UNCC claim Nos. 3012019, 3011561, 3011611, 3011870); claimants’ names were found in the United Nations Development Programme (“UNDP”) ledger indicating that the claimant either received forms or submitted a claim form through the UNDP office in Kuwait during the regular filing period (UNCC claim Nos. 3011509, 3012039, 3012281); residency in Jordan for more than one year of the regular filing period (UNCC claim No. 3011629); inconsistent statements regarding residency (UNCC claim No. 3012704); failure to establish to the satisfaction of the Palestinian Panel that the claimants were Palestinian (UNCC claim Nos. 3012800, 3012154); failure to provide suitable explanations for not being able to file during the regular filing period (UNCC claim Nos. 3012145, 3011351); and irregularities identified in the passport (UNCC claim No. 3011935). Taking cognisance of the findings of the Palestinian Panel, the “D2” Panel recommends no award of compensation in respect of these claims.

<sup>2</sup> UNCC claim Nos. 3012041 and 1849513.

<sup>3</sup> See “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”).

<sup>4</sup> See “Report and recommendations made by the Panel of Commissioners concerning the first instalment of Palestinian ‘late claims’ for damages up to USD 100,000 (category ‘C’ claims)” (S/AC.26/2003/26) (the “First Palestinian ‘C’ Report”); “Report and recommendations made by the Panel of Commissioners concerning the second instalment of Palestinian ‘late claims’ for damages up to USD 100,000 (category ‘C’ claims)” (S/AC.26/2004/3); “Report and recommendations made by the Panel of Commissioners concerning the third instalment of Palestinian ‘late claims’ for damages up to USD 100,000 (category ‘C’ claims)” (S/AC.26/2004/14); and, “Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of Palestinian ‘late claims’ for damages up to USD 100,000 (category ‘C’ claims)” (S/AC.26/2005/3).

<sup>5</sup> See the Sixth Instalment Report, paragraphs 52-60. Stream 1 comprises Kuwaiti claimants who operated a business in Kuwait or Iraq before the invasion and who either returned to or never left Kuwait or Iraq. Stream 2 comprises non-Kuwaiti claimants, excluding nationals of Organisation for Economic Co-operation and Development (OECD) countries, who operated a business in Kuwait or Iraq before the invasion but who did not return to Kuwait or Iraq. Stream 3 comprises claimants who operated their businesses principally outside Kuwait or Iraq.

<sup>6</sup> During the December 2004 technical mission to Kuwait, the Kuwait Association of Accountants and Auditors and the Kuwait Ministry of Commerce and Industry advised that audited financial statements are not required for unincorporated establishments unless an individual holds more than five business licences, in which case consolidated audited financial statements must be prepared.

<sup>7</sup> The Panel notes that the first trials of the World Wide Web were conducted in December 1990 at the CERN laboratories in Switzerland. Web browser and web server software were developed in 1991. While e-mail was invented in 1971 or 1972, and the first commercial usage of e-mail, on a very limited basis, was in or about 1988, it was not until the advent of the World Wide Web that large network service providers began to connect their proprietary e-mail systems to the Internet (<http://www.nethistory.info/>). The Panel also notes that only about one per cent of the population of

Kuwait were cellular mobile telephone subscribers in 1990 (<http://unstats.un.org/unsd/cdb;www.unhabitat.org>).

<sup>8</sup> The Panel considered information from the report to the Secretary-General by a United Nations Mission led by former Under-Secretary-General Mr. Abdulrahim A. Farah (S/22535) (the "Farah Report"). The Farah Report documents an unofficial exchange rate or "market rate" of "about 10 to 12 Iraqi dinars to a Kuwaiti dinar" in July 1990 (see page 81, paragraph 513 of the Farah Report). The Panel also considered the "E Claims Summary Report to the Commission" submitted by the Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression, which states that prior to Iraq's invasion and occupation of Kuwait, the Iraqi dinar was valued at a rate of 0.08917181 Kuwaiti dinar to one Iraqi dinar, in other words, approximately 11 Iraqi dinars to a Kuwaiti dinar.

<sup>9</sup> See the "Report and recommendations made by the Panel of Commissioners regarding the second instalment of 'E4' claims" (S/AC.26/2000/17), paragraphs 100-101, and the "Report and recommendations made by the Panel of Commissioners regarding the fifth instalment of 'E2' claims" (S/AC.26/1999/17), paragraphs 67-72.

<sup>10</sup> The Panel notes, however, that in the case of invalid Kuwaiti dinars, it is possible to verify that the submitted Kuwaiti dinars are in fact part of the series of currency that were cancelled by the Kuwait Government after the theft and circulation of such currency by Iraqi officials during Iraq's invasion and occupation of Kuwait. In accordance with the methodology for losses of invalid Kuwaiti dinars, at the time of valuation a crosscheck of the serial numbers of the submitted Kuwaiti dinars was undertaken against the list of cancelled serial numbers provided by the Kuwait Government.

<sup>11</sup> See the First Palestinian "C" Report, paragraphs 145-146.

<sup>12</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), paragraph 223.

<sup>13</sup> See "Report and recommendations made by the Panel of Commissioners concerning part one of the second instalment of individual claims for damages above US\$100,000 (category 'D' claims)" (S/AC.26/1998/11), paragraphs 77-115.

<sup>14</sup> While under its established guidelines for the transmittal of claim files to Iraq for comments, the Panel may draw an adverse inference against claimants who object to the transmission of their claim files to Iraq, the Panel did not do so in this case.

<sup>15</sup> See "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>16</sup> These claims were reported in the "Report and recommendations made by the Panel of Commissioners concerning the thirtieth instalment of 'E4' claims" (S/AC.26/2005/4) and the "Fourth special report and recommendations made by the merged 'E4' Panel of Commissioners concerning overlapping claims" (S/AC.26/2005/5).

<sup>17</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 65-67, 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 88-91.

<sup>18</sup> The transferred claims are UNCC claim Nos. 1814210 (1854452), 1814643 (1854453), 1848861 (1854454), 1817360 (1854456), 1816667 (1855128), 3011295, 3011404, 3012432, 3012704, 3012768, 3011874 (3013917), 3011608 (3013921), 3011422 (3013922), 3010786 (3013934), 3011510 (3013937), 3011314 (3013956), 3012065 (3013957), 3012167 (3013958), 3012735 (3013959), 3012803 (3013960), 3013039 (3013961), 3012768 (3013962) and 3011379 (3013963). Where there is a reference to a claim number in parenthesis, this reference is to the new claim number created by the “E4” Panel after severance of the corporate losses from the personal losses. Claims without a parenthetical reference contained corporate losses only.

<sup>19</sup> UNCC claim No. 3011623.

<sup>20</sup> UNCC claim No. 1810440.

<sup>21</sup> See the “Report and recommendations made by the Panel of Commissioners concerning the twenty-sixth instalment of ‘E4’ claims” (S/AC.26/2003/23).

<sup>22</sup> The Panel applied the approach to verification and valuation of overlapping claims that is set out paragraphs 38-42 of the “Special report and recommendations made by the ‘E4’ and ‘E4A’ Panels of Commissioners concerning overlapping claims” (S/AC.26/2002/28).

<sup>23</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 61-63.

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