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INTERNAL AUDIT DIVISION I
OFFICE OF INTERNAL OVERSIGHT SERVICES

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To: Mr. Rolf G. Knutsson, Executive Secretary
United Nations Compensation Commission,

From: for Patricia Azarias, Director
Internal Audit Division I, OIOS

Subject: **OIOS Audit Number AF2004/820/03 – Audit of "D1" Claims: 19th installment, Part 3**

1. I am pleased to present the final audit report on the audit of D1, 19th installment claims, which was conducted in Geneva from August 2004 to September 2004. The audit was conducted in accordance with the standards for the professional practice of internal auditing in United Nations organizations.

2. The report incorporates as appropriate the UNCC Secretariat's comments on eleven preliminary audit comments that were issued by OIOS between 12 August and 24 September 2004. Please note that OIOS considers recommendation numbers 1, 2, 6, 7, 8, 13, 14, 15 and 16 of the recommendations in this report as being of critical importance.

3. OIOS is assessing the overall quality of its audit process, and requests that you consult with your managers who dealt directly with the auditors and complete the attached client satisfaction survey form.

4. I take this opportunity to thank the management and staff for the assistance and cooperation provided to the auditors in connection with this assignment.

Copy to:
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Office of Internal Oversight Services

Internal Audit Division I

Audit of UNCC D1 Claims: 19th Installment, Part 3

Audit No.:	AF2004/820/03
Report date:	16 December, 2004
Audit team:	Jayanti Prasad, Auditor in-charge Srimali De Mel, Audit Assistant

AUDIT OF "D1" CLAIMS: 19TH INSTALLMENT, PART 3

EXECUTIVE SUMMARY

OIOS conducted, in August and September 2004, an audit of the claims contained in part three of the nineteenth installment of individual claims for damages exceeding above $100,000 (Category "D" claims), submitted to "D1" Panel. This claim consists of 19 claims with an asserted value of $357,610,839.73. The Panel has recommended a total award of $152,830,005.26 to 18 claimants (excluding interest and claim preparation costs). These claims relate to, inter alia, D4 (personal property) losses, D7 (real property) losses and D8/D9 (individual business) losses. Of the 19 claims, 18 were identified as "unusually large or complex" as the claimed amount for each claim exceeded $10 million. Two of these 18 claims included high-value personal property items where the Panel sought assistance from expert consultants. Some of the claims considered by the Panel in the Report gave rise to new factual, legal or valuation issues. The Governing Council (GC) approved the Panel's recommendation of awards totalling $152,830,005.26 in its 53rd session in September 2004.

OIOS' findings were communicated in writing to UNCC as preliminary audit comments before the GC has reviewed the panel's report, excepting the last one (eleventh) that was issued after the GC's review of the Panel's recommendation. UNCC's comments are incorporated in this report as appropriate.

OIOS found that procedures are in place in UNCC to avoid overpayment/duplicate payment on account of same claim elements featuring in different category of claims and methodologies for valuing different type of "D" claims have been developed over a period of time. However, OIOS is of the view that there is a risk of fraud in cases where the original claim does not have adequate supporting documentation and these documents are provided by the claimants subsequent to Art 34 notifications by UNCC. In OIOS' opinion such a risk needs to be appropriately addressed by UNCC.

Certain key issues like compensabilty of claim preparation costs and calculation/payment of interest on awards have not yet been decided and this would have serious financial and logistical impact on the operations of UNCC. Furthermore, in OIOS opinion the application of exchange rate for converting claims expressed in other currencies into US dollars has not been consistent and could lead to substantial overpayments or underpayments.

In addition, there is no provision to levy penalty or recommend appropriate action in cases where UNCC finds or suspects fraudulent and fake claims. OIOS also observed poor and insufficient documents/evidence in support of the claims leading to wastage of UNCC's resources in terms of supplementary questions/inquiries and the Panel report does not sufficiently disclose to the GC the level and quality of evidence relied upon while recommending awards. The Secretariat agreed to consider writing to the concerned Government for appropriate action in case of a suspected fraudulent claim case.

Though the Panel decided to recommend award equivalent to 'lowest replacement value in 1990' for claims relating to high value or unique personal property, this was not consistently done and, in one case led to overcompensation of $860,000 in OIOS' opinion.

LIST OF ABBREVIATIONS USED IN THE REPORT

United Nations Compensation Commission	UNCC
Kuwaiti Dinar	KWD
Office of Internal Oversight Services	OIOS
United Nations Compensation Commission	UNCC
Verification and Valuation Support Branch	VVSB
Legal Services Branch	LSB
QA	Quality Assurance
Governing Council	GC

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I. INTRODUCTION

1. OIOS conducted an audit of the Report and Recommendations made by the "D1" Panel of Commissioners concerning part three of the nineteenth installment of individual claims for damages exceeding above $100,000 (Category "D" claims). This claim consists of 19 claims submitted to the Panel. The total asserted value of these claims was $357,610,839.73 (including interest and claim preparation costs) and the Panel has recommended (31 March 2004) a total award of $152,830,005.26 to 18 claimants (excluding interest and claim preparation costs), which was approved by the Governing Council in September 2004. The summary of the recommendations is abstracted in Table 1 below:

Table 1: Summary of recommendations

Submitting entity	Number of claims not recommended for payment	Number of claims recommended for payment	Total amount claimed (USD)	Amount of compensation recommended (USD)
Jordan	1	0	14,324,856.99	0.00
Kuwait	0	16	328,046,825.58	151,689,105.22
Saudi Arabia	0	1	1,541,607.58	825,137.62
United Arab Emirates	0	1	13,697,549.58	315,762.42
Total	1	18	357,610,839.73	152,830,005.26

The total amount claimed includes USD 31,023,358.19 for interest and USD 379,315.75 for claims preparation costs.

2. The Panel commenced its review of the nineteenth instalment in January 2003. However, due to events in Iraq during 2003 that resulted in the loss of certain claim files transmitted to Iraq, the Government of the Republic of Iraq was unable to provide comments on 19 claims included in this installment in time and therefore the Panel's recommendations could be finalized only in March 2004.

3. Part three of the nineteenth installment comprises claims containing, inter alia, D4 (personal property) losses, D7 (real property) losses and D8/D9 (individual business) losses. Of the 19 claims included in the report, 18 were identified as "unusually large or complex" as the claimed amount for each claim exceeded $10 million.

4. Two of these 18 claims included high-value personal property items where the Panel sought assistance from expert consultants. The items were either of high value or unusual nature, such as jewellery and gems, paintings, carpets, bloodstock and various antiques. The expert consultants also interviewed representatives of the claimants. Some of the claims considered by the Panel in the Report gave rise to new factual, legal or valuation issues, that had not been dealt with in the Panel's

("D") previous reports.

5. OIOS submitted eleven memorandum containing preliminary findings to the UNCC Secretariat (Secretariat) between 12th August and 24th September 2004. All of these except for the eleventh were issued prior to the Governing Council's scheduled review of the Panel's report from 21-23 September 2004. The Secretariat's responses to these were received between 18th August and 29th September 2004 and have been incorporated as appropriate in the audit report.

II. AUDIT OBJECTIVES

6. The objectives of the audit were to:

(i) Determine compliance and adherence with resolutions of the Security Council and the decisions of the Governing Council for processing "D" claims;
(ii) Evaluate the adequacy of internal controls over the processing of "D" claims;
(iii) Determine if the evaluation methodologies and evidentiary standards have been developed and consistently applied in processing the claims;
(iv) Assess the appropriateness of the currency exchange rate used by UNCC to calculate dollar equivalent of losses incurred/claimed and assessed in other currencies; and
(v) Determine consistency of procedures and decisions in dealing with similar claims.

III. AUDIT SCOPE AND METHODOLOGY

7. We test checked three claims included in the Panel's report for the compensability of the claims, the procedures and methodology applied for valuation and verification of the asserted losses by the Secretariat, the supporting evidence submitted by the claimants, and the Panel's recommendations on the compensation to be awarded. The sample claims selected for audit included (i) claim number 3005342, which was one of the claims for high value or unique personal property with asserted value of $20,184,057.10, (ii) claim number 3003942, which gave rise to new factual, legal or valuation issues with an asserted value of $14,324,856.99 and (iii) claim number 3006804 with an asserted value of $25,887,598.62. Certain other general issues like methodologies developed for "D" claims, claim preparation costs, interest and consistency of exchange rate procedures were also reviewed.

IV. OVERALL ASSESSMENT

8. Procedures are in place in UNCC to avoid overpayment/duplicate payment where the same claim elements occur in different category of claims and methodologies for valuing various types of "D" claims have been developed. Additionally, while 'acceptable explanatory statement' from a claimant is often accepted as evidence, OIOS ascertained that controls are in place that this alone should not be the basis of an award for a claim. Certain key issues like compensabilty of claim preparation costs and calculation/payment of interest on awards have not yet been decided. This

would have serious financial and logistical impact on the operations of UNCC.

9. Also, in OIOS' opinion the application of exchange rate for converting claims expressed in other currencies into Dollars has not been consistent and could lead to substantial overpayments or underpayments. In addition, there is no provision to levy penalty or recommend appropriate action in cases where UNCC finds or suspects fraudulent and fake claims.

10. OIOS also found insufficient documents/evidence in support of the claims leading to wastage of UNCC's resources in terms of supplementary questions/inquiries and the Panel report does not sufficiently indicate to the Governing Council (GC) the level and quality of evidence relied upon while recommending awards. Furthermore, though the Panel decided to recommend award equivalent to 'lowest replacement value in 1990' for claims relating to high value or unique personal property, this was not consistently done and, in one case, led to overcompensation of $860,000 in OIOS' opinion.

V. AUDIT FINDINGS AND RECOMMENDATIONS

A. Lack of provisions for penalties on submission of grossly inflated, unsubstantiated or fraudulent claims

11. In claim no. 3003942, the claimant had sought compensation of $14,324,856.99 for business losses. An allegation of fraud concerning claimant's asserted tangible property and vehicle losses was received by UNCC from a third Party in November 1999. The memo alleged that the whole of claimant's tangible property, business vehicle and incremental costs claims were fraudulent. The complainant stated that he had sold all of the claimant's vehicles and heavy equipment in 1992 (post-liberation) and had wired the proceeds to the claimant's bank. In support of his contention the complainant included copies of banking records showing transfer of $928,555.72 to the claimant and photographs of the equipment sold. In support of the complaint, he also attached a court judgement (of the claimant's country) stating that the total amount received by the claimant as a result of sale of the equipment and vehicles in Kuwait was $928,555.72.

12. We further note that VVSB had recommended on 02 March 2004 an award of $1,413,201.65 to the claimant, pending final decision by the Panel regarding compensabilty of the claim in respect to the allegation of fraud. The Database for awards in respect of this claimant accordingly displayed an amount of $1,413,201.65. On 29 March 2004, the LSB informed the ISS to remove this recommended award of $1,413,201.65 and replace it by 'zero' as per Panel's decision.

13. Based on the allegation of fraud and further clarification sought by UNCC from Government of Kuwait and the claimant, the Panel came to the conclusion that "..... the claimant had in fact sold a number of vehicles after the liberation of Kuwait in respect of which he has made a claim.....". The Panel accordingly recommended no award to the claimant.

14. In OIOS' opinion the claimant's action was a deliberate attempt to defraud an International Organisation (UNCC) and another member State. While the claimant has not been recommended any

award, there was substantial resources wasted in processing this claim by UNCC.

15. We find that no penalty or censure was considered to be imposed on the claimant for the attempted fraud and wastage of resources at UNCC. Furthermore, we find that UNCC has not considered writing to the concerned Government, to take appropriate action against the claimant, within their own national laws, for an attempted fraudulent claim with UNCC. OIOS sought clarification on UNCC's position on this. Incidentally, the same claimant had been awarded $40,927.34 as "C" claim (No 1604144) for loss of two vehicles.

16. Based on the affirmation of the claimant that all information in his claim form are true, the concerned Government had also given an affirmation (in terms of Article 14(c) of the Rules) that they had no reason to believe that the information stated in the claim of the claimant is incorrect.

17. We enquired if there are policies, to penalize claimants if claims submitted are found to be grossly inflated, unsubstantiated, and fraudulent or are found to be inadmissible because of incorrect facts having been submitted. Gross inflation or unsubstantion of claims is indicated by the fact that until 07 May 2004, out of approximately $266 billion asserted, only approximately $48 billion was awarded by UNCC. The average success rate of claims resolved stands at approximately 18 per cent in terms of amount. In terms of numbers, out of approximately 2.6 million claims that have been resolved, only approximately 1.5 million have been awarded (i.e. approximately 42 per cent claims have been rejected in their entirety).

18. OIOS is of the opinion that since all claims are received through the Governments/International Organizations and are thus expected to have been vetted to some degree in terms of Article 14(c) of the Rules, there should be a provision in the Rules which would allow UNCC to take some action against the claimants who file grossly inflated, fraudulent or unsubstantiated claims. There is no deterrent to the claimants to forward inflated or fraudulent claims and this also leads to a lot of wasted resources at UNCC in processing those claims.

Recommendations 1 and 2

(i) UNCC should request the Governing Council to establish provisions in the Rules to provide penalties against claimants who file inflated, unsubstantiated or fraudulent claims (AF04/820/03/01); and

(ii) UNCC should consider writing to the concerned Government to take appropriate action against the claimant for attempting to defraud an International Organisation (AF04/820/03/02).

19. *In response to OIOS' preliminary comments, the Secretariat stated that it is not within UNCC's mandate to attempt to penalize or censure claimants outside of its verification and valuation of claims. Since claims are filed with the Commission by submitting Governments and*

those Governments receive the Reports of the Panel, as approved by the GC, they would be in a position to consider whether and what action may be appropriate. However, UNCC added that the "Secretariat is under advisement, whether in this instance the Commission should further act to bring this case to the attention of the concerned Government. It further stated that an amendment to Rules is not appropriate at this time, given that some 2.6 million claims have already been processed and the Commission is currently processing the final installments in remaining claim categories.

20. OIOS is of the opinion that as claims now under processing are bigger and of higher value, it is all the more important that fraudulent claimants are sanctioned.

B. Procedures are in place to avoid duplicate payments on account of same claim elements in different categories

21. The Panel report in Paragraph 25 states that the recommended awards in part 3 of the 19th installment are net of any category "A", "B" and "C" approved awards made to the same claimants. We enquired from UNCC as to what mechanism UNCC used to verify that awards approved earlier are deducted from subsequent awards for the same claim elements of the claimant. OIOS also sought clarification whether claimants were asked, ab-initio, to declare awards approved/received earlier from UNCC. We also checked if the claimants are initially asked to declare any amounts received from other entities/Organisations, for claim elements they are seeking while submitting their "D" Claims.

22. The Secretariat stated that "....as the deadline for the filing of claims in categories "A", "B" and "C" coincided with the deadline for filing claims in category "D", it was not possible for category "D" claimants to declare awards received from the Commission in respect of any other claims that they may have filed with the Commission. It should also be noted that at the time that the filing of category "D" claims in the regular programme ceased, the review of claims filed in other claims categories had either not commenced or was ongoing".

23. OIOS was also informed by UNCC that it is the standard practice of the "D1" Panel of Commissioners ("Panel") to ensure that claimants are not compensated on more than one occasion for the same loss. Before any category "D" claim is taken up by the Panel for review, the claim is subject to an electronic "matching" procedure, which is performed against the information contained in every other claim filed by an individual that is registered and included in the Commission's database. This procedure is done to identify other claims filed by the same claimant with the Commission. This matching procedure is undertaken against the claimant's name and various numeric identifiers, such as the claimant's civil identification number, passport number and birth date. Potential matches are investigated manually to confirm whether they are actual matches.

24. This matching procedure identifies any other claims that a claimant has filed with the Commission in categories "A", "B", "C" and "D" ("related claims"). Once such related claims are identified, they are linked electronically in the Commission's database. When reports are prepared in respect of the category "D" claim, all of the related claims filed by the same claimant and awards made are also identified.

25. At the time that the category "D" claim is taken up by the Panel for review, the Panel considers any related claims filed by the claimant with the Commission. If the losses being asserted in the related claim are separate and distinct from those asserted in the category "D" claim, the award made in respect of the related claim is not deducted from the award recommended by the "D" Panel. However, if the same loss is asserted in a related claim and the category "D" claim (for example, if the claimant claims for the loss of the same motor vehicle in both a category "C" claim and a category "D" claim), then the Panel takes the award made in the related claim into account when it values the category "D" claim, and makes an appropriate deduction of the previously awarded amount. This procedure is done to ensure that individual claimants are not compensated for the same loss on more than one occasion.

26. Claimants are also required to declare on the claim form, any compensation already received from other entities, and then set out the net value of their asserted losses. Further, they are also required to indicate whether they had filed a category "B" or a category "C" claim with the Commission. In addition to having claimants indicate whether they had filed a category "B" or a category "C" claim with the Commission, the matching procedure is additionally undertaken by the Commission to ensure that all related claims of a claimant in all claims categories were identified.

27. Fourteen of the 19 claimants whose claims were included in the Report did not file any other claims with the Commission. In three other cases, claimants had filed claims in other claims categories for losses that were not included in the category "D" claims filed by those claimants. Therefore, in these three cases, it was not necessary to deduct the award in respect of the category "A", "B" or "C" claim from the award recommended in respect of the category "D" claim, as the respective awards pertained to different losses. In the final two cases, claimants had filed claims in both category "C" and category "D" for the same type of losses.

28. In one case, the claimant had included business related losses under both C8 and D8/D9. In the second case, the claimant had included losses of personal property under both C4(PP) and D8/D9, which loss was re-categorised by the Panel to D4(PP). However, in both of these cases, it was not necessary for the Panel to make a finding as to whether the claims were for the same losses, or whether the category "C" award should be deducted from the recommended category "D" award, because in both cases, the Panel recommended 'nil' for the corresponding category "D" loss.

C. Work done by Legal Services Branch needs to be authenticated on claims file and VVSB summary table should be updated

29. A claimant (claim number 3005342) sought compensation totaling $20,184,057.10 for personal losses including $17,335,640.14 for valuation items (Jewellery). The Panel has recommended an award of $5,423,488.37 including an award of $3,337,000 for valuation items (Jewellery).

30. The Verification and Valuation Support Branch (VVSB) Claim Summary table available on file is not updated in terms of Panel approval date, despite a field for it being provided in the

summary report format. It is OIOS view that this should be done to maintain a good audit trail.

Recommendation 3

UNCC should update the claim summary table for this as well as other claims to assist external independent review of claim processing. (AF04/820/03/03).

31. *In response to the preliminary comments in this regard, VVSB staff were in agreement that this could be done. However, the Secretariat stated that (i) the VVSB Claim Summary table that is placed on a category "D" claim file is a record of the valuation of the claim by VVSB, in accordance with the legal instructions received from LSB and/or the Panel. The secretariat stated that there is already a clear audit trail contained on the claim file in the form of the following documents: (1) LSB's electronic worksheet setting out the legal instructions for the valuation of the losses (excluding the Valuation Items that were considered by the external consultants) included in the claim, (2) VVSB's Claim Summary table that implements those valuation instructions, (3) the decision of the Panel taken at the meeting from 17-19 March 2004 concerning the Valuation Items included in the claim that were not subject to VVSB's valuation, and (4) the QA confirmation dated 23 March 2004 that confirms that the legal instructions provided by LSB, together with the decisions taken by the Panel in respect of the Valuation Items, have been correctly implemented to arrive at the total recommended award.*

32. The response of UNCC is understood, however, given that fields for such dates like "Panel's approval date" exist in the VVSB summary table, OIOS maintains that these should be updated, manually if required.

33. Furthermore, while the Legal Services Branch (LSB) Worksheet available on file does have the names of initial reviewer and final reviewer of the claim, there is no signed authentication and indication as to when these reviews were completed. The 'Report Date' on the worksheet is more indicative of the date of printing the report, as was ascertained during audit. Furthermore, there is no indication on the worksheet whether the work of the initial and final reviewer has been approved/cleared by any supervisory authority in LSB. Discussions revealed that the 'Installment Leader' does this quality control (QC) function in LSB for all claims in an installment.

Recommendation 4

UNCC should require all three personnel in LSB i.e. Initial Reviewer, Final reviewer and the person performing the quality control (QC) function in LSB (installment leader or Team Leader or Chief, LSB) to authenticate their work by signing with dates on the LSB worksheet, to maintain a visible audit trail. (AF04/820/03/04).

34. *In response to the preliminary comments in this regard the Secretariat, while clarifying that complete audit trail of legal review exists for each claim file, often electronically, noted the*

comments of OIOS and stated that it could, on a going forward basis, request the initial and final legal reviewers and the installment leader to sign and date the LSB electronic worksheet before sending the claim file to VVSB for valuation.

D. Roles of VVSB and LSB are not segregated

35. We also note that some of the items are valued by the LSB and others left for valuation to VVSB (or external consultants). In OIOS' view good internal control practice requires segregation of duties. LSB personnel, who are legal experts, should not be involved in the valuation of claims.

Recommendation 5

UNCC should consider segregating the roles of LSB and VVSB in as much as 'valuation' of losses are concerned. (AF04/820/03/05).

36. *In response to the preliminary comments in this regard the Secretariat did not accept the recommendation and stated that (i) only very few losses are "valued" by LSB for which any technical valuation experience is not required, (ii) in respect of these few loss types, a VVSB officer is no more qualified to identify the correct amount than a legal officer, (iii) all of the values proposed by both LSB and VVSB are subject to the QA function carried out by VVSB and (iv) that it is not practical to alter the current arrangement as the category "D" work programme is nearly complete.*

37. The response of UNCC is not in keeping with best practices of segregation of duties and further if as stated by UNCC there is not much difference in valuation of certain types of losses by LSB or VVSB, then it should not make any difference even if these losses too are valued by VVSB.

E. 'Lowest replacement value' was not used as the basis of awards on a consistent basis

38. Claimant (claim number 3005342) had sought KD 5,010,000 for jewellery items on the claim form. As the claim was for valuation items, the Secretariat engaged a consultant to value the jewellery items, using first the documents submitted with the original claim submission. The valuation consultants responded that they were unable to value the items using only the original claim submission, as there was no evidence in the original claim submission in support of the jewellery loss. There was no itemised list of jewellery items submitted by the claimant in the original claim submission. In response to Article 34 notification (questions), the claimant then submitted a list of 34 jewellery items totaling KD 6,475,500, a value different from the original claim.

39. The consultants were required to follow the decisions of January and May 2002 of D1 and D2 Panel of Commissioners relating to the basis of valuation for this claim, as with the other high value D claims, which was to value these items at the 'lowest replacement value'.

40. The Consultants recommended a total of $3,337,000 for the 34 Jewellery items. We note that the Panel accepted this figure for making an award to the claimant in the same amount. However, the Consultants report does not have any supporting working papers etc. and the basis for valuation and figures recommended except, one page summary for each item valued. OIOS took note of the fact that (i) no evidence in support of the jewellery losses existed in the original claim submission due to which Consultants were not able to value these items initially and (ii) the listing of jewellery submitted in response to Article 34 notification had an increased value of these items than originally sought.

41. OIOS is of the view that there is a risk of fraud in cases where the original claim does not have adequate supporting documentation and these documents are provided by the claimants subsequent to Art 34 notifications by UNCC. In OIOS' opinion such a risk needs to be appropriately addressed by UNCC.

42. Furthermore, the Consultant had followed the 'lowest replacement value' in all cases that they valued, excepting 4 items (Item number 4,5,6 and 7 in the their report), where they indicated higher replacement values (toward the middle of retail and auction ranges), due mainly to the history of ownership and their opinion that it was unlikely for the claimant's father (an important pearl collector/merchant) to have kept inferior pearls. The Consultants had recommended $1,340,000 for these four items. Had the lowest auction value been adopted for these four items, the value for these items would have been $480,000. It is noteworthy that the Consultants stated in their report under Paragraph 'Basis of valuation' that they have valued jewellery on Basis 1, that is at the lowest replacement value.

43. In OIOS opinion the lowest auction value for these four items too should have been adopted for the purpose of valuation, as was done for the remaining items that were valued by the Consultants. This would have also been consistent with the decisions of D1 and D2 Panel (referred to above) in this regard. Accordingly, it is our opinion it would be more appropriate to compensate these four items also at the lowest auction value. This would require reduction of the award to the claimant by $860,000 (from $5,423,488.37 to $4,563,488.37). We take note of the fact that there were discussions by the Panel for reducing the award on these lines; however, the Panel finally accepted the higher recommended amount.

Recommendations 6 and 7

(i) UNCC should consider reducing the award to this claimant by $860,000 to ensure consistency with policy of valuing 'high value' items on a 'lowest replacement value, (AF04/820/03/06) or

(ii) UNCC should specifically bring to the attention of GC (i) the discussions of the Panel in this regard, and (ii) OIOS comments, before the GC considers the Panel's report, so that

they may take a final view for reduction of award on this account or otherwise. (AF04/820/03/07).

44. *In response to OIOS preliminary comments in regard, the Secretariat did not accept to reduce the award to the claimant by $860,000. It stated that OIOS is correct in stating that the "D1" and "D2" Panels of Commissioners considered the issue of the valuation of high value items at the joint meetings held in January and May 2002. However, it not entirely correct to say that "[t]he consultant valuers were supposed to follow the decisions of January and May 2002 of D1 and D2 Panel of Commissioners relating to the basis of valuation for this claim, as with the other high value D claims, which was to value these items at the 'lowest replacement value'." (sic). The decision that was actually taken by the Panels is set out in the Minutes of the January 2002 joint meeting, an extract of which follows: "The Panels discussed the principles to be applied in valuing the D4(PP) claims and determined the following: (i) Antiques, decorative arts and other collectables are to be valued at the lowest replacement value, (ii) High value items without a secondary market are to be valued on the basis of new 1990 replacement value less depreciation and (iii) Where the consultants believe that 1 or 2 above is not appropriate, in a particular case, they should bring the case to the attention of the Panel with a recommendation." . UNCC stated that what is particularly important in this case is foregoing point (iii).*

45. *The secretariat further stated that although the "D1" and "D2" Panels have established principles and methodologies for the review of category "D" claims, they have always retained their discretion to recommend awards that depart from those principles and methodologies where, in their view, the facts of a particular claim warrant such a departure. Therefore, even if the "D" Panels had not carved out a possible exception to the "lowest replacement value" principle at the January 2002 meeting, the "D1" Panel would still have been within its mandate to depart from the principle in respect of a particular claim if the facts of that claim warranted such a departure.*

46. *The Secretariat added that while OIOS may take a different view on what the recommended award should be, that is beyond the proper scope of audit. There is no mechanism whereby the opinion of the OIOS auditor can be substituted for that of the Panel. This is not a matter of a computational error. As the Office of Legal Affairs stated in its legal opinion dated 27 November 2002, "It is clear that OIOS's functions do not extend to the examination, review and appraisal of decisions that are the result of a legal process. Likewise, they clearly do not include the examination, review and appraisal of decision-making that takes place in the course, and as an integral part, of such a process".*

47. The response of the Secretariat is not correct in as much as Secretariat is laying emphasis on point (iii) of the January 2002 minutes of the D1 and D2 Panel in this regard which allowed the Consultant to recommend values different from those arrived at on the basis of point (i) and (ii) which were 'lowest replacement value' or new 1990 replacement value less depreciation'. Whereas the fact is that the Consultants themselves state in their report that they have valued the jewellery on the basis of point (i) of the minutes, ibid. Thus, valuation on the basis of point (iii) is not relevant in the present case.

48. *In response to OIOS comments to bring the discussions of the Panel and observations of OIOS to the notice of GC for a final decision, before their review, the Secretariat stated that it is the standard practice of the secretariat to bring the final audit report of OIOS in respect of any report of a panel of Commissioners, together with the secretariat's response thereto, to the attention of the Governing Council for any action the Council considers appropriate.*

F. The Panel report does not sufficiently describe the insufficiency of documentary evidence

49. Often claims are not supported by documentary evidence sufficient for the amounts claimed. (e.g. Claim number 3005342). VVSB summary reports and LSB reports do indicate that the evidence has been insufficient and describe in some detail the nature of evidence. In addition, a lot of UNCC's resources are used to obtain additional information or evidence as the claims are not supported with proper and adequate evidence, ab-initio. The Panel reports does not describe the insufficiency of the evidence, which the Panel had used to arrive at the recommended awards. Furthermore, the Panel report does not sufficiently and in a transparent way indicate, what reductions, if any, in awards recommended have been made by the Panel, for each claim on account of insufficiency of supporting evidence.

50. In OIOS' opinion, there should be sufficient disclosure in the Panel's report in order for the GC to have a better-informed review of the Panel's report. While OIOS is aware that the GC could ask for any documents, VVSB's/LSB's working documents etc. in relation to a claim, inclusion of at least a paragraph in the Panel's report on quality (insufficiency of evidence) and resultant reductions, if any, would be in the interest of transparency.

Recommendation 8

UNCC should consider including a paragraph or some other summarized table in the Panel's report, which should indicate to the Governing Council the sufficiency or otherwise of the evidence in support of a claim as also any reductions which the Panel made on account of insufficiency of the evidence. (AF04/820/03/08).

51. *In response to OIOS comments in this regard, the Secretariat did not accept the recommendation stating that that:*

(i) *The assessment of the sufficiency or otherwise of the evidence is a matter that the Governing Council has entrusted to the panel of Commissioners and not to any other person or body. While the internal work product of the secretariat, as evidenced by LSB and VVSB worksheets in respect of category "D" claims, includes descriptions and assessments of the evidence proffered by claimants, it is for the panel reviewing the claim to determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted.*

(ii) *It has never been the practice of either of the category "D" Panels to provide the specific details of their findings (including findings on the sufficiency of the supporting evidence attached to a claim), and recommendations in respect of every loss included in every category "D" claim incorporated in a particular report. This practice exists on account of (i) impracticality to include the findings including the sufficiency of documentation in the Panel's report due to large number of claims included in an installment, and (ii) limitation on the amount of information that the Panel can include in their reports to ensure that the identity of the claimant cannot be ascertained from the face of the report itself.*

(iii) *It is not appropriate for OIOS to instruct panels of Commissioners on the structure and/or substantive content of their reports. OIOS has undertaken the audit of a number of category "D" reports and it has not previously made any suggestion that those earlier reports were in some way deficient because of their reportage of the documentary evidence considered by the Panels. It is too late in the day for OIOS to suggest a fundamental change in the format of the reports prepared by the "D" Panels, a change that, as noted above, has not been requested by the Governing Council.*

52. OIOS is of the opinion that it had only suggested (recommended) and not "instructed" the Panel to include a paragraph on the quality/sufficiency of evidence relied upon by the Panel in its reports in the interest of transparency and complete information to the GC for their review of the Panel's report.

G. Work of 'Quality Assurance unit' is not clearly indicated in claim files

53. The Quality Assurance (QA) unit, an independent unit in VVSB reporting directly to Chief VVSB, provides the quality assurance on valuation processing by checking a sample of claims from an installment of claims contained in a Panel's report. In this regard we have had discussions with the staff in the QA unit and have examined the documents available on claim files.

54. There is nothing on file in a consolidated way to indicate as to which claims were taken up for checks by QA and what results (corrections), if any were recommended by QA. For example, for claim 3003942, the VVSB claim summary table does not indicate clearly whether this claim was merely processed or selected for examination and passed. Furthermore, there is no document indicating as to what corrections (reductions or increase in the valuations) have been made by the QA.

55. Discussions with QA unit indicate that corrections of only more than 5 per cent of the incorrect amount are reported (and even that report is not available in claim files), the others being corrected in the database. In OIOS' opinion, sufficient documentation of the QA processing should be kept on the claim files itself for better audit trail, perhaps in the format, indicated in the Table 2 below. In OIOS opinion this would also provide extra assurance to the Governing Council on the correctness of the recommended awards.

Table 2: Proposed format to indicate work done by QA

Claim No.	Amount claimed	Amount proposed by VVSB/LSB/Consultants before QA	Claim selected for examination by QA (Yes/No)	Amount proposed after QA examination	Remarks
Total					

Recommendation 9

UNCC should consider including a paragraph or some other summarized table in the Panels report, which indicates the results of QA functions having been applied on individual claims to ensure that the GC has additional assurance of correctness of the recommended awards for each claim contained in a Panel's report. (AF04/820/03/09).

56. *In response to the OIOS preliminary comments in this regard, the Secretariat did not accept the recommendation and stated that the Quality Assurance (QA) examination is evidenced in the hard copy claim file by the dated signature of the person who carried out the examination on the "VVSB Claim Summary Table". The quality assurance sign-off space is labelled with the two words "processed" and "passed". When signing off, the quality assurer should delete the inappropriate and/or circle the appropriate word to indicate either that the claim has been made available to QA but has not been selected for checking (i.e. "processed"), or that the claim has been subjected to a QA examination and found to comply with the relevant valuation methodologies (i.e. "passed"). A similar and parallel QA sign-off is carried out on the integrated database record for the claim via the VVSB "tracking" application. In the case of claim number KW 3003942, the quality assurer has omitted to indicate in the way described above that the claim had "passed" a QA examination. This was an oversight both on the part of the quality assurer and of the QA team leader for not spotting and making good this omission. This information was, however, properly indicated in the electronic sign-off for this claim.*

57. *They further informed OIOS that all 19 claims in 19 Part 3 were examined by QA because they all qualified for special selection given that they all contained claimed amounts of over $1,000,000. No errors (either reportable or nonreportable) were detected by QA.*

58. OIOS believes that if a certificate or a paragraph is included in the Panel's report that the claims have been reviewed by QA indicating the results of such QA action on claims, that would help GC have an additional assurance on the correctness of the claims processing, while reviewing

the Panel's report.

H. Unclear and confusing production database for valuation of rental income under D8/D9 loss type claims

59. While reviewing claim number 3006804, OIOS found that the VVSB D8/D9 Methodology-PRD (Database) and its printout which was used to workout the final recommended awards to the claimant is not clear, is ambiguous and has unauthenticated manual overriding figures. The claimant has been recommended an award of $15,601,399.01 out of an asserted claim value of $25,887,598.62.

60. To arrive at the net recommended award, a figure of minus $174,609 is mentioned under the field 'Compensation from other sources'. In OIOS' view the database should not allow a minus figure entry in the field for 'Compensation from other sources', which is meant to account for any compensation received by the claimant from other sources for losses claimed before UNCC. Ideally, this figure should be subtracted from the gross recommended award.

61. For this claimant there was in reality no compensation, which the claimant had received from the other sources. Accordingly, there was no need for an entry under this field in the VVSB production database and it could be prone to misinterpretation, accordingly.

62. OIOS also found a manual entry of $174,609 under the field for recommended award for loss element 'rental income'. There is no signed authentication of this figure on the print out. Manual overriding of figures in the valuation database printout and that too without signed authentication is an internal control weakness, which should be addressed.

63. Further enquiries with the relevant staff revealed that while there was no compensation received by the claimant from other sources and hence a figure of -$174,609 under that field was erroneous and misleading to that extent, this was done by UNCC to account for and award $174,609 under the rental income loss type, as under the VVSB D8/D9 methodology-PRD, there is no mechanism to process the award for rental income. Accordingly, to make an award of $174,609 under rental income, an equivalent minus figure was inserted under 'compensation from other sources' and this minus figure when subtracted from gross recommended award, resulted in net award being increased by $174,609. Discussions further revealed that this was a technical problem while accounting for awards for rental income under D8/D9 loss types, and would occur for all such similar claims.

64. OIOS noted that there was no explanatory note kept on the file and the methodology production database printout to clarify the prima-facie error and accounting of rental income award through a minus entry in the field for 'compensation from other sources'.

Recommendations 10, 11 and 12

UNCC should:

(i) Authenticate any manual entry of figures in the valuation database print sheet and minimize the occasions to do so (AF04/820/03/10);

(ii) Develop other clear mechanism to make an award for rental income under D8/D9 loss types instead of the unclear, misleading mechanism of accounting it through a minus entry under 'Compensation from other sources' (AF04/820/03/11); or

(iii) Keep an explanatory note in the claim file as well as on the printout of the VVSB D8/D9 methodology-PRD, if the present mechanism to account for rental income awards through a minus entry under 'compensation from other sources' is to be continued. (AF04/820/03/12).

65. *In response to the preliminary comments in this regard, the Secretariat did not accept OIOS' comments and stated that:*

i. *Where losses are so rare as in the present case, it was not worthwhile creating a database module for their valuation. In such rare cases, the Excel template is used. The template contains the note "The recommended award...has been added to the D8/9 application" and this is both clear and unambiguous. While the secretariat of the UNCC notes the auditor's opinion that a negative entry should not be made and that such an entry should not be made in the field concerned, it would point out that this practice and that of additionally noting the result of this computation in this particular field on the D8/D9 database has been used successfully throughout the category "D" work programme.*

ii. *It is incorrect to say that the operation of the database has been manually overridden. Indeed, all the computations remain on record. The result of the quite separate Excel spreadsheet computation for the loss of rental income is clearly entered as an adjustment to the total on the database, without disturbing the other calculations that were made on the database. Contrary to the auditor's impression, the work was fully authenticated.*

iii. *Moreover, the approach has never been a source of systemic error in final recommended awards. Although the auditor has suggested alternative procedures, the secretariat would point out that there are established and well-understood procedures already in place. Data values for loss of rental income have always been input to the database field "Compensation from other sources" which is thereby used as an adjustment field as a practical convenience in the few cases involved. Given that this practice has no*

negative impact, there is no purpose to be served by changing it, particularly at this late stage in the work category "D" programme. The fact that no error occurred in this case shows that the existing procedures are well understood, that they work and that they were correctly applied.

66. While UNCC explained the procedure involved, OIOS did not suggest that an error leading to negative financial impact had occurred. Additionally, the use of the field 'Compensation from other sources' to input negative data values to adjust claim award for rental income, cannot be adjudged as a best practice. Furthermore, while authentication would have been done electronically followed by QA/VVSB etc., what OIOS was pointing was a written figure on the production database sheet, which did not have any signature to authenticate. OIOS believes that since such procedures have direct financial impact (like writing cheques) any alterations if done manually, must be signed.

I. Application of Exchange rates on claims expressed in currencies other than Dollars

67. In OIOS audit of E1, 10th installment claims, it was noted that for claims expressed, incurred and assessed in currencies other than Dollars, the Panel had used the exchange rate prevailing on the date of loss (2nd August 1990 to 15 April 1992) to convert the claim awards into Dollars from the currency claimed. It was pointed out in OIOS audit of "E1" 10th installment claims that this system would lead to substantial overpayments and/or underpayments to claimants.

68. The Governing Council's Decision 18 of 1994 on "Distribution of Payments and transparency" requires that " If Governments convert US dollar payments received from the UNCC into other currencies for distribution of awards to the claimants, they shall notify the Governing Council on the method of conversion and exchange rate used, bearing in mind the interests of claimants in receiving full equivalent of their awards". In OIOS' opinion the above system of exchange rate on the date of loss being used by UNCC is in contradiction with the Governing Council decision, ibid, as it can be reasonably expected that the Governments would use the exchange rate as on the date of payments received from the UNCC to convert rather than the rate that was prevailing on the date of loss. It was also pointed out that this system treated the claimants expressing their claims in US Dollars unfairly and differently from claimants expressing their claims in currencies other than US Dollars. Also this system was not in conformity with the UN Financial Regulations and Rules♦.

69. Accordingly, it was suggested by OIOS to amend the above system of using currency exchange rate for awards in currencies other than US Dollars at rate prevailing on the date of payment instead of as on the date of loss.

70. In response to our comments, UNCC Secretariat did not accept the recommendations on

♦ Rule 106.5 (b) states that "Payments in currencies other than the United States dollar will be determined on the basis of the operational rate of exchange at the time of payment. Any difference between the actual amount received on exchange and the amount that would have been obtained at the operational rate of exchange shall be accounted for as loss or gain on exchange."

various grounds including "In the E1/10 Report, the "E1" Panel applied the currency exchange rate at the date of loss, which is consistent with the approach taken in all of its previous reports as well as all of the previous reports of other panels of Commissioners addressing the issue. "

71. OIOS audit of D1, 19/3 claims revealed that the above assertion of UNCC is not factually correct. The "D" panel itself realised that exchange rate mechanism being used by UNCC as on the date of loss would result in over or under compensation. The Panel report in Paragraph 27 of the Report states that "In its report and recommendations concerning the third installment of category "D" claims, the Panel noted that where losses are claimed for money in currencies other than United States dollars and it is established that the application of the exchange rate approved by the Panel in its First "D" Report would result in either under-compensation or over-compensation of the claimant, the Panel determined that it will select a conversion rate based on the evidence that most closely compensates the claimant for the value of the losses suffered. In particular, this method would be applied in situations where the claimant has submitted evidence that he or she purchased the money at a rate different from the rate adopted by the Panel."

72. OIOS queried whether UNCC has a consistent methodology to convert awards into Dollars for claims expressed in other currencies. We also sought UNCC's response on the apparent fact that all Panels have prima-facie not been adopting the same methodology on currency exchange as was stated by UNCC. In view of UNCC's realization itself that the exchange rate as on the date of loss may lead to overcompensation or under compensation (which is what OIOS had pointed out in the audit of E1, 10th installment claims), OIOS reiterates its recommendation as below:

Recommendations 13 and 14

(i) Amend the system used to determine the currency exchange rate for awards in currencies other than US dollars as the rate prevailing on the date of payment, in order to:

- mitigate the risk of overpayment or underpayment;
- bring the exchange rate procedures in line with UN Financial Regulations and Rules;
- ensure fairness to both type of claimants, those submitting their claims in US dollars and those who submitted their claims in currencies other than US dollars;
- ensure consistency of the methodology being used for the purpose by different Panels;
- ensure consistency with the Governing Council decision 18 requiring claimants to receive full equivalents of their awards (AF04/820/03/13) and;

(ii) Apply the currency exchange rate for awards in currencies other than US dollars at the rate prevailing on the

date of payment, to claims already awarded but not paid in full and to future claims (AF04/820/03/14).

73. *In response to the preliminary comments in this regards the Secretariat did not accept OIOS' recommendations stating that:*

i. The general policy of the Commission for conversion of recommended awards into United States dollars ("US dollars") where a claim is expressed in some other currency, is that the applicable exchange rate as at the date that the loss was sustained should be utilised.

ii. In the third installment, the "D1" Panel reviewed one claim (JO 3004812) that gave the Panel occasion to revisit its decision as set out in the First "D" Report. Briefly, this Jordanian claimant filed a claim in category "D" asserting, inter alia, the confiscation of Kuwaiti dinar (worth KD 50,335) and Iraqi dinar (worth IQD 1,527,000) currency in his possession by Iraqi authorities. In respect of the confiscated amount of IQD 1,527,000, the claimant stated that "the exchange rate was 180 fils = 1 Iraqi dinar". The "D1" Panel compared this exchange rate with the official exchange rate used by the Commission. When applying the actual exchange rate at which the claimant converted the cash, the value of the loss was calculated at USD 951,072.66. However, if the official rate generally used by the Commission was implemented (IQD 0.311 = USD 1), the value of the claimant's loss would have been calculated at USD 4,909,967.85. The difference in these possible awards is obvious. Had the Panel adopted the official rate generally used by the Commission, the claimant would have been vastly over-compensated. Therefore, the "D1" Panel considered that where there was evidence on a claim file that indicated that the use of the official exchange rate would result in either over-compensation or under-compensation to the claimant, the Panel would consider using an alternate exchange rate that accurately reflected the actual loss sustained by the claimant. The Panel considered that it may depart from the position it took in the First "D" Report in cases such as JO 3004812, where there was evidence on the claim file of the actual rate of exchange used in the conversion of currency, or in instances where currency traders suffered the loss of currency where it may be more appropriate to compensate those claimants on the basis of the rate of exchange at which the lost currency was purchased.

iii. While this issue has not arisen very often in category "D" claims, the "D1" Panel has implemented the approach outlined above in cases where the application of the official rate of the Commission would result in either over-compensation or under-compensation to the claimant.

iv. In the overwhelming majority of category "D" claims reviewed by the "D1" Panel, the principle concerning currency exchange rates set out in the First "D" Report, which is consistent with the statement made in the E1/10 response, has been applied. The "D1" Panel has departed from this general position concerning the actual currency exchange rate to be used in only a very few cases, where the evidence on the claim file warrants such a departure from the established principle. The secretariat therefore does not agree that the statement made in the E1/10 audit response is factually inaccurate, in the light of the general practice of the "D1"

Panel. The very rare departures from the general principle on the part of the "D1" Panel are reflective of the careful, individual review of all category "D" claims that is undertaken, and the fact that the "D1 Panel (and indeed, all panels of Commissioners), retain a discretion to depart from an established methodology where the facts of a particular claim warrant such a departure to ensure an accurate, fair result. The application of the "D1" Panel's discretion in the review of claims such as JO 3004812 does not detract from the Commission's general position on currency exchange rates, which principle was endorsed by the "D1" Panel itself in the First "D" Report.

v. For the many reasons set out in the E1/10 response, including the fact that neither the panels of Commissioners nor the Governing Council can determine when, or even if, claimants will receive payment of their recommended awards, the secretariat confirms its previous position that it is not appropriate to consider amending the exchange rate mechanism to convert awards into US dollars, for those claims expressed in currencies other than US dollars, to the rate prevailing on the date of payment instead of the date of loss. In the E1/10 response, the secretariat has set out, in detail, the reasons why it believes that it is not appropriate to change this mechanism at this very late stage of the work programme of the Commission.

74. From the response of the Secretariat it is clear that the exchange rate as on the date of loss has not been consistently used. Furthermore, OIOS maintains that using the exchange rate as on the date of loss is inappropriate as it over or under compensates a claimant when he/she gets the claim payment. Accordingly, there is a need to de-link the exchange rate from the date of loss and correlate it to date of payment, if the exchange mechanism has to be continued. Otherwise, the awards could be made in original currencies alone, which would obviate the need of exchange rate mechanism and would also ensure that the claimants get exactly equivalent of what they lost.

J. Delays in decisions on compensabilty of claim preparation costs and methods and calculation of interest

75. The issue of compensabilty of claim preparation costs to claimants in categories D, E and F has been under consideration and discussions within UNCC since June 1992. We also observe that certain claimants have been claiming for claim preparation costs. The total of such claim preparation costs that has been asserted by the claimants is $274,791,244.21.

76. In April 1998, the working Group of the Governing Council decided that the GC and not the Panel of Commissioners would decide whether claim preparation costs constitute direct losses within the meaning of paragraph 16 of the Security Council Resolution 687 (1991) so as to be compensable by UNCC. It was also decided that UNCC would seek a legal opinion on the issue from the UN Legal Counsel as well as opinion from D, E and F Panel of Commissioners. They also agreed for a deadline for a decision on the issue, which was set as the date upon which the Executive Secretary notifies the GC that the processing of all remaining claims is likely to take no more than six months to complete.

77. The ASG for Legal Affairs provided its opinion on the issue in June 1998 itself indicating that claim preparation costs do not stand the definitional test of 'direct loss' and accordingly there is no legal basis for the assertion that costs incurred in claim preparation are eligible for compensation. However, they added that the GC may consider it justifiable in cases of unusually large or complex claims. They advised however, that this should be done with regard to retrospective effect of the decision and fair and equitable solution for all claimants. Eighteen Commissioners also expressed their opinion that claim preparation costs are not compensable and 12 commissioners were in favour of compensation of claim preparation cost.

78. The Panel of Commissioners in their reports recommending awards of claimants, in the absence of a decision on the compensabilty of claim preparation cost, have not been dealing with the asserted quantum of claim preparation cost and made no recommendations accordingly. In OIOS opinion, should a favourable decision be taken to compensate for claim preparation cost, that would involve looking and processing all claims afresh, for the element of claim preparation costs in terms of assessing the reasonableness, admissibility or otherwise of the quantum of claim. Thus, the decision on the issue has a major impact on resources required.

79. Despite the legal opinion and the opinions of the Commissioners and further in view of the fact that the panels of Commissioners are likely to resolve all claims by December 2004, the decision on the issue of compensabilty of claim preparation costs is yet to be taken.

80. Similarly the GC through its decision 16 of December 1992 decided that interest would be awarded from the date of loss until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award. They further decided that the method of calculation and payment of interest would be decided later. They decided that interest would be paid after all principal awards have been paid. The issue of the method of calculation of interest has been under consideration and discussions ever since and a final decision has not been determined.

81. We note that the issue of method of calculation and rate of interest has a significant impact on funds required and resources required to administer that. As per UNCC's assessment at the expected rate of $1 billion per year receipts in the funds, the expected principal awards of $60 billion would be finally paid out only around the year 2045. At an assumed simple interest rate of 5 per cent, total simple interest of approximately $79 billion would have accrued by 2045. At the continuing income of $1 billion a year, it would take another 79 years beyond the year 2045, to fully pay off the interest.

82. Furthermore, if a decision to award compound rather than simple interest was made, the interest accrual at 5 per cent would be to the order of $562 billion. In this case the expected annual income of $1 billion a year, would not even offset the annual increase in cumulative interest resulting from annual compounding.

83. In the absence of a decision on the method of calculation of interest (rate as well as whether simple or compounded) and in view of the fact that the decision to award interest has been taken, the liability of the fund can not be quantified or defined, in addition to the fact that the successful

claimants can not be sure of their receivables. This has an impact on all parties concerned and would lead to inappropriate planning of funds requirement of UNCC.

84. OIOS is of the opinion that the delay in the decision on the issue of (i) compensability of claim preparation costs, and (ii) method of calculation of interest has major impact on the work programme of UNCC with significant resource requirement and funding requirement, depending on nature of the final decisions. There is therefore an urgent need to take final decisions on the issue. We take note that the GC may consider these issues again in its scheduled session in September 2004.

85. UNCC has planned its staff requirement in keeping with the reduction in work and planned cessation of claims resolution by the end of December 2004. The following Table 3 indicates the planned staff reduction during the year 2004 and 2005. In reality the departures may actually exceed than planned as many staff knowing that the Programme is closing are shifting to other career opportunities. In our opinion there is a risk of inefficient management of the administration of claim preparation costs and interest, due to delay in the decisions when viewed with planned reduction of staff.

Table 3: Planned staff strengths at UNCC

Quarter of the Year	Total planned staff at UNCC
First Quarter of 2004	189
Second Quarter of 2004	186
Third Quarter of 2004	178
Fourth Quarter of 2004	171
First Quarter of 2005	96
Second Quarter of 2005	76
Third Quarter of 2005	51
Fourth Quarter of 2005	43

Recommendation 15

UNCC should consider requesting the Governing Council to decide urgently (through a special session, if required) on the two critical issues of (i) compensabilty of claim preparation costs, and (ii) method of calculation and payment of interest, in view of the major and significant impact which the issues have on the resource and funding requirement. (AF04/820/03/15).

86. *In response to the preliminary comments in this regard, the Secretariat stated that:*

(i) *The Governing Council is aware that the issues of the compensability of claims preparation costs and the methods of calculation of interest remain to be determined by it. Both of these issues were on the agenda for consideration by the Governing Council at its*

June-July 2004 session. At the request of the Governing Council, detailed information notes regarding both issues were prepared by the secretariat for that session. The issues remain on the active agenda for the Council's consideration at the next session from 21-23 September 2004.

(ii) *The Governing Council is also aware that the Commission's work programme is coming to an end and that a consequential reduction in the staffing of the secretariat is expected. Indeed, it is the Governing Council that approves the operating budget for the Commission, including the number of posts budgeted for secretariat staff, and it is therefore entirely aware of these two matters.*

87. OIOS notes that the GC has not taken final decisions on the issues in its sessions of September 2004 and December 2004.

K. Controls exist to ensure that awards are not made on the basis of 'Acceptable explanatory statement' alone for "D", "E" and "F" claims

88. Paragraph 1 of Article 35 of the Rules imposes a general evidentiary requirement on all claimants as "…..Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or a group of claims is eligible for compensation……."

89. With respect to category "D" claims, paragraph 3 of Article 35 provides that "….such claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss". Thus, the Governing Council has put the responsibility on category "D" claimants to submit documents and other appropriate evidence sufficient to demonstrate both the circumstances and the quantum of loss. The higher evidentiary burden placed upon category "D" claimants is an important distinguishing factor between category "D" and categories "A", "B" and "C" claimants.

90. OIOS noted that the "D" Panel decided to give significant weight to and placed reliance on "Acceptable explanatory statement" in support of the particulars in the "D" claim form, to satisfy the level of proof, in certain circumstances and in respect of certain loss types.

91. In its first report (S/AC.26/1998/1), the "D" Panel had emphasised that they would have to decide in later installments whether an "Acceptable explanatory statement" alone would be sufficient for larger and more complex loss types like personal property, real property and business claims. OIOS noted that this "Acceptable explanatory statement" has often been used/accepted to process the claims in D 1, 19th installment part 3 claims. Furthermore, often, the personal statements did not tally or support the amount claimed for different losses as mentioned in the original claim forms.

92. OIOS was concerned that acceptance of just an "Acceptable explanatory statement" from the claimant in support of its "D" claims exposes UNCC to the inherent risk of processing and approving inflated/fake/fraudulent claims. OIOS queried UNCC to provide its comments on this.

93. OIOS was informed that the GC too had requested clarification from the Panel concerning its treatment of "acceptable explanatory statements" submitted by category "D" claimants. In response, the Chairman of the Panel stated that "...an Acceptable Explanatory Statement is only intended to be relied upon as supplementary evidence provided other surrounding circumstances justify doing so. In other words, the intention has been that where there is a gap in the claimant providing complete documentary evidence to support a particular kind of loss type, the Acceptable Explanatory Statement, given the surrounding circumstances, might be relied upon to fill such a gap. The intention has not been that the Acceptable Explanatory Statement could be relied upon where there was no other evidence at all."

94. Subsequently, the Governing Council also adopted decision 46 (S/AC.26/Dec.46(1998)) concerning explanatory statements submitted by claimants in categories "D", "E" and "F" wherein they decided that "....in accordance with the Provisional Rules for Claims Procedure and the criteria established by the Governing Council for category "D", "E" and "F" claims, no loss shall be compensated by the Commission solely on the basis of an explanatory statement provided by the claimant."

95. The Secretariat confirmed to OIOS that for larger and more complex loss types such as personal property, real property and business loss claims, a claimant would not receive an award of compensation if the only document that was submitted in support of the loss was an "acceptable explanatory statement". Such losses would fail legal review and the "D" Panels would recommend a nil award on that basis, without proceeding to value the loss concerned.

96. The Secretariat further stated that Article 35(1) of the Rules requires each panel of Commissioners to "determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted" in support of a claim. The "D" Panels have consistently taken the position that the greatest weight is given to the "best" evidence submitted by a claimant in support of his or her category "D" claim. It is usually the case that the evidence with the greatest probative value will be the independent documentary evidence submitted by a claimant, and not the claimant's personal statement. Therefore, while the "D" Panels will consider a claimant's explanatory statement as part of their review of the entire claim file, greater reliance will generally be placed on the independent documentary evidence submitted with that claim. Further, the awards of compensation are capped at the amount claimed by the claimant as set out in the category "D" claim form. Accordingly, while the Panel considered explanatory statements submitted by claimants in respect of those claims included in the 19/3 Report, in all cases, the Panel also considered additional documentary evidence of the losses claimed in order to determine the recommended awards.

97. The Secretariat also stated that this query relates to the sufficiency of evidence, a matter that the Governing Council has empowered the panels of Commissioners alone to determine, as confirmed by the legal opinion of the Office of Legal Affairs dated 27 November 2002.

98. OIOS is of the opinion that controls by way of the GC decision on the issue exist to ensure that awards are not made on the basis of an 'acceptable explanatory statement' alone for category

"D", "E" and "F" claims.

L. Conclusions

99. OIOS audit of selected "D1" 19th instalment, part three claims raised a series of questions and critical issues, which in OIOS' view have not been fully addressed by the Secretariat while responding to OIOS preliminary comments. OIOS believes that it is imperative for the UNCC to re-examine the issues discussed in this report, and adjust the amounts of compensation awarded in these claims, conclusively decide on the issue of compensabilty of claim preparation costs and calculation of interest, address the risk of fraud in cases where supporting evidence is submitted not initially but subsequent to Art. 34 notifications, develop a punitive policy to deal with fake/fraudulent claims and implement the proposed change in the existing policy of using the exchange rate as on the date of loss for awards in US dollars for claims incurred, expressed and assessed in currencies other that US dollars, to the one which uses the rate of exchange as on the date of payment.

Recommendation 16

OIOS recommends that the UNCC Secretariat inform the Governing Council of the OIOS recommendations contained in this report for their consideration and appropriate action (AF04/820/03/16).

for Patricia Azarias, Director
Internal Audit Division I, OIOS