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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)

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Introduction

1. At its forty-second session on 11-13 December 2001, the Governing Council established a “late claims” programme (the “late-claims programme”) for Palestinians who can demonstrate that they did not have a full and effective opportunity to file claims with the United Nations Compensation Commission (the “Commission” or the “UNCC”) during the Commission’s filing period for individual claims from 1 January 1992 to 1 January 1996 (the “regular filing period”). The Governing Council adopted the following recommendation of the Working Group of the Council:

“The Working Group considered the request of the Permanent Observer Mission of Palestine to the United Nations Office at Geneva concerning the filing of a number of Palestinian ‘late claims’. In discussing the request, the Working Group had before it the Information Note dated 28 November 2001 prepared by the secretariat, the memorandum dated 15 November 2001 submitted by the Palestinian Authority, and the statement delivered on behalf of the Palestinian Authority at the opening plenary session on 11 December 2001. Having considered all of the issues and information, and being concerned that these individuals possibly did not have a full and effective opportunity to file claims within the relevant filing deadline, the Working Group recommends that the Governing Council register the 1318 claim files collected by the Palestinian Authority for filing with the Commission. The Working Group further recommends that the Palestinian Authority be given an opportunity to submit claims on behalf of other individuals who were similarly affected and unable to file claims within the filing deadline, with such claims to be submitted to the Commission no later than 1 July 2002. The Working Group recommends that all of these Palestinian ‘late claims’ be put before the category ‘D’ panels of Commissioners who shall review the claim if they determine in each case that the claimant did not have a full and effective opportunity to file the claim within the filing deadline, taking into account the particular circumstances of these claimants, and therefore qualify for late filing under the established criteria.”

2. At its forty-fourth session on 18 June 2002, the Governing Council extended the deadline for the Commission’s receipt of Palestinian “late claims” from 1 July to 30 September 2002.

3. A total of 46,160 claims were filed by the Palestinian Authority under the late-claims programme, 43,806 claims in category “C” and 2,354 claims in category “D”. Although a few claims were filed in categories “A” and “B”, these claims will be processed as category “C” claims and are included in the number of category “C” claims stated above.¹ Of the total number, 256 claims in category “C” and 2 claims in category “D” have been withdrawn.

4. Pursuant to the Governing Council’s direction, a Panel of Commissioners (the “Panel”), consisting of Michael Pryles (Chairman), Kamal Hossain and Nayla Comair-Obeid, was constituted from among the category “D” Commissioners. The Panel is conducting the threshold eligibility assessment directed by the Governing Council in respect of all Palestinian “late claims”. This assessment requires the Panel to determine whether claimants have demonstrated that they did not have a full and effective opportunity to file claims during the regular filing period. The Panel is also reviewing the merits of

those category “C” claims that satisfy the threshold eligibility requirement. Those category “D” claims that satisfy the threshold eligibility requirement will be reviewed separately by the two category “D” Panels of Commissioners.

5. This is the first report of the Panel submitted to the Governing Council through the Executive Secretary of the Commission in accordance with article 38(e) of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the “Rules”). This report contains the Panel’s determinations and recommendations concerning 1,691 category “C” Palestinian “late claims” (the “first instalment claims”) together with the Panel’s eligibility assessment in respect of 70 category “D” Palestinian “late claims”.

6. The Panel has used these claims, together with other sample claims, as a “pilot group” to elaborate guidelines for the threshold eligibility assessment of all Palestinian “late claims”. The Panel has also used the category “C” claims in the pilot group to determine whether modifications to the established methodologies for category “C” claims are required to take into account unique or specific characteristics of category “C” Palestinian “late claims”.

I. OVERVIEW OF THE PALESTINIAN “LATE CLAIMS”

A. Characteristics of the claims

7. Approximately 95 per cent of the claims filed under the late-claims programme are category “C” claims. The most common loss types are departure (C1-Money), personal injury (C2-Money), personal property (C4-CPHO), motor vehicles (C4-MV) and loss of salary (C6-Salary). Less frequent loss types include mental pain and anguish arising from forced hiding, hostage-taking or illegal detention (C1-MPA), mental pain and anguish arising from personal injury (C2-MPA) and business losses (C8-Business). A few claims assert death (C3), loss of bank accounts (C5-BA), loss of stocks and other securities (C5-SOS), loss of financial support (C6-Support), mental pain and anguish arising from deprivation of all economic resources (C6-MPA), real property (C7), and other losses (CS-Other).

8. With respect to the category “D” claims filed under the late-claims programme, the most common loss types are departure-related losses (D1), personal injury (D2), personal property (D4), loss of salary (D6), and business losses (D8/D9). Some claims assert mental pain and anguish arising from forced hiding, hostage-taking or illegal detention (D1-MPA), death and support (D3), mental pain and anguish arising from death (D3-MPA), loss of bank accounts, stocks and other securities (D5), and mental pain and anguish arising from deprivation of all economic resources (D6-MPA).

9. It became apparent during the course of data entry and the sample reviews of claims that the Palestinian “late claims” tend to assert higher amounts claimed and more loss types than category “C” claims filed during the regular filing period (“original category ‘C’ claims”). The Panel therefore instructed the secretariat to perform detailed statistical comparative analyses between a representative sample of category “C” Palestinian “late claims” and comparable original category “C” claims.²

10. These analyses confirm that category “C” claims in the late-claims programme assert substantially higher total amounts claimed and more loss types than comparable claims in the original category “C” programme. For example, the median value³ for the total amount claimed in the sample of category “C” Palestinian “late claims” is USD 45,450 and the median number of loss types asserted is three. In contrast, the median value for the total amount claimed for comparable claims in the original category “C” programme was as follows: (a) for Palestinians whose claims were filed by various Governments and international organizations, USD 28,498; (b) for Jordanians, USD 27,682; (c) for Kuwaitis, USD 19,533; and (d) for all claimants, USD 14,575. The median number of loss types asserted for all claims, including comparable claims, in the original category “C” programme, was two. The significance of these differences between the Palestinian “late claims” and the original category “C” claims and their impact on the processing of the Palestinian “late claims” is addressed in section VII.E below.

11. Similar statistical comparative analyses performed in respect of category “D” Palestinian “late claims” confirm that they also assert substantially higher total claim amounts and more loss types than comparable category “D” claims filed during the regular filing period (“original category ‘D’ claims”).⁴ For example, the median value for the total amount claimed for category “D” Palestinian “late claims” is USD 799,308 and the median number of loss types asserted is three. In contrast, the median value for the total amount claimed for original category “D” claims is USD 257,076 and the median number of loss types is two. The detailed results of the statistical comparative analyses will be transmitted to the category “D” Panels of Commissioners for their consideration.

B. Origin of the claims

12. The Palestinian Authority is the submitting entity for all Palestinian “late claims”. The Panel understands that the Palestinian Authority made claim forms available at its offices in Gaza, the West Bank and worldwide, and that the Palestinian Authority also opened a claims office in Amman, Jordan. At the request of the Commission and with the consent of the Palestinian Authority, the United Nations Development Programme (“UNDP”) office in Kuwait assisted with the distribution and collection of claim forms from Palestinians in Kuwait while the United Nations Relief and Works Agency for Palestine Refugees in the Near East (“UNRWA”) undertook similar work in Lebanon and the Syrian Arab Republic. This assistance was sought because the Palestinian Authority had no offices in those countries.

13. The majority of the Palestinian “late claims” were submitted through the Palestinian Authority office in Jordan and the UNDP office in Kuwait. Of the total number of 46,160 Palestinian “late claims”, 27,335 originated from the Palestinian Authority office in Jordan,⁵ 16,752 from the UNDP office in Kuwait, 1,278 from the Palestinian Authority office in Gaza and 795 from the offices of UNRWA.

II. THE PROCEEDINGS

14. The Panel held its first meeting on 17 May 2002. Since then, the Panel has convened a total of 12 meetings. The Panel has also held consultations with the secretariat on a regular basis.

15. The Panel decided at its first meeting that it would conduct as much of its business as possible by electronic means. The Panel has conducted many of its meetings by teleconference. It has also taken advantage of the attendance in Geneva of one or more of its members for meetings of the “D1” or “D2” Panels of Commissioners to meet, discuss progress and further its work in the Palestinian “late claims”.

III. DATA ENTRY

16. It was necessary at the outset of the late-claims programme to enter the relevant information from the claim forms into the Commission’s database. This work was undertaken by the secretariat over the period March 2002 to June 2003. Given the electronic mass claims processing techniques used to resolve category “C” claims, data entry plays a critical role in the preparation of claims for substantive processing.

17. With respect to category “C” claims, the original data entry programmes were found to be obsolete and, in the time since resolution of the original category “C” claims, the Commission had moved to a new, more powerful, integrated database (the “claims database”). The secretariat, through its Information Services Section, wrote new programmes to speed up the data entry process and ensure consistent treatment of the Palestinian “late claims” with the original category “C” claims and with other claim categories. As will be described in more detail below, several changes were also made to other software, commensurate with the needs of computerised claims processing in a new, integrated database environment.

18. Data entry of the category “C” Palestinian “late claims” was performed in three phases: data entry, quality control and recategorization. The first phase consisted of entering data from the claim forms into the claims database. The second phase verified that the data had been correctly captured. The third phase, conducted at the same time as quality control, consisted of reviewing claimants’ classification of their losses and, where necessary, recategorizing losses to the appropriate loss type. The correct categorization of losses is essential given that each loss type is subject to a different methodology.

19. The category “D” Palestinian “late claims” were also entered into the claims database. Quality control in respect of these claims was performed on a random sample basis, since the verification of claims data in the claims database will be carried out by the secretariat during the individual review of these claims by the category “D” Panels of Commissioners.

20. As a further check on the accuracy of data entry, the Verification and Valuation Support Branch of the secretariat conducted an independent quality assurance review.

IV. THE THRESHOLD ELIGIBILITY REQUIREMENT

21. As stated in paragraph 1 above, the Governing Council directed that claimants must demonstrate that they did not have a full and effective opportunity to file claims during the regular filing period to be eligible to participate in the late-claims programme. This threshold eligibility

assessment, which is unique to Palestinian “late claims”, has been entrusted to the Panel. Only those claims that the Panel determines satisfy the threshold eligibility requirement will be considered on their merits.

22. The Panel has developed a two-step process for conducting the threshold eligibility assessment and has elaborated guidelines for the assessment of whether claimants had a full and effective opportunity to file claims during the regular filing period. That process is as follows.

A. Matching of claims

23. The first step is to identify those claims filed under the late-claims programme by claimants who previously filed claims during the regular filing period. The Panel directed the secretariat to undertake electronic searches with respect to each Palestinian “late claim” using a general matching programme that automatically runs in the claims database. The programme identifies matching claimants and claims within the total population of claims submitted to the Commission, across all claim categories. The programme employs the following identifier information relating to the claimant: (a) claimant name; (b) civil identification number or residence permit number; and (c) passport number, year of birth and nationality. This identifier information was entered into the claims database for each Palestinian “late claim” in order to run the general matching programme. Additional matching on claimant names is done using “fuzzy” search techniques.⁶

24. Claims identified by these programmes as potential matches undergo manual verification to confirm whether they are in fact matches. Confirmed matches may relate either to claims filed by the same claimant in the same claim category or to claims filed by the same claimant in different claim categories. Over 4,000 confirmed matches have been identified. A sample of these claims is reported in this first instalment report. The balance will be reported in future instalments.

25. The Panel finds that the existence of a previously filed claim in the same claim category demonstrates that the claimant had a full and effective opportunity to file a claim with the Commission during the regular filing period. In such cases, the Palestinian “late claim” is not eligible for inclusion in the late-claims programme and will not be processed further.

26. The Panel finds that the existence of a previously filed claim in another claim category may, but does not necessarily, indicate that the claimant had a full and effective opportunity to file a claim with the Commission during the regular filing period. The Panel is aware that, in certain circumstances, claim forms for particular claim categories were not available during the regular filing period, with the result that claimants were able to file claims in some claim categories but not in others. Where a claimant filed a claim in one claim category during the regular filing period and now asserts that he or she was unable to file a claim in other claim categories at that time, the Panel considers on a case-by-case basis whether the claimant is eligible to participate in the late-claims programme.

27. Additional matching was conducted with respect to those Palestinian “late claims” originating in Kuwait. The Commission’s original compensation programme in Kuwait was administered⁷ by UNDP. At the request of the Panel, the UNDP office in Kuwait provided the secretariat with its ledger

in which the names of those individuals who received or submitted claim forms during the regular filing period were recorded. The names in the ledger were matched against the names of claimants filing under the late-claims programme.

28. The Panel presumes that those claimants who are identified in the ledger as having received or submitted claim forms had a full and effective opportunity to file claims during the regular filing period. Such claimants are ineligible to participate in the late-claims programme unless they are able to rebut this presumption to the satisfaction of the Panel.

B. Reasons review

29. For those claims that are not found to be ineligible on the basis of matching, the second step is to review the reasons proffered by each claimant as to why he or she was unable to file a claim during the regular filing period.

30. The Panel's starting premise is that only stateless Palestinians are eligible to participate in the late-claims programme. This premise is based on the Panel's understanding of the materials that were before the Governing Council at the time it established the late-claims programme. The Panel notes that paragraph 19 of Governing Council decision 1 (S/AC.26/1991/1), which deals with the criteria for the expedited processing of urgent claims, provides, in part, that:

“Claims will be submitted by Governments. Each Government will normally submit claims on behalf of its nationals; each Government may, at its discretion, also submit the claims of other persons resident in its territory. In addition, the Council may request an appropriate person, authority or body to submit claims on behalf of person who are not in a position to have their claims submitted by a Government ...”

31. The Panel further notes that the Governing Council in decision 5 (S/AC.26/1991/5) identified Palestinians as the individuals most likely not to be in a position to have their claims submitted by a Government, and stated as follows in paragraph 4 thereof:

“The international community, represented by the UNCC bears the overall responsibility for protecting the interests of the above-mentioned individuals. It will be necessary, however that an appropriate person be entrusted with various aspects of the implementation of this task which shall include, inter alia, providing information to future claimants, distributing and collecting forms, submitting claims and finally executing payments.”

32. The Panel understands that the Governing Council requested the Executive Secretary to locate and recommend an appropriate international body to submit claims on behalf of Palestinians. After extensive consultations, an agreement was reached whereby various United Nations organizations would assist Palestinians in designated areas to file claims with the Commission.

33. The Panel further understands that it was concerns about the execution of the agreement put into place to enable Palestinians to file claims that prompted the Governing Council's establishment of the late-claims programme and its formulation of the "full and effective opportunity" test for eligibility.

34. Several consequences follow from the Panel's starting premise. First, claimants must establish to the satisfaction of the Panel that they are Palestinian. Secondly, an issue arises as to the eligibility of those claimants who are Palestinian and who were, during the regular filing period, nationals of a State. The Panel determines that such claimants are ineligible to participate in the late-claims programme since they could have filed claims through the Governments of such States. The issue is complicated, since the Panel is aware that during the regular filing period some Palestinians held passports or other travel documents issued by certain Governments for certain purposes, and that such documents did not necessarily connote the possession of citizenship.⁸ The particular circumstances of the holders of such documents and their eligibility to participate in the late-claims programme are further considered in section IV.B.2 below.

35. In determining whether a stateless Palestinian claimant had a full and effective opportunity to file claims with the Commission during the regular filing period, the Panel considers the particular circumstances of each claimant, the efforts made by the claimant to file a claim during the regular filing period and the explanation provided by the claimant as to why he or she was unable to do so. The Panel required each claimant to submit a "reasons statement" with the claim form describing his or her circumstances during the regular filing period and explaining why he or she alleges the lack of a full and effective opportunity to file claims during that period. The Panel also required each claimant to submit documentation to support the assertions contained in the reasons statement. Pursuant to the direction of the Governing Council, each reasons statement and supporting documentation is individually reviewed in order to determine whether the claim is eligible for inclusion in the late-claims programme.

36. The Panel finds that claimants who failed to provide a reasons statement with their claim form have not met the burden on them to demonstrate that they did not have a full and effective opportunity to file claims during the regular filing period. They are therefore ineligible to participate in the late-claims programme.

37. The Panel began the process of formulating guidelines for reasons review by reviewing a sample of the "reasons statements" and supporting documentation submitted by claimants. That review indicated that, in many instances, claimants did not provide sufficient information in their reasons statements to enable the Panel to conduct its assessment of eligibility. The Panel therefore devised a questionnaire to elicit further information from claimants. Issuance of such notifications to the Palestinian Authority commenced on 7 May 2002 and responses began to be received by the Commission on 13 June 2002. The Panel anticipates that the reasons review phase of the Palestinian "late claims" processing will continue on an ongoing basis into the last quarter of 2004.

38. In developing its guidelines for reasons review, the Panel also reviewed the information provided to the Governing Council on behalf of the Permanent Observer Mission of Palestine to the

United Nations Office at Geneva in support of its request for approval to file “late claims” as well as the information provided by the secretariat to assist the Governing Council in considering the request. Further, the Panel directed the secretariat to gather additional information, including information from Governments and other United Nations organizations, concerning the circumstances faced by Palestinians following Iraq’s invasion and occupation of Kuwait and during the regular filing period, and the administration of the Commission’s compensation programme in Gaza, the West Bank, Kuwait and elsewhere during the regular filing period.

39. The Panel has used this information to develop guidelines for assessing the reasons provided by claimants and determining whether or not they had a full and effective opportunity to file claims during the regular filing period. The process is complex, given the diverse circumstances the Panel has had to consider. The Panel has identified particular factual circumstances that require further investigation. Moreover, the Panel expects that as reasons review continues, new issues will arise and additional guidelines will be developed as necessary and will be reported in subsequent reports of the Panel.

1. The movement of Palestinians following Iraq’s invasion and occupation of Kuwait

40. To better understand the circumstances of claimants during the regular filing period, the Panel obtained information concerning the movement of Palestinians from Kuwait and Iraq following Iraq’s invasion and occupation of Kuwait.⁹ That information is summarized as follows.

41. Kuwait’s pre-invasion population totalled some 2,142,600 individuals, of whom 1,316,014 were expatriate workers and their dependents.¹⁰ Included in the latter figure were approximately 400,000 Palestinians. Many were long-term residents in Kuwait.¹¹

42. Accounts of departures of Palestinians from Kuwait following Iraq’s invasion of Kuwait generally refer to three waves of departures that took place from August 1990 to the end of 1992. The first wave took place in the immediate aftermath of Iraq’s invasion of Kuwait and involved approximately one-half of the pre-invasion Palestinian population.¹² The second wave of departures took place after the liberation of Kuwait in March 1991.¹³ By the end of 1992, after a third wave of departures prompted by the imposition of more stringent residency rules in Kuwait, approximately 30,000 Palestinians remained in Kuwait,¹⁴ the majority of whom were Palestinians of Gaza origin who held Egyptian travel documents.¹⁵

43. Many Palestinians holding Jordanian passports who departed Kuwait were able to enter Jordan, with some 30,000 to 40,000 of them going to the West Bank.¹⁶ An estimated 60,000 Palestinians were unable to enter Jordan, and ended up in Iraq, Sudan or Yemen. Some were able to emigrate to Australia and to countries in North America, Latin America and Europe.¹⁷

2. The grouping of claimants

44. Based on its review of a sample of reasons statements and responses provided by claimants, the materials before the Governing Council in relation to the request for approval of a “late claims”

programme and the information collected at its own instigation, the Panel has identified a number of factors that it considers important in assessing whether a claimant satisfies the threshold eligibility requirement. They include, but are not necessarily limited to, the following: (a) the physical location(s) of the claimant following the liberation of Kuwait and during the regular filing period; (b) the existence at that location of a functioning Government or international organization office charged with the administration of the Commission's compensation programme; (c) the sufficiency of notification of the Commission's compensation programme such that an individual could be reasonably expected to have known about it; (d) the availability of claim forms for the various individual claim categories; (e) the ability of individuals to physically visit offices administering the Commission's compensation programme; and (f) the period of time available to file claims.

45. The Panel considers a key factor to be the physical location(s) of claimants following Iraq's invasion of Kuwait and during the regular filing period. In that regard, and based on its review of the Palestinian "late claims" to date, the Panel finds that most claimants under the late-claims programme fall into one of four groups, namely:

- (a) Claimants who returned to Gaza;
- (b) Claimants who relocated to Jordan or the West Bank;
- (c) Claimants who relocated to third countries, including Iraq; and
- (d) Claimants who remained in Kuwait.

The Panel will address each of these groups in turn.

(a) Claimants who returned to Gaza

46. Some claimants assert in their reasons statements that they returned to Gaza following Iraq's invasion of Kuwait, often after being stranded in Iraq or other countries for varying periods of time while seeking permits from Israeli authorities to enter Gaza. These claimants typically assert that by the time they were able to enter Gaza, administration of the Commission's compensation programme had ceased in Gaza. Other claimants allege that they were unable to travel to the UNDP office in Gaza City to obtain or submit claim forms because of closures imposed by Israeli authorities.¹⁸ Still other claimants in this group assert that they were unable to obtain claim forms for certain claim categories. Yet others allege that they were unaware of the Commission's compensation programme.

47. The Panel is mindful of the information provided to the Governing Council concerning the administration of the Commission's compensation programme in Gaza by UNDP Jerusalem and in particular the limited time period during which the programme was administered. Accordingly, the Panel closely scrutinizes the date upon which claimants entered Gaza. A mere assertion of a date of entry by a claimant in his or her reasons statement is insufficient. The Panel requires documentary evidence of the date of entry, such as copies of passports or other travel documents containing entry and exit stamps, visitor's permits demonstrating entry to Gaza, bridge statistics cards (showing transit

between Jordan and the West Bank via the Allenby/King Hussein Bridge), work permits or other relevant documentation.

48. The Panel is of the view that where a claimant establishes that he or she did not enter Gaza until after administration of the Commission's compensation programme ceased and remained there for the balance of the regular filing period, the claimant has demonstrated the lack of a full and effective opportunity to file claims and is therefore eligible to file a claim under the late-claims programme, provided that the claimant also establishes the lack of an opportunity to file claims during the regular filing period prior to entering Gaza.

49. The Panel has obtained information from several sources, including UNRWA's daily records and reports of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories¹⁹ concerning closures and curfews in Gaza during the regular filing period. The Panel takes this information into account in its assessment of eligibility where claimants assert that they were unable to obtain or submit claim forms because of closures in Gaza.

50. The Panel is aware that claim forms were not available in Gaza for every individual claim category. The Panel also takes this information into account in its assessment of the reasons proffered by claimants for late filing.

51. With respect to those who allege they were unaware of the Commission's compensation programme, the Panel understands that, generally speaking, ignorance of the existence of the programme is not an acceptable reason for late filing with the Commission. In the light of the particular circumstances surrounding the notification of the programme in Gaza, however, the Panel, while accepting that in general ignorance is no excuse, examines the reasons statements of such claimants and the factual assertions therein on a case-by-case basis to determine whether the claims should be accepted.

(b) Claimants who relocated to Jordan or the West Bank

52. Many claimants indicate that they are Palestinians holding Jordanian passports and residing in Jordan or the West Bank. The fact that these claimants held some type of Jordanian passport raises the question whether these claimants could have filed claims during the regular filing period through the Government of Jordan. Some of these claimants allege that they attempted to file claims in Jordan and were turned away by the relevant authorities.

53. The Panel has investigated this matter at some length and has gathered information from a number of sources, notably the Government of Jordan. The Panel also directed the secretariat to perform a sample review of claims filed by the Government of Jordan on behalf of Palestinians during the regular filing period. The results of that sample review indicated that the Government of Jordan filed claims during the regular filing period on behalf of Palestinians in Jordan.

54. Having considered the totality of the information before it, the Panel concludes that Palestinians who held any type of Jordanian passport and who stayed in Jordan for a continuous period of 12 months or longer during the regular filing period (from the time that claim forms were provided by the Commission to the Government of Jordan) had an opportunity to file claims through the Government of Jordan. The Panel considers that 12 months was a sufficient period of time for such individuals to have been able to file their claims. Therefore these individuals are ineligible to participate in the late-claims programme. The Panel considers that individuals who stayed in Jordan for less than 12 months would have been preoccupied with establishing themselves and organising their affairs. Consequently, it would not in general be realistic to suppose that they would have had an effective opportunity to learn about how and where to file their claims. However, the Panel examines the reasons statements of such claimants and the factual assertions therein on a case-by-case basis to determine whether the claimant in fact had a full and effective opportunity to file claims through the Government of Jordan.

55. Other claimants stayed in Jordan for 12 months or longer during the regular filing period but did not hold Jordanian passports. Mindful of the fact that the sample review indicated that the Government of Jordan filed claims during the regular filing period on behalf of Palestinians holding other types of travel documents, the Panel presumes that such claimants had a full and effective opportunity to file claims through the Government of Jordan. The burden is on these claimants to demonstrate through their reasons statements and supporting documentation why this presumption should not be applied to them.

56. With respect to those claimants who relocated to the West Bank, the Panel was mindful of the information before the Governing Council to the effect that the UNDP office in Jerusalem did not administer the Commission's compensation programme in the West Bank. The Panel made its own inquiries concerning the administration of the programme in the West Bank during the regular filing period. The results of those inquiries indicated that although Jordan severed its legal and administrative ties with the West Bank on 31 July 1988, the Government of Jordan provided a limited number of claim forms for certain of the individual claim categories for distribution through the eight Shari'a courts in the West Bank, which remained under Jordanian control until 15 February 1993. The information gathered by the Panel also suggests that the distribution and collection of claim forms was confined to a brief portion of the regular filing period.

57. Having considered this matter at some length, and given the uncertainty that still exists surrounding the administration of the programme in the West Bank, the Panel determines that it will consider the circumstances of these claims on a case-by-case basis, having particular regard to the claimant's explanation of the efforts he or she made to file claims in the West Bank.

(c) Claimants who relocated to third countries, including Iraq

58. Some claimants assert that they had to stay in third countries for extended periods of time while awaiting the requisite papers to travel to Gaza, the West Bank or elsewhere, and were unable to file claims while in those third countries. In some instances, these claimants stayed in third countries where neither the Governments nor offices of international organizations submitted claims to the

Commission on behalf of Palestinians. In other instances, claimants stayed in third countries where Governments or offices of international organizations did submit claims to the Commission on behalf of Palestinians.

59. The Panel directed the secretariat to conduct a search of the claims database to determine which Governments and international organization offices assisted Palestinians in filing claims during the regular filing period. That search indicated that certain countries and international organization offices filed claims on behalf of Palestinians. As a result, a list of such countries and international organization offices was compiled.

60. The Panel finds that claimants who stayed for a continuous period of at least 12 months during the regular filing period in a country that is on the list referred to in paragraph 59 above are ineligible to participate in the late-claims programme. The Panel considers that 12 months was a sufficient period of time for a claimant to have been able to file their claims in such countries through those Governments or international organization offices. The Panel considers that individuals who stayed in these countries for less than 12 months would have been preoccupied with establishing themselves and organising their affairs. Consequently, it would not in general be realistic to suppose that they would have had an effective opportunity to learn about how and where to file their claims. However, the Panel examines the reasons statements of such claimants and the factual assertions therein on a case-by-case basis to determine whether the claimant in fact had a full and effective opportunity to file claims through those Governments or international organization offices.

61. The Panel finds that Palestinians who stayed in third countries not on the list would not have had an opportunity to file claims, since unlike claimants of other nationalities who found themselves in third countries, they had no national embassies or missions they could turn to for assistance in filing claims. The Panel further finds that it would be unreasonable to expect these Palestinians to have left those third countries in order to try and find another Government or international organization office to receive their claims. Accordingly the Panel considers that these claimants did not have a full and effective opportunity to file claims during the regular filing period and are therefore eligible to participate in the late-claims programme.

62. The Panel also finds that claimants who establish that they were stranded in Iraq throughout the regular filing period did not have a full and effective opportunity to file claims and therefore are eligible to participate in the late-claims programme. The Panel considers that there was no Government or international organization office administering the Commission's compensation programme in Iraq.

(d) Claimants who remained in Kuwait

63. Many Palestinians who remained in Kuwait following its liberation have filed claims under the late-claims programme through the UNDP office in Kuwait. Many of these claimants assert that they were not permitted to file claims during the regular filing period or were prevented from claiming for certain types of losses. Others allege that they were unaware of the Commission's compensation programme.

64. In order to investigate such assertions, the Panel made inquiries concerning the administration of the Commission's compensation programme in Kuwait by UNDP. The information gathered indicated that the programme was administered for a brief portion of the regular filing period and that only Palestinians holding Egyptian travel documents were permitted to submit claims. Further, it appears that some groups of individuals may have been precluded from submitting claims while others may have been constrained from claiming for certain loss types.

65. As stated in paragraphs 27-28 above, the Panel presumes that those claimants whose names appear in the ledger maintained by the UNDP office in Kuwait for the Commission's compensation programme as having received or submitted claim forms had a full and effective opportunity to file claims at that time. The Panel finds that such claimants are ineligible to participate in the late-claims programme unless they demonstrate that the presumption should not apply to them.

66. With respect to those claimants who allege that they were prevented from claiming for certain loss types, the Panel considers their reasons statements and supporting documentation on a case-by-case basis in the light of its information concerning the administration of the Commission's compensation programme in Kuwait.

67. With respect to those claimants who assert that they were unaware of the Commission's compensation programme, as stated in paragraph 51 above, the Panel considers that in general ignorance of the existence of the programme is not an acceptable reason for late filing. In light of the particular circumstances surrounding the programme in Kuwait, however, the Panel examines the reasons statements of such claimants and the factual assertions therein on a case-by-case basis to determine whether the claims should be admitted.

68. Other claimants in this group held Jordanian passports and allege that they were turned away from the UNDP office in Kuwait because they did not hold Egyptian travel documents. The Panel understands that the UNDP office in Kuwait did not file claims for such individuals during the regular filing period. The question arises, however, whether these claimants held Jordanian nationality. If so, the Panel finds that they are ineligible to participate in the late-claims programme. The Panel considers on a case-by-case basis whether these claimants held Jordanian nationality.

69. Other claimants in this group who also held Jordanian passports alleged that they went to Amman, Jordan, during the regular filing period in order to file claims because of the closure of the Jordanian Embassy in Kuwait. They assert that they were told in Amman that they could not file claims because they still resided in Kuwait. Where these claimants stayed in Jordan for 12 months or longer, the finding of the Panel set out in paragraph 54 above applies and they are ineligible to participate in the late-claims programme. Where these claimants stayed in Jordan for less than 12 months, the Panel will determine whether they had a full and effective opportunity to file claims on a case-by-case basis.

70. Still other claimants in this group held Lebanese or Syrian travel documents and remained in Kuwait following its liberation. The Panel is aware from a sample review of claims filed by the Governments of Lebanon and the Syrian Arab Republic during the regular filing period that these

Governments filed claims on behalf of Palestinians holding such travel documents and residing in Lebanon, the Syrian Arab Republic and Kuwait. Accordingly the Panel finds that claimants who remained in Kuwait following its liberation and held Lebanese or Syrian travel documents had a full and effective opportunity to file claims through the Governments of Lebanon and the Syrian Arab Republic. Such claimants are therefore ineligible to participate in the late-claims programme.

3. Other considerations

71. Some claimants assert that they were unable to file claims during the regular filing period, although their spouses were able to do so. The sample review indicated that these claims present a number of factual situations. In some cases, it appears that the wife was with her husband throughout the regular filing period. In those instances, the Panel finds that the wife should have been able to file claims at the same time as her husband and is therefore ineligible to participate in the late-claims programme. In other cases, it appears that the wife was not with her husband throughout the regular filing period. In these cases, the Panel applies the guidelines set forth above. In yet other instances, it appears that the wife remained in Kuwait throughout the regular filing period. In these cases, the Panel will assess the claims on a case-by-case basis.

C. Irregularities

72. During data entry and reasons review, the secretariat discovered and reported to the Panel certain irregularities, such as alterations to the supporting documentation submitted by some claimants with their reasons statements. The Panel has established procedures to identify and deal with such cases. Where the Panel determines that the documents submitted in support of a claim have been altered, the claim is ineligible for inclusion in the late-claims programme and will not be considered further. In cases where the authenticity of a photocopied document is called into question, the claimant is required to provide the original document for inspection by the Panel.

V. OVERVIEW OF THE FIRST INSTALMENT CLAIMS

73. The first instalment of category "C" Palestinian "late claims" comprises 1,691 claims for a total amount claimed of USD 96,303,469.66. The Panel finds that 883 of these claims, for a total amount claimed of USD 41,736,799.53, are eligible for inclusion in the late-claims programme. The remainder of the first instalment claims, asserting a total amount claimed of USD 54,387,305.85, are ineligible for inclusion.

74. The Panel has considered the eligible claims on their merits and made individual recommendations as to compensation that are set out in a confidential report to the Palestinian Authority.

75. The eligible claims in the instalment include claims for departure (C1-Money), mental pain and anguish arising from forced hiding, hostage-taking or illegal detention (C1-MPA), personal injury (C2-Money), mental pain and anguish arising from personal injury (C2-MPA), personal property (C4-CPHO), motor vehicles (C4-MV), loss of bank accounts (C5-BA), loss of stocks and other securities

(C5-SOS), loss of salary (C6-Salary), loss of financial support (C6-Support), mental pain and anguish arising from deprivation of economic resources (C6-MPA) and business losses (C8-Business). The Panel has excluded from the first instalment claims relating to death (C3) or real property (C7) losses and claims from individuals who were minors at the time of Iraq's invasion and occupation of Kuwait pending further review and consideration. The Panel will report claims with such losses in subsequent instalments.

76. In accordance with article 16 of the Rules, the Executive Secretary of the Commission issues quarterly reports to inform the Governing Council of claims received and the significant legal and factual issues raised therein. Such reports are also circulated for comment to the Government of Iraq and all Governments and international organizations that have submitted claims. The Executive Secretary submitted to the Governing Council report Nos. 41 and 43 dated 17 October 2002 and 17 April 2003, respectively, in accordance with article 16 of the Rules. These reports covered, inter alia, all of the claims in this instalment. Responses were due 30 days from the issuance of the reports in respect of the category "C" Palestinian "late claims" contained in the reports. No responses were received by the Commission.

VI. THE LEGAL FRAMEWORK

77. The Panel adopts the legal framework and general issues relating to the processing of category "C" claims previously established by the category "C" Panel of Commissioners (the "category 'C' Panel"). This report should therefore be read against the background of the earlier reports made by the category "C" Panel, in particular its final report, the "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) ("Seventh 'C' Report"), which provides the most comprehensive discussion by the category "C" Panel of the processing of category "C" claims submitted during the regular filing period.

A. Subject matter jurisdiction

78. The Governing Council established the types of losses that are compensable under category "C" as a result of Iraq's invasion and occupation of Kuwait. They include death or personal injury, losses of income, support, housing or personal property, medical expenses or costs of departure, up to USD 100,000 per person.²⁰ Claims for damages relating to mental pain and anguish for certain losses are also compensable.²¹ In addition, business losses of individuals may be considered under category "C".²²

B. Jurisdictional period

79. The category "C" Panel determined the jurisdictional period for losses that are compensable under category "C". In general, losses must have occurred between 2 August 1990 and 2 March 1991 to be attributable to Iraq's invasion and occupation of Kuwait. The occurrence of loss outside that time period imposes an extra burden on the claimant to establish a direct causal link.²³

C. Applicable law

80. Pursuant to resolution 687 (1991), the Security Council established Iraq's liability under international law for any direct loss arising as a result of Iraq's invasion and occupation of Kuwait. Resolution 687 (1991) provides, in paragraph 16, that Iraq:

“...is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait”.

81. Article 31 of the Rules identifies the law to be applied by panels of Commissioners in their consideration of claims. Specifically, panels are to apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any relevant decisions of the Governing Council. When necessary, panels are to apply other relevant rules of international law.

D. Causation

82. The Governing Council provided guidelines in respect of the directness requirement in its decision 1 at paragraph 18, as follows:

“Claims must be for death, personal injury or other direct loss to individuals as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:

- (a) military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
- (b) departure from or inability to leave Iraq or Kuwait (or a decision not to return) during that period;
- (c) actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;
- (d) the breakdown of civil order in Kuwait or Iraq during that period; or
- (e) hostage-taking or other illegal detention.”

83. In decision 15 (S/AC.26/1992/15) the Governing Council confirmed that these guidelines are not intended to be exhaustive.²⁴

84. The Panel notes that the category “C” Panel had regard to these and other relevant decisions of the Governing Council concerning causation in developing the category “C” methodologies.²⁵

E. Evidentiary requirements

85. The Panel is mindful of the evidentiary requirements established by the Governing Council for category “C” claims. Paragraph 15(a) of Governing Council decision 1 provides that:

“Such claims must be documented by appropriate evidence of the circumstances and the amount of the claimed loss. The evidence required will be the reasonable minimum that is appropriate under the circumstances involved, and a lesser degree of documentary evidence would ordinarily be required for smaller claims, such as those below \$20,000.”

86. The Panel also has regard to article 35(2)(c) of the Rules, which provides that:

“For consideration of claims up to US\$100,000 of actual losses, such claims must be documented by appropriate evidence of the circumstances and amount of the claimed loss. Documents and other evidence required will be the reasonable minimum that is appropriate under the particular circumstances of the case. A lesser degree of documentary evidence ordinarily will be sufficient for smaller claims such as those below US\$ 20,000.”

87. In applying the evidentiary requirements to the first instalment claims, the Panel seeks consistency with the relevant precedents established by the category “C” Panel. The Panel adopts the approach of the category “C” Panel, namely, that the degree and type of evidentiary support required is determined to a large extent by the loss types claimed.²⁶

VII. SUBSTANTIVE PROCESSING

A. Category “C” methodologies

88. The Panel’s starting point in the processing of the eligible claims in the first instalment is the category “C” methodologies developed by the category “C” Panel. Before applying those methodologies, however, the Panel had to consider whether they required modification in order to take into account any particular characteristics of the category “C” Palestinian “late claims”.

89. Preliminary scrutiny during data entry and preliminary surveys of electronic claims data provided the Panel with initial information concerning the category “C” Palestinian “late claims” and the specific loss types asserted therein. That information suggested that the Palestinian “late claims” presented particular characteristics that may not have been present, or did not raise an issue, in claims filed during the regular filing period. The Panel thereupon decided to conduct a closer examination of the category “C” Palestinian “late claims” through reviews of representative sample claims and statistical comparative analyses. These sample reviews and statistical analyses were performed from April to July 2003, upon completion of the data entry phase of claims processing. Other sample reviews, particularly for losses related to C3 (death) and C7 (real property), have been deferred by the Panel for consideration in later instalments.

90. As a result of data obtained from the sample reviews and statistical analyses, the Panel determines that two modifications to the established methodologies are necessary. The first relates to

the criteria for the compensability of claims and is specific to claims for C1-Money, C2-Money and C2-MPA. This modification and its rationale are explained in paragraphs 98-105, 111-116 and 118-121 below. The second relates to the risk of overstatement in category "C" Palestinian "late claims". This modification and its rationale are explained in paragraphs 145-146 below.

B. Rewriting of the electronic compensation formulae

91. The electronic compensation formulae developed by the category "C" Panel had to be rewritten and adapted to run on the claims database. This work was undertaken during the period March to August 2003. It was based on the specifications used in the old database and the modifications the Panel directed be made to the compensation formulae. The rewritten formulae were tested and quality assurance checked to ensure their accuracy.

C. Preparation of claims for electronic processing

92. The Panel adopts the procedures established by the category "C" Panel for the substantive processing of category "C" Palestinian "late claims". As a first step, and in order to ensure that claims are ready for the application of the compensation formulae, claims with potential problems related to electronic processing are identified.

93. Such claims fall into three groups. The first group comprises claims lacking data necessary for the application of the electronic compensation formulae. These claims are reviewed in an attempt to locate the missing data in the claim file. Where the information is located, the missing data is entered in the claims database to permit electronic processing. Where the information is not available, the Panel uses the statistical tools developed by the category "C" Panel to resolve such claims.²⁷

94. The second group comprises claims containing loss types requiring individual review under the procedures established by the category "C" Panel. Those procedures provide for individual review for loss types that are relatively few in number, namely C2-Money, C2-MPA, C5 losses, C6-Support and C6-MPA.²⁸ The Panel determines through these individual reviews if claimants have established the fact of loss and the requisite causal link to Iraq's invasion and occupation of Kuwait pursuant to the criteria established by the category "C" Panel.

95. The third group comprises claims containing particular substantive issues for the Panel's determination. For example, claims for C8-Business losses that assert corporate rather than individual business losses are identified and a determination is made as to whether they should be transferred to another claim category for processing as corporate claims.

96. Once data entry is complete and processing issues, if any, have been resolved, the claims are ready for electronic processing. In most cases the recommended award is computed automatically by applying the appropriate electronic compensation formula to each loss type. In certain cases the recommended award is computed manually and subsequently inserted into the database.²⁹

D. Losses claimed

97. The Panel adopts the methodologies established by the category “C” Panel for the loss types that are included in this first instalment,³⁰ subject to the modifications that the Panel determines are necessary in the light of particular characteristics of Palestinian “late claims”. These methodologies encompass the criteria for the electronic identification of loss types and the review procedures, compensability criteria and valuation methodologies applied by the category “C” Panel and described in the Seventh “C” Report.

1. C1-Money

98. C1-Money claims arise from expenses incurred for transportation, lodging, food, relocation and other costs on account of the claimant’s departure from Iraq or Kuwait or inability to leave or return and decision not to return to Iraq or Kuwait. There are 550 claims in the first instalment asserting C1-Money losses.

99. In respect of losses relating to relocation, the category “C” Panel determined that for these losses to be considered directly resulting from Iraq’s invasion and occupation of Kuwait, claimants must establish the fact of their residence in Iraq or Kuwait prior thereto.³¹ It found that relocation costs may be compensable even when claimants departed from Iraq or Kuwait prior to the invasion but in no event earlier than 1 June 1990, provided that claimants provide proof of residency such as a Kuwaiti civil identification or an Iraqi residence number.³²

100. In respect of losses relating to departure, the category “C” Panel determined that claimants must establish the fact of their departure from Iraq or Kuwait during the jurisdictional period. Where no dates of departure and return were specified on the claim form, the category “C” Panel presumed that the C1-Money losses occurred during the jurisdictional period and were therefore compensable.

101. The Panel took note of preliminary information obtained during data entry suggesting that there may be a large number of C1-Money Palestinian “late claims” without dates of departure and/or return indicated on the claim form.³³ This raised the issue of whether the asserted C1-Money losses were incurred during the jurisdictional period. The Panel therefore directed that a sample review of C1-Money claims without dates of departure and/or return be performed to determine whether it would be appropriate to continue to apply the presumption established by the category “C” Panel.

102. The sample review showed that a large majority of the claims would be compensable as either (a) the claim is for inability to leave Kuwait or Iraq (in which case the absence of a date of departure and return was entirely consistent with the type of claim made), or (b) supporting documentation shows a date of departure and return during the jurisdictional period for claims for departure or during the period from 1 June 1990 to 2 March 1991 for claims for inability to return/decision not to return. The review also showed that the vast majority of claims that would not be compensable are claims for departure where claimants did not provide evidence that they departed during the jurisdictional period.

103. Based on the results of the sample review, the Panel determines that it will individually review claims for departure from Iraq or Kuwait without dates of departure and/or return in order to consider the issue of causation. With respect to claims for inability to leave without dates of departure and/or return, the Panel continues to apply the presumption described in paragraph 100 above.

104. There are claims for departure in the first instalment without dates of departure and/or return in the claim form. During the individual review of these claims, information with respect to dates of departure and/or return were found in the supporting documents in the claim files for some of the claims. This information was entered in the claims database, the compensation formula was applied and recommended amounts were generated. With respect to the remaining claims, the Panel recommends no award of compensation since the claimants have failed to establish that they departed during the jurisdictional period and therefore have failed to satisfy the directness requirement.

105. The other claims for C1-Money were processed using the established methodologies.

106. On the basis of the foregoing, the Panel recommends awards of compensation in respect of 102 C1-Money claims and no awards of compensation in respect of 448 C1-Money claims.

2. C1-MPA

107. C1-MPA claims relate to damages for mental pain and anguish arising from (a) being taken hostage or illegally detained for more than three days, (b) being taken hostage or illegally detained for three days or less, or (c) being forced to hide. There are 59 claims for C1-MPA (hostage taking) and 119 claims for C1-MPA (forced hiding) in the first instalment.

108. The compensability criteria established by the category "C" Panel for C1-MPA losses differed depending on the nationality of the claimant or the Government or entity that submitted the claim. The category "C" Panel found that claimants with the same nationality and those from the same submitting entity generally asserted the same factual circumstances surrounding their claims for C1-MPA.

109. The Panel reviewed some Palestinian "late claims" with C1-MPA losses to determine whether these claims share the same profile with claims submitted during the regular filing period. The review showed that such claims have claim characteristics similar to the Jordanian claims for C1-MPA filed during the regular filing period. Therefore the Panel adopts the compensation criteria and valuation methodologies established by the category "C" Panel for Jordanian claims for C1-MPA.

110. The Panel recommends awards of compensation in respect of eight C1-MPA (hostage taking) and 116 C1-MPA (forced hiding) claims and no awards of compensation in respect of 51 C1-MPA (hostage taking) and three C1-MPA (forced hiding) claims.

3. C2-Money

111. C2-Money claims encompass medical expenses relating to the following personal injuries as stated on the C2 page of the claim form: dismemberment; disfigurement; loss of use or limitation of

use of a body organ, member, function or system; sexual assault; torture; aggravated physical assault; and other injuries requiring medical attention. There are 620 claims for C2-Money losses in the first instalment.

112. The category “C” Panel determined that it could be presumed that injuries occasioned during the jurisdictional period were attributable to Iraq’s invasion and occupation of Kuwait.³⁴ All C2-Money claims with dates of injury falling within the jurisdictional period were therefore considered compensable. Since it was possible to electronically identify C2-Money claims with dates of injury within the jurisdictional period, such claims proceeded directly to electronic processing and the compensation formula for this loss type was applied.

113. The category “C” Panel authorized the individual review of C2-Money claims to determine whether the injuries suffered were directly caused by Iraq’s invasion and occupation of Kuwait in two instances: (a) where the dates of injury were outside the jurisdictional period; and (b) where no date of injury was indicated on the claim form. For the former group, the Panel continues to apply the established methodology. With respect to the latter group of claims, the Panel notes that the category “C” Panel determined that they were compensable only where there was a description of the circumstances from which a causal link with Iraq’s invasion and occupation of Kuwait could be inferred.³⁵

114. The Panel recalls that the statistical comparative analyses referred to in paragraphs 9-10 above indicate that a relatively large proportion of category “C” Palestinian “late claims” assert C2-Money losses as compared to comparable claims in the original category “C” programme.³⁶ A preliminary review of C2-Money claims was performed to investigate the reasons therefor. This review indicated that there may be a significant number of claims for C2-Money losses in the Palestinian “late claims” population without any date of injury indicated on the claim form.³⁷ The Panel notes that the claim form specifically requests claimants to fill in the date on which the personal injury was sustained. Therefore, the absence of a date of injury in a potentially large number of claims raises the issue of whether these losses directly resulted from Iraq’s invasion and occupation of Kuwait.

115. To address this issue, the Panel conducted a sample review of C2-Money claims without a date of injury. The review indicated that the vast majority of these injuries would not be compensable, as either (a) they were attributable to causes other than Iraq’s invasion and occupation of Kuwait, or (b) claimants failed to provide a description of the circumstances of the injury sufficient to establish a causal link with Iraq’s invasion and occupation of Kuwait (or sometimes failed to provide a description of the injury itself). The sample review also showed that the largest proportion of compensable C2-Money losses is concentrated in claims for “other injury requiring medical attention”.

116. Based on the results of the sample review, the Panel considers it necessary to modify the existing methodology for the processing of C2-Money claims. The Panel rejects claims for C2-Money losses without a date of injury in respect of all types of personal injury specifically listed on the claim form with the exception of “other injury requiring medical attention”. The Panel will individually review C2-Money claims for “other injury requiring medical attention” without a date of injury to

determine their compensability. Where causation is established as a result of individual review, the Panel applies the compensation formula for C2-Money.

117. On the basis of the foregoing, the Panel recommends awards of compensation in respect of 311 claims and no awards of compensation in respect of 309 C2-Money claims.

4. C2-MPA

118. C2-MPA claims relate to damages for claimants' mental pain and anguish arising from a serious personal injury or for witnessing the intentional infliction of serious injury to a spouse, child or parent. There are 445 claims for C2-MPA losses in the first instalment.

119. For C2-MPA claims to be compensable, the category "C" Panel required proof of at least one serious personal injury.³⁸ As defined in paragraphs 1 to 3 of Governing Council decision 3 (S/AC.26/1991/3), "serious personal injury" relates to all injuries identified in the C2 page of the claim form except for "other injury requiring medical attention".

120. The Panel recognizes that its decision to reject C2-Money claims without dates of injury except for "other injury requiring medical attention", as stated in paragraph 116 above, impacts on related C2-MPA claims. It follows that rejection of a C2-Money claim for serious personal injury without a date of injury results in rejection of the related C2-MPA claim. Accordingly the Panel recommends no award of compensation for C2-MPA claims where the related C2-Money claim has been rejected. The Panel notes that this is a departure from the methodology established by the category "C" Panel, which provided for the individual review of all C2-MPA claims.³⁹

121. For the remaining C2-MPA claims, the Panel continues the practice established by the category "C" Panel of individually reviewing these claims.⁴⁰ On the basis of such individual review, the Panel recommends awards of compensation in respect of 10 claims for C2-MPA.

122. The Panel recommends no awards of compensation in respect of 435 C2-MPA claims in the first instalment.

5. C4-Personal Property

123. C4-Personal Property claims seek compensation for the loss of clothing, personal effects, household furnishings and other personal property items (C4-CPHO) and motor vehicle-related losses (C4-MV). There are 700 claims for C4-CPHO losses and 205 claims for C4-MV losses in the first instalment.

124. The category "C" Panel established standards of evidence in its review of C4 Personal Property losses. It determined that the fact of ownership may be established by evidence that is the "reasonable minimum" appropriate in the circumstances. Thus, personal statements and witness statements were accepted in support of the fact of ownership for C4-CPHO losses.⁴¹ For C4-MV claims, the category "C" Panel determined that non-Kuwaiti claimants established the fact of ownership if they submitted a claim form containing relevant data concerning the vehicle claimed.⁴² Moreover, the category "C"

Panel found that if the factual circumstances surrounding personal property losses were well documented, it was likely that some form of personal property loss was suffered by claimants who had established that they were resident in Iraq or Kuwait at the time of Iraq's invasion of Kuwait. Further, the category "C" Panel concluded that those personal property losses so suffered directly resulted from Iraq's invasion and occupation of Kuwait.⁴³

125. The Panel conducted sample reviews of C4-Personal Property claims to determine whether such losses directly resulted from Iraq's invasion and occupation of Kuwait. These sample reviews were performed since a preliminary review of the claims had suggested that these losses might not be direct. For example, some claimants indicated that they suffered losses as a result of selling their personal belongings at a loss prior to their departure from Kuwait (which was generally during the period from July 1991 to October 1992, i.e. after the jurisdictional period). In some instances, claimants stated that they were forced to sell their property because of involuntary departure from Kuwait after its liberation. In other instances, claimants chose to leave Kuwait due to personal hardship.

126. The sample reviews indicated that the majority of the claims provided some evidence concerning their property losses and a causal link with Iraq's invasion and occupation of Kuwait. In very few cases did claimants assert that they suffered personal property losses for reasons unrelated to Iraq's invasion and occupation of Kuwait. Almost all the personal property losses were either alleged to have been caused by Iraq's invasion and occupation of Kuwait or the cause of loss was unknown. The sampling review further revealed that a number of claimants did not specifically address the issue of causation. The Panel notes that this is not surprising given that, unlike the forms for other loss types, the C4 page of the claim form does not require claimants to explain or document the factual circumstances regarding the loss of their personal property.

127. The Panel notes the standards of evidence established by the category "C" Panel for C4-Personal Property losses as well as the general presumption that the category "C" Panel applied in respect of the fact of loss and the causal link of such loss to Iraq's invasion and occupation of Kuwait. Viewed in this context, the results of the sample reviews show that in respect of fact of ownership, Palestinian "late claims" claimants meet the "reasonable minimum" concerning their C4 Personal Property losses. In addition, the sample results do not warrant a departure from the general presumption applied by the category "C" Panel that claimants resident in Kuwait or Iraq during Iraq's invasion and occupation suffered personal property losses as a direct result thereof. Therefore the Panel adopts the methodology and compensation formula established by the category "C" Panel for the processing of C4 Personal Property claims.⁴⁴

128. On the basis of the foregoing, the Panel recommends awards of compensation in respect of all C4-CPHO and 132 C4-MV claims and no awards of compensation in respect of 73 C4-MV claims

6. C5-BA and C5-SOS

129. C5 claims are for losses relating to bank accounts, stocks or other securities. There are 22 C5-BA and eight C5-SOS claims in the first instalment. The Panel applies the established methodologies for these loss types and finds that none of the claimants have established that such losses are

compensable as a direct result of Iraq's invasion and occupation of Kuwait. The Panel recommends no awards of compensation in respect of all C5 claims.

130. Further, the Panel finds that 18 claims for C5-BA are for bank accounts in Kuwait. Consistent with the procedure established by the category "C" Panel in the light of measures undertaken by the Central Bank of Kuwait to provide claimants access to amounts on deposit with Kuwaiti banks,⁴⁵ the Panel instructs the secretariat to forward lists of such claimants, through the Government of Kuwait, to the Central Bank of Kuwait.

7. C6-Salary

131. C6-Salary claims are for employment-related losses such as salary and wages, indemnities and other benefits. There are 600 claims for C6-Salary in the first instalment. The Panel applies the established methodology for this loss type and recommends awards of compensation in respect of all C6-Salary claims in the first instalment.

8. C6-Support

132. C6-Support claims are for the loss of financial support to the claimant. The category "C" Panel identified the losses that could fall under this loss type.⁴⁶ The Panel adopts this determination. There are 40 claims for C6-Support in the first instalment.

133. The Panel adopts the procedures established by the category "C" Panel for C6-Support claims and accordingly has individually reviewed the first instalment claims to determine whether they are true claims for support (claims that are not support-related are reclassified to other appropriate loss types) and to determine their compensability.

134. On the basis of the individual review and the application of the compensation formula for this loss type, the Panel recommends awards of compensation in respect of 36 claims and no awards of compensation in respect of four claims.

9. C6-MPA

135. C6-MPA claims relate to damages for mental pain and anguish resulting from the deprivation of all economic resources which seriously threatened the claimant's survival and that of his or her family. There are 10 claims for C6-MPA losses in the first instalment.

136. The Panel adopts the procedures established by the category "C" Panel for C6-MPA claims and accordingly has individually reviewed the first instalment claims to determine their compensability. On the basis of the individual review and the application of the compensation formula for this loss type, the Panel recommends awards of compensation in respect of one claim and no awards of compensation in respect of nine claims.

10. C8-Business losses

137. There are 46 claims for C8-Business losses in the first instalment.

138. A preliminary review of these claims suggested that they do not raise new issues that were not addressed during the original category “C” programme. Nor do they present claim characteristics different from claims in the original category “C” programme. Therefore the Panel adopts the compensability criteria established by the category “C” Panel for these losses.⁴⁷ With respect to valuation, the Panel adopts the framework established by the category “C” Panel but provides new parameters to be used in the valuation of these claims.

139. The established valuation methodology for C8-Business losses uses three parameters to value such losses. The parameters are as follows: (a) macro-economic benchmark; (b) percentage of general evidence relating to the stated business losses; and (c) percentage of primary evidence submitted by claimants in support of the asserted value of loss. The specification of these parameters differs depending on the submitting entity, or identified group of submitting entities of the claim as determined by the category “C” Panel through sample reviews.⁴⁸

140. The Panel conducted a sample review of Palestinian “late claims” for C8-Business losses. After considering the results of the sample review, the Panel adopted a new set of parameters for C8-Business losses for Palestinian “late claims”, given that the population is large enough to be considered as a group distinct from the country groupings previously identified during the original category “C” programme.

141. On the basis of the foregoing, the Panel recommends awards of compensation in respect of all C8-Business claims in the first instalment.

11. CS-Other losses

142. The category “C” Panel found that claims for CS-Other losses did not represent independently identifiable loss elements eligible for compensation in category “C” and therefore determined that CS-Other losses should be recategorized to defined loss categories.

143. Consistent with the procedures established during the original category “C” programme, the Panel directed the secretariat to individually review these claims for recategorization.⁴⁹ There are 13 claims for CS-Other losses in the first instalment that could not be recategorized to other loss types, since the claimants have failed to establish that these losses directly resulted from Iraq’s invasion and occupation of Kuwait. The Panel recommends no awards of compensation in respect of these claims.

E. Deficiencies

144. The Panel has also found some claims that have material deficiencies. For example, in some instances claimants have not asserted any identifiable loss types nor claimed any amounts of compensation. In the absence of such basic and fundamental information, no claim can be processed. Where the Panel determines that a claim is materially deficient, it will not consider the claim further.

F. Risk of overstatement in category “C” Palestinian “late claims”

145. As stated in paragraphs 9-10 above, the statistical comparative analyses showed some significant differences between category “C” Palestinian “late claims” and comparable claims in the original category “C” population. The Panel is mindful of the fact that the reports and recommendations of the category “C” Panel, wherein the methodologies are described in some detail, have been in the public domain throughout the filing period for Palestinian “late claims”. The Panel is of the view that this gives rise to a risk of overstatement in the claims. In addition, the average of the total amounts claimed and number of loss types per claim have increased substantially. In the circumstances, therefore, an appropriate adjustment should be made (quite apart from any risk of overstatement relating to evidentiary deficiencies).

146. The Panel considered various options to address the risk of overstatement and determines that a global adjustment should be made to the recommended amounts for all loss types except C6-Salary and C6-Support losses. For these two loss types, the results of the statistical comparative analyses lead the Panel to conclude that no adjustment is warranted.

VIII. OTHER ISSUES

A. Currency exchange rate

147. The Panel adopts the currency exchange rate applied during the original category “C” programme for converting currencies into United States dollars.⁵⁰ For amounts originally stated in Kuwaiti dinars, the currency exchange rate is the rate of exchange in effect on 1 August 1990.⁵¹ For other currencies, the exchange rates used are the average rates in effect for the month of August 1990 for such currencies.⁵²

B. Interest

148. The Governing Council has addressed the matter of interest in its decision 16 (S/AC.26/1992/16), the text of which is as follows:

- “1. Interest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award.
2. The methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time.
3. Interest will be paid after the principal amount of awards.”

149. It therefore falls to panels of Commissioners to determine the date of loss. The Panel notes that in the First “C” Report, the category “C” Panel fixed that date as 2 August 1990, the date of Iraq’s invasion of Kuwait.⁵³ The Panel concurs and adopts the date of 2 August 1990 as the date of loss for category “C” Palestinian “late claims”.

C. Duplicate claims

150. Some claimants submitted more than one category “C” claim under the late-claims programme. To prevent multiple recovery, the Panel selects the claim to be processed from among the multiple submissions based on the following criteria:

(a) The later claim is selected if it consolidates the losses being asserted by the claimant;

(b) If the claims deal with different loss types, the later claim is considered as supplemental to the earlier claim.

151. The first instalment contains 16 sets of duplicate claims that have been reviewed according to these criteria. The Palestinian Authority will be provided a confidential report identifying these claims.

D. Deductions

152. As mentioned in paragraph 26 above, there are instances when the filing of a claim in a different claim category during the regular filing period does not result in the claimant being ineligible to file under the late-claims programme. For category “C” Palestinian “late claims”, this is possible only where the claim category involved is category “A”. In these instances, the awards of compensation recommended by the Panel for the category “C” claims have been reduced by the amounts of the awards in category “A” for the same losses. There are two claims in this instalment for which recommended awards reflect deductions.

IX. RECOMMENDATIONS

153. The Panel recommends a total of USD 15,76,453.51 against a total claimed amount of USD 40,916,163.81 in respect of 883 eligible category “C” claims in the first instalment.

154. The Panel has not recommended awards of compensation for 13 eligible claims in the first instalment.

155. The Panel determines that 808 claims in this instalment, for a total claimed amount of USD 55,387,305.85, have failed to satisfy the threshold eligibility requirement and are therefore ineligible for inclusion in the late-claims programme.

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

Table 1. Summary of first instalment recommendations

<u>Submitting entity</u>	<u>Number of claims in instalment</u>	<u>Total amount claimed (USD)</u>	<u>Number of eligible claims</u>	<u>Total amount claimed (USD)</u>	<u>Number of ineligible claims</u>	<u>Total amount claimed (USD)</u>	<u>Total recommended amount (USD)</u>
Palestinian Authority	1,691	96,303,469.66	883	40,916,163.81	808	55,387,305.85	15,768,453.51

157. The Palestinian Authority will be provided with a confidential report setting out the Panel's determinations in respect of each claim in the instalment.

X. CATEGORY "D" CLAIMS

158. To date the Panel has determined that 47 category "D" claims, with a total claimed amount of USD 229,233,760.30, are eligible for inclusion in the late-claims programme. These claims will be transferred to the category "D" Panels of Commissioners for review. The Panel has also determined that 23 category "D" claims with a total claimed amount of USD 197,694,763.60 are ineligible for inclusion in the late-claims programme.

159. The Palestinian Authority will be provided with a confidential report identifying these claims.

XI. SUBMISSION OF THE REPORT

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

Geneva, 22 September 2003

(Signed) M.C. Pryles
Chairman

(Signed) K. Hossain
Commissioner

(Signed) N. Comair-Obeid
Commissioner

Notes

¹ Category “A” claims are claims for departure-related losses submitted by individuals who had to depart from Kuwait or Iraq from the date of Iraq’s invasion of Kuwait (2 August 1990) to the date of the cease-fire (2 March 1991). Category “B” claims are claims submitted by individuals who suffered serious personal injury or whose spouse, child or parent died as a result of Iraq’s invasion and occupation of Kuwait. Category “C” claims are individual claims for damages up to 100,000 United States dollars (USD) each. Category “C” claims can be made for 21 different types of losses, including those relating to departure from Kuwait or Iraq; personal injury; mental pain and anguish; loss of personal property; loss of real property; and individual business losses. Category “D” claims are individual claims for damages above USD 100,000. The types of losses that can be claimed under category “D” are similar to those under category “C”, with the most frequent being the loss of personal property; the loss of real property; the loss of income, and business-related losses.

² The Panel compared the Palestinian “late claims” to the original category “C” claims population as a whole and to various groups within that population: Kuwaitis, Jordanians and Palestinians whose claims were filed by various Governments and international organizations. The Panel determined that the most comparable group is Palestinians who were able to file during the regular filing period through various Governments and international organizations.

³ The median is the value at the centre of a distribution of data; that is, 50 per cent of the data is above that value and 50 per cent is below. The median is not as precise as the mean value, but it is not distorted by extreme values at either end. The median value can be understood as representing the characteristics of an “average” claimant.

⁴ The Panel compared the Palestinian “late claims” to the original category “D” claims population as a whole and to various groups within that population: Kuwaitis, Jordanians and Palestinians whose claims were filed by various Governments and international organizations.

⁵ The Palestinian Authority has withdrawn 258 claims from those originating from the Palestinian Authority office in Jordan.

⁶ When conventional means are used to find matches in the database, typically between names of individuals or companies, the computer will attempt to find an exact or very near correspondence. For example: Danzig matches Danzig; while Airtour matches Airtours. However, as names are often transcribed and spelt in different, sometimes incorrect, ways, more powerful techniques have been developed which can find matches between words or phrases approximating each other. For examples: Danzig matches Dantzig, Guf Shipping (Dubai) Ltd matches Dubai Gulf Shipping and Mahomet matches Muhammed. Such techniques use pattern matching, frequency count, stem search, phonex and other algorithms. The term "fuzzy" is widely used to describe the application of such techniques to searching and matching.

⁷ See paras. 31-32 of this report as to what was contemplated by the administration of the Commission’s compensation programme.

⁸ For example, during the period from 1948 to 1967 Gaza was under Egyptian administration. Gaza Palestinians were issued with Egyptian travel documents that enabled them to move outside Gaza and Egypt. As at the date of Iraq’s invasion and occupation of Kuwait, holders of Egyptian travel documents required visas to enter Egypt: see Anis F. Kassim, “The Palestinians”, in N.A. Butenschn, U. Davis and M. Hassassian, eds., Citizenship and the State in the Middle East, (Syracuse, New York, Syracuse University Press, 2000) pp. 209, 216-217. The Panel understands that the Government of Jordan issued two-year temporary Jordanian passports to some displaced Palestinians from Gaza, but that such passports did not connote Jordanian nationality: see the State Party report

from the Government of Jordan dated 10 October 1997, in the “Reports submitted by States under Article 9 of the Convention, International Convention of the Elimination of all Forms of Racial Discrimination”), CERD/C/318/Add.1, para. 16. After 31 July 1988, the Government of Jordan also issued two to five-year passports to Palestinians in the West Bank to facilitate travel, however such passports did not connote citizenship (see Kassim, p. 213). These were temporary Jordanian passports initially issued for two years and were subsequently extended to five years. They were regarded by the Government of Jordan as travel documents “to help their holders to travel freely throughout the world. Although recognized as official documents, the passports did not imply that their holder was a Jordanian citizen holding Jordanian nationality” (State Party Report from the Government of Jordan, paras. 15-21).

⁹ The Panel consulted numerous sources and reports to gather information concerning the facts and circumstances of the Palestinian population in Kuwait both during and after Iraq’s invasion of Kuwait, including the following: United Nations Economic and Social Council (ECOSOC), “Report on the Situation of Human Rights in Kuwait under Iraqi Occupation”, by Walter Kälin, Special Rapporteur of the ECOSOC Commission on Human Rights, E/CN.4/1992/26 (January 16, 1992) (“Kälin Report”), which is annexed to “Letter dated 26 April 1991 from the Secretary-General addressed to the President of the Security Council”, S/22535; “Report to the Secretary-General Humanitarian Needs in Kuwait in the Immediate Post-Crisis Environment by a Mission to the Area led by Mr. Martti Ahtisaari, Under-Secretary General for Administration and Management” S/22409 (28 March 1991) and “Report and recommendations made by the Panel of Commissioners concerning the first instalment of individual claims for damages up to US\$100,000 (category ‘C’ claims)”, S/AC.26/1994/3 (“First ‘C’ Report”).

¹⁰ Kälin Report, para. 25. See also “Report and recommendations made by the Panel of Commissioners concerning the first instalment of ‘A’ claims (category ‘A’ claims)” (S/AC.26/1994/2) (“First ‘A’ Report”), p. 10.

¹¹ Ann M. Lesch, “Palestinians in Kuwait”, Journal of Palestine Studies, Vol. XX:4, (Summer 1991), pp. 42-54 (placing the figure at “nearly 400,000”).

¹² About 150,000 Palestinians remained in Kuwait by December 1990: see Lesch at p. 46. See also Nicholas Van Hear, New Diasporas: The mass exodus, dispersal and regrouping of migrant communities (Seattle, University of Washington Press, 1998), p. 83 (stating that “around 200,000” left Kuwait).

¹³ First “A” Report, p. 10. Lesch, p. 53, opines that some 60,000 Palestinians would exit voluntarily if certain restrictions were lifted.

¹⁴ Van Hear, p. 84.

¹⁵ Ibid.

¹⁶ Ibid., p. 85.

¹⁷ Ibid. This information is consistent with that provided by Dr. Anis Kassim, legal representative for the Permanent Observer Mission of Palestine in his submission to the Governing Council dated 15 November 2001.

¹⁸ In his submission to the Governing Council dated 15 November 2001, Dr. Kassim identified several types of closures. In terms of the area covered, a closure is “universal” when an entire area is closed off; for example, when the entire Gaza Strip is closed. It is “local” when one locality is separated from other areas. In terms of the length of time, a closure is “total” when a complete curfew

is imposed and “partial” when it is imposed only for a few days. And in terms of notice to the inhabitants, a closure can be “instant” or imposed with advance notice.

¹⁹ The reports cited are: A/47/509 (for the period 23 August 1991 to 26 August 1992), A/48/96 (for the period 27 August to November 1992), A/48/278 (for the period 1 December 1992 to 31 March 1993), and A/48/557 (for the period 1 April to 27 August 1993).

²⁰ Decision 1, para. 14. See also decision 11 (S/AC.26/1992/11), which provides for the eligibility of compensation for loss or injury of members of the Allied Coalition Forces.

²¹ Decision 3 (S/AC.26/1991/3) establishes seven categories of compensable mental pain and anguish (“MPA”) losses while decision 8 (S/AC.26/1992/8) provides guidance for MPA awards and establishes maximum MPA award amounts.

²² Decision 4 (S/AC.26/1991/4).

²³ Seventh “C” Report, paras. 10-12.

²⁴ See paragraph 6.

²⁵ See First “C” Report pp.19-21 and Seventh “C” Report paras. 27-30.

²⁶ Seventh “C” Report, para. 35.

²⁷ For example, in some claims for C4-MV, claimants do not indicate whether their claims are for total loss or for repairs of vehicles. This information is important since the applicable compensation formula depends upon the nature of the loss claimed. In such instances, the category “C” Panel authorized the use of a logistic regression model to predict whether the losses should be classified as total loss or repairs for the purpose of electronic substantive processing. See Seventh “C” Report, para. 215.

²⁸ See the Seventh “C” Report, paras. 115-133 (for C2-Money); paras. 135-140 (for C2-MPA); paras. 223-237 (for C5-BA); paras. 283-290 (for C6-Support); and paras. 292-298 (for C6-MPA).

²⁹ Recommended awards that are manually inserted are derived through calculations performed during manual review in accordance with the valuation methodology established during the regular category “C” programme. For example, recommended awards for compensable C2-MPA claims are manually calculated based on certain “modifying factors” as indicated in the Seventh “C” Report, paras. 136 and 138; see also para. 124 which provides for the manual review of C2-MPA claims. The calculated amounts are then entered or inserted in the claims database (hence, the term “manual insertion”).

³⁰ The following are the relevant paragraphs in the Seventh “C” Report which explain the methodologies and compensation criteria for the losses included in this instalment: paras. 84-92 for C1-Money; paras. 94-112 for C1-MPA; paras. 115-133 for C2-Money; paras. 135-140 for C2-MPA; paras. 178-220 for C4 personal property losses; paras. 222-237 for C5-BA; paras. 239-248 for C5-SOS; paras. 249-281 or C6-Salary; paras. 283-290 for C6-Support; paras. 292-298 for C6-MPA; and paras. 327-367 for C8-Business.

³¹ Seventh “C” Report, para. 88.

³² See “Report and recommendation made by the Panel of Commissioners concerning the sixth instalment of individual claims for damages up to US\$100,000 (category ‘C’ claims)” (S/AC.26/1998/6) (the “Sixth ‘C’ Report”), para. 27(a) and Seventh “C” Report, para. 92.

³³ It is not possible to determine the exact number of C1-Money claims that will undergo substantive processing until reasons review is completed.

³⁴ Seventh “C” Report, para. 117.

³⁵ Seventh “C” Report, para. 126.

³⁶ The statistical comparative analyses showed that 21 per cent of Palestinian claimants are claiming for C2-Money losses compared to 2 per cent for all claims in the regular category “C” programme, 4 per cent for Palestinian claims submitted by third Governments and international organizations during the regular filing period and 4 per cent for Jordanian claimants.

³⁷ It is not possible to determine the exact number of C2-Money claims that will undergo substantive processing until reasons review is completed.

³⁸ Seventh “C” Report, para. 138.

³⁹ Seventh “C” Report, paras. 124.

⁴⁰ Ibid.

⁴¹ Seventh “C” Report, para. 184.

⁴² Seventh “C” Report, para. 203.

⁴³ Seventh “C” Report, para. 185.

⁴⁴ See the Seventh “C” Report, paras. 178-220.

⁴⁵ Seventh “C” Report, para. 226.

⁴⁶ The category “C” Panel determined that only claims resulting from the following or similar circumstances should be classified as financial support-related claims: (a) claims by gainfully employed persons whose ability to work had been permanently or temporarily affected as a result of a permanent or temporary disability or other injury; (b) claims by persons who were not employed, but who, as a result of a permanent disability, might never be able to be fully employed; (c) claims by family members of wage earners in Kuwait or Iraq, who were unable to continue making certain payments such as alimony, regular dependent payments, subsistence payments, etc., to those family members, due to having lost their employment as a result of Iraq’s invasion and occupation of Kuwait, or as the result of some permanent or temporary disability; (d) claims by family members who, prior to the invasion, had been receiving death benefits on behalf of a deceased family member; (e) students who had lost scholarship grants for study in Kuwait; and (f) students who had been receiving tuition assistance for education in third countries from public or private entities based in Iraq or Kuwait (Seventh “C” Report, paras. 284 and 289).

⁴⁷ Seventh “C” Report, paras. 327-367.

⁴⁸ Seventh “C” Report, paras. 359-367.

⁴⁹ Seventh "C" Report, para. 369. See also Sixth "C" Report, paras. 90-94.

⁵⁰ See First "C" Report, pp. 30-33 and Seventh "C" Report, para. 36.

⁵¹ The exchange rate used on 1 August 1990 for Kuwaiti dinars is the average monthly rate for July 1990 as reported in the United Nations Monthly Bulletin of Statistics, vol. XLV No. 4, April 1991 (ST/ESA/STAT/SER.1/220).

⁵² Ibid.

⁵³ See First "C" Report, p. 33 and Seventh "C" Report, para. 377.
