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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS
CONCERNING THE SECOND INSTALMENT OF PALESTINIAN "LATE CLAIMS"
FOR DAMAGES UP TO USD 100,000 (CATEGORY "C" CLAIMS)

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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 “UNCC”) during the Commission’s filing period for individual claims, from 1 January 1992 to 1 January 1996 (the “regular filing period”).
2. Pursuant to the direction of the Governing Council, 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 each Palestinian “late claim”. 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 the category “C” claims that satisfy the threshold eligibility requirement. The category “D” claims that satisfy the threshold eligibility requirement will be reviewed separately by the two category “D” Panels of Commissioners.
3. This is the second report of the Panel submitted to the Governing Council pursuant to article 38(e) of the Commission’s Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the “Rules”).
4. This report contains the Panel’s determinations as to eligibility for inclusion in the late-claims programme of 965 category “C” claims and 299 category “D” claims. It also includes the Panel’s recommendations on the merits of 406 category “C” claims (the “second instalment claims”). The Panel intends to review the remaining Palestinian “late claims” in additional instalments during the course of 2004.

I. THE PROCEEDINGS

5. This report covers the claims reviewed and work performed by the Panel since it finalized its First Report and recommendations concerning the first instalment of Palestinian “late claims” in September 2003.¹ The Panel has since conferred on 3 November 2003 and 18 November 2003 and also conducted regular communications with the secretariat.
6. In accordance with article 16 of the Rules, the Executive Secretary submitted to the Governing Council report Nos. 41, 43 and 45 dated 17 October 2002, 17 April 2003 and 6 October 2003, respectively, with information concerning the categories of claims submitted by the Palestinian Authority, the number of claims and the total claimed amount in each category. These reports covered, inter alia, all of the claims in the second instalment. The reports were circulated for comment to the Government of the Republic of Iraq (“Iraq”) and all submitting entities, including the Palestinian Authority.
7. In undertaking its review of the claims and in making its determinations and recommendations, the Panel has applied relevant Security Council resolutions, Governing Council decisions, the Rules, and

other relevant principles of international law. The Panel has conducted the threshold eligibility assessment of the claims referred to in paragraph 2 above and has reviewed the category “C” claims in this instalment in accordance with the principles and methodologies that were described in its First Report.²

II. THE THRESHOLD ELIGIBILITY REQUIREMENT

8. The Panel has developed a two-step process for conducting the threshold eligibility assessment directed by the Governing Council. This process is described in the Panel’s First Report.³ The first step is the electronic matching of claims and the manual verification of matches in order to identify those claims filed under the late-claims programme by claimants who previously filed claims during the regular filing period. The second step is to review the reasons proffered by claimants as to why they were unable to file claims during the regular filing period (“reasons review”).

9. In its First Report, the Panel also identified factual circumstances that required further investigation and anticipated that new issues would arise for which additional guidelines would be developed in the course of its review of claims. A number of such circumstances and issues are addressed below.

A. Claimants holding Jordanian passports who remained in Kuwait

10. In its First Report, the Panel considered the situation of claimants who held Jordanian passports and resided in Jordan during the regular filing period. The Panel determined that if these claimants resided in Jordan for a continuous period of 12 months or longer (from the time when claim forms became available through the Government of Jordan), they are ineligible to participate in the late-claims programme.⁴

11. The Panel further stated in its First Report that it will consider on a case-by-case basis the assertions of those claimants holding Jordanian passports but who remained in Kuwait following its liberation. Many claimants in this group allege that as a result of their inability to file claims in Kuwait, they travelled to Jordan for the purpose of attempting to file claims. They stayed in Jordan for less than 12 months.⁵ These claimants further allege that when they attempted to file their claims in Jordan, they were refused on account of Kuwaiti residence permits stamped in their Jordanian passports. The claimants explain that the Jordanian authorities considered the Kuwait residence permits as proof of the claimants’ non-residence in Jordan.

12. The Panel has investigated this matter and obtained information from various sources, including the Government of Jordan. The Panel also directed the secretariat to conduct an electronic survey of claims data in the UNCC database concerning Palestinian claimants who resided in Kuwait but were able to file their claims through the Government of Jordan during the regular filing period. The electronic survey showed that very few individuals who resided in Kuwait during the regular filing period filed claims through the Government of Jordan.

13. Having regard to the totality of the information before it, the Panel finds that Palestinian claimants who held Jordanian passports and Kuwait residence permits during the regular filing period and who travelled to Jordan to attempt to file claims through the Government of Jordan, but were not permitted to do so, did not have a full and effective opportunity to file claims. They are therefore eligible to participate in the late-claims programme.

14. The Panel notes that some claimants in this group allege that they did not go to Jordan and file claims because they heard that individuals with Kuwaiti residence permits in their Jordanian passports were not allowed to submit claims in Jordan. The Panel considers that in the absence of proof of attempts to file claims in Jordan, there is no basis for determining that such a claimant was denied a full and effective opportunity to file claims during the regular filing period. The Panel therefore finds that these claimants have not provided satisfactory reasons for late filing and are therefore ineligible to participate in the late-claims programme.

15. Still others in this group assert that they were afraid to leave Kuwait and go to Jordan to attempt to file claims for fear of losing their residency status in Kuwait. From its review of the evidence provided by claimants in support of their reasons statements, the Panel notes that Kuwaiti residence permits state that holders thereof are allowed to travel outside Kuwait for a period not exceeding six months. In the light of this information, the Panel finds that these claimants have not established to the satisfaction of the Panel that they were denied a full and effective opportunity to file claims during the regular filing period. These claimants are therefore ineligible to participate in the late-claims programme.

B. Claimants who frequently visited Jordan from the West Bank

16. Some claimants who held Jordanian passports and who relocated to the West Bank following Iraq's invasion and occupation of Kuwait indicate that they frequently travelled to Jordan during the regular filing period. These claimants were generally engaged in business and appear to have been well settled and to have organised their affairs such that in their frequent trips to Jordan, it would be reasonable to expect that they would have had an opportunity to file claims in Jordan. The Panel therefore presumes that these claimants had a full and effective opportunity to file claims through the Government of Jordan during the regular filing period. The Panel considers that the burden is on these claimants to establish why this presumption should not be applied to them. Each claim will be considered individually.

C. Claimants holding Jordanian passports who relocated to third countries

17. As stated in paragraph 10 above, the Panel determined in its First Report that claimants holding Jordanian passports who stayed in Jordan for a continuous period of 12 months or longer during the regular filing period (from the time when claim forms became available through the Government of Jordan) are ineligible to participate in the late-claims programme. Subsequently, the Panel obtained information from the Government of Jordan that it also accepted for filing claims from individuals holding Jordanian passports through its embassies and diplomatic missions in third countries that were open during the regular filing period. At the direction of the Panel, the secretariat performed 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 confirmed that the Government of Jordan filed claims during the regular filing period on behalf of Palestinians who resided outside of Jordan. On the basis of that information, the Panel finds that claimants who held Jordanian passports and resided for a continuous period of 12 months or longer in third countries where there was a functioning Jordanian Embassy or diplomatic mission during the regular filing period⁶ had a full and effective opportunity to file claims through the Government of Jordan. Such claimants are therefore ineligible to participate in the late-claims programme.

D. Claimants who held Lebanese travel documents

18. In its First Report, the Panel considered claims from individuals who held Lebanese travel documents. The Panel recognized that during the regular filing period the Government of Lebanon filed claims on behalf of Palestinians who held Lebanese travel documents and resided in Kuwait or Lebanon.⁷ Subsequently, the Panel has received confirmation from the Government of Lebanon that it accepted claims from Palestinians holding Lebanese travel documents only through its Ministry of Foreign Affairs in Lebanon or its embassy in Kuwait and that its embassies in other countries did not have UNCC claim forms for distribution. In the light of this information, the Panel is able to clarify its determination in the First Report concerning these claimants. The Panel finds that Palestinians who held Lebanese travel documents and resided in Lebanon or Kuwait for a continuous period of 12 months or longer during the regular filing period had a full and effective opportunity to file claims through the Government of Lebanon. Such claimants are therefore ineligible for inclusion in the late-claims programme.

19. The Panel considers that individuals who stayed in Lebanon or Kuwait for less than 12 months would have been preoccupied with establishing themselves and organising their affairs. Generally speaking, it would not be reasonable to expect that they would have had an opportunity to file claims. However, the Panel examines the reasons statements of such claimants and their factual assertions on a case-by-case basis to determine whether such claimants had a full and effective opportunity to file claims through the Government of Lebanon during the regular filing period.

E. Irregularities

20. In its First Report, the Panel described the procedures it has established to identify and deal with claims that have irregularities.⁸ To date, the Panel has identified three types of irregularities. The first concerns alterations to documents submitted by some claimants. The second involves the use of the same documentation by multiple claimants in support of their claims. This latter type includes claimants who have submitted passport pages that contain an identical entry or exit stamp and/or residence permit stamp. For example, in one instance involving claims reported in this instalment, the Panel has identified seven claimants, not related to each other,⁹ who have used a photocopy of the passport of an eighth claimant in support of their reasons statements. All seven have been determined by the Panel to be ineligible to participate in the late-claims programme.

21. The third type of irregularity noted by the Panel concerns responses submitted by claimants to notifications issued by the UNCC.¹⁰ The Panel has observed some discrepancies between the photocopies of supporting documents attached to responses and photocopies of the same supporting documents attached to the original claim file. For example, stamps are shown on photocopied passport pages attached to the claimant's response to the UNCC notification that do not appear on the same photocopied passport pages included in the original submission. The Panel has therefore instructed the secretariat to compare all supporting documents attached to responses to notifications with those submitted with the original claim file.

22. Claimants who submit documents with irregularities are not eligible to participate in the late-claims programme. The Panel has instructed the secretariat to continue to conduct electronic searches and use electronic matching techniques to identify irregularities in supporting documents.

III. SUBSTANTIVE PROCESSING

A. Overview of the second instalment

23. The second instalment of category "C" Palestinian "late claims" comprises 965 claims seeking a total amount of compensation of USD 53,679,478.65. The Panel finds that 406 of these claims, with a total amount claimed of USD 19,495,152.43, are eligible for inclusion in the late-claims programme. The remainder of the second instalment claims are ineligible for inclusion.

24. The First Report sets out the methodologies to be applied to the substantive processing of category "C" Palestinian "late claims" with respect to all loss types other than C3 (death) and C7 (real property) losses. The methodologies for these two loss types together with claims from individual who were minors at the time of Iraq's invasion and occupation of Kuwait will be considered by the Panel in a future instalment.

25. As outlined in the First Report, the Panel has applied a global adjustment to the recommended amounts for loss types which are processed according to established methodologies except for C6-Salary and C6-Support losses.¹¹

B. Losses claimed

1. C1-Money

26. There are 221 claims in the second instalment asserting C1-Money losses. In its First Report, the Panel outlined the modifications that it applies to the methodologies established by the category "C" Panel in the substantive processing of C1-Money losses.¹² The Panel recommends awards of compensation in respect of 99 claims and no awards of compensation in respect of 122 C1-Money claims in the second instalment.

2. C1-MPA

27. There are 18 claims for C1-MPA (hostage taking) and 62 claims for C1-MPA (forced hiding) in the second instalment. In its First Report, the Panel adopted the compensation criteria and valuation methodologies established by the category “C” Panel for Jordanian C1-MPA claims in the substantive processing of C1-MPA losses.¹³

28. The Panel recommends awards of compensation in respect of five C1-MPA (hostage taking) and 60 C1-MPA (forced hiding) claims and no awards of compensation in respect of 13 C1-MPA (hostage taking) and two C1-MPA (forced hiding) claims in the second instalment.

3. C2-Money

29. There are 143 claims for C2-Money losses in the second instalment. In its First Report, the Panel outlined the modifications that it applies to the methodologies established by the category “C” Panel in the substantive processing of C2-Money losses.¹⁴ The Panel recommends awards of compensation in respect of 71 claims and no awards of compensation in respect of 72 C2-Money claims in the second instalment.

4. C2-MPA

30. There are 104 claims for C2-MPA losses in the second instalment. In its First Report, the Panel outlined the modifications that it applies to the methodologies established by the category “C” Panel in the substantive processing of C2-MPA losses.¹⁵ The Panel recommends awards of compensation in respect of seven claims and no awards of compensation in respect of 97 C2-MPA claims in the second instalment.

5. C4-Personal Property

31. There are 310 claims for C4-CPHO losses and 101 claims for C4-MV losses in the second instalment. In its First Report, the Panel adopted the methodologies established by the category “C” Panel in the substantive processing of C4-CPHO and C4-MV losses.¹⁶ The Panel recommends awards of compensation in respect of all C4-CPHO and 66 C4-MV claims and no awards of compensation in respect of 35 C4-MV claims in the second instalment.

6. C5-BA and C5-SOS

32. There are 10 C5-BA and two C5-SOS claims in the second instalment. In its First Report, the Panel adopted the methodologies established by the category “C” Panel for these loss types.¹⁷

33. The Panel 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 therefore recommends no awards of compensation in respect of any of the C5 claims in this instalment.

34. Further, the Panel finds that eight claims for C5-BA in the second instalment are for bank accounts in Kuwait. Consistent with procedures 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, the Panel instructs the secretariat to forward lists of such claimants, through the Government of Kuwait, to the Central Bank of Kuwait and to inform the Palestinian Authority of the procedure to follow to obtain access to these accounts in Kuwait.¹⁸

7. C6-Salary

35. There are 288 claims for C6-Salary in the second instalment. The Panel has adopted the methodologies established by the category “C” Panel for this loss type in its First Report.¹⁹ The Panel recommends awards of compensation in respect of 287 claims and no awards of compensation in respect of one C6-Salary claim in the second instalment.

8. C6-Support

36. There are six claims for C6-Support in the second instalment. The Panel has adopted the methodologies established by the category “C” Panel for this loss type in its First Report.²⁰ The Panel recommends awards of compensation in respect of five claims and no awards of compensation in respect of one C6-Support claim in the second instalment.

9. C6-MPA

37. There are four claims for C6-MPA losses in the second instalment. In its First Report, the Panel adopted the procedures established by the category “C” Panel for C6-MPA claims²¹ and accordingly has individually reviewed the second instalment claims to determine their compensability. The Panel recommends no awards of compensation in respect of all C6-MPA claims in the second instalment.

10. C8-Business losses

38. There are 27 claims for C8-Business losses in the second instalment. In its First Report, the Panel adopted the compensability criteria and the valuation methodology established by the category “C” Panel for the substantive processing of this loss type.²² In doing so, however, the Panel has established a new set of parameters for the valuation of business losses in Palestinian “late claims”.²³

39. The Panel recommends awards of compensation in respect of all C8-Business claims in the second instalment.

11. CS-Other losses

40. There are 11 claims for CS-Other losses in the second instalment. In its First Report, the Panel adopted the procedures established by the category “C” Panel in the substantive review of this loss type.²⁴ Consistent with these procedures, claims in the second instalment have been individually reviewed for recategorization to defined loss types. None of the claims could be recategorized to defined loss types since the claimants have failed to establish that these losses directly resulted from

Iraq's invasion and occupation of Kuwait. The Panel therefore recommends no awards of compensation in respect of these claims.

IV. OTHER ISSUES

A. Duplicate claims

41. The second instalment contains eight sets of duplicate claims that have been reviewed according to the criteria established by the Panel.²⁵ These sets of duplicate claims comprise a total of eight claims that are determined to be duplicates and therefore are not recommended awards of compensation. The Palestinian Authority will be provided with a confidential report identifying these claims.

B. Deductions

42. There are two claims in this instalment put forward by claimants resident in the West Bank for which recommended awards reflect deductions of awards previously received by the claimants in category "A" for the same losses.²⁶

V. RECOMMENDATIONS

43. The Panel recommends a total of USD 7,822,582.33 in compensation in respect of 406 eligible category "C" claims in the second instalment.

44. The Panel has recommended that no compensation be awarded for eight eligible claims in the second instalment.

45. The Panel determines that 559 claims in this instalment have failed to satisfy the threshold eligibility requirement and are therefore ineligible for inclusion in the late-claims programme.

46. The Panel's recommendations are summarized as follows:

Table 1. Summary of second instalment recommendations

<u>Submitting entity</u>	<u>Number of claims in instalment</u>	<u>Total amount claimed^a (USD)</u>	<u>Number of eligible claims</u>	<u>Number of ineligible claims</u>	<u>Total amount claimed for eligible claims (USD)</u>	<u>Total recommended amount for eligible claims (USD)</u>
Palestinian Authority	965	53,679,478.65	406	559	19,495,152.43	7,822,582.33

^a This amount is exclusive of claims preparation costs and interest.

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

VI. CATEGORY "D" CLAIMS

48. Since its First Report, the Panel has continued with the reasons review of category "D" Palestinian "late claims". The Panel has determined that a further 91 category "D" claims 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 208 category "D" claims are ineligible for inclusion in the late-claims programme.

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

VII. SUBMISSION OF THE REPORT

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

Geneva, 23 December 2003

(Signed) M.C. Pryles
Chairman

(Signed) K. Hossain
Commissioner

(Signed) N. Comair-Obeid
Commissioner

Notes

¹ “Report and recommendations made by the Panel of Commissioners concerning the first instalment of Palestinian ‘late claims’ for damages up to USD 100,000 (category ‘C’ claims)” (S/AC.26/2003/26) (“First Report”).

² First Report, paragraphs 77-146.

³ Ibid., paragraphs 21-72.

⁴ Ibid., paragraph 54.

⁵ Ibid., paragraph 69.

⁶ The Panel understands that there was a functioning Embassy of the Government of Jordan in Iraq during the regular filing period. However, the Panel finds that it would have been impracticable for claimants to attempt to file claims in Iraq. See First Report, paragraph 62.

⁷ First Report, paragraph 70.

⁸ First Report, paragraph 72.

⁹ Sometimes a wife is not issued a separate passport but rather is included in her husband’s passport and therefore submits a copy of his passport with her claim. Palestinian children do not possess their own passports but rather are included in either of their parents’ passports. Claimants who were minors during the regular filing period also submitted photocopies of the passports of their parents.

¹⁰ See First Report, paragraph 37. In addition, notifications were also sent to claimants requesting further information with respect to their claims for business losses in order to identify potential overlapping or stand alone claims.

¹¹ First Report, paragraphs 145-146.

¹² First Report, paragraphs 98-105. See also 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”), paragraphs 84-92.

¹³ First Report, paragraphs 108-109. See also Seventh “C” Report, paragraphs 94-112.

¹⁴ First Report, paragraphs 111-116. See also Seventh “C” Report, paragraphs 115-133.

¹⁵ First Report, paragraphs 118-121. See also Seventh “C” Report, paragraphs 135-140.

¹⁶ First Report, paragraphs 123-127. See also Seventh “C” Report, paragraphs 178-220.

¹⁷ First Report, paragraphs 129-130. See also Seventh “C” Report, paragraphs 222-248.

¹⁸ First Report, paragraph 130. See also Seventh “C” Report, paragraph 226.

¹⁹ First Report, paragraph 131. See also Seventh “C” Report, paragraphs 249-281.

²⁰ First Report, paragraphs 132-133. See also Seventh “C” Report, paragraphs 283-290.

²¹ First Report, paragraphs 135-136. See also Seventh "C" Report, paragraphs 292-298.

²² First Report, paragraphs 138-140. See also Seventh "C" Report, paragraphs 327-367.

²³ First Report, paragraph 140.

²⁴ First Report, paragraphs 142-143. See also Seventh "C" Report, paragraph 369.

²⁵ First Report, paragraph 150.

²⁶ First Report, paragraph 152.
