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

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GLOSSARY

(This glossary is for purposes of the Palestinian late-claims programme)

- Matching claims: Two or more claims filed by a claimant during the regular filing period and under the late-claims programme.
- Duplicate claims: Two or more claims filed by a claimant under the late-claims programme in the same category.
- Related claims: Claims in different categories that were submitted by any of the following: (a) the same individual, (b) a relative such as a spouse, child or parent, or (c) a business partner/associate who may be claiming for the same losses.
- Multiple claims: Two or more claims in category “C” that were submitted under the late-claims programme by individuals who are related to each other.

Introduction

1. At its forty-second session held from 11 to 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 those 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 category "D" Panels of Commissioners.
3. This is the third 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 21,551 category "C" and 1,968 category "D" claims.¹ It also includes the Panel's recommendations on the merits of 1,784 category "C" claims (the "third instalment claims"). With this instalment, the Panel has completed the review and processing of over half of the category "C" claims and substantially completed its eligibility assessment of category "D" claims.

I. THE PROCEEDINGS

5. This report covers the claims reviewed and work performed by the Panel in connection with the third instalment of Palestinian "late claims". The Panel met on 20 January 2004, 20 March 2004, 21 June 2004 and 23 June 2004, and also regularly conferred among themselves and with the secretariat.
6. In accordance with article 16 of the Rules, the Executive Secretary submitted to the Governing Council report Nos. 41, 43, 45 and 46 dated 17 October 2002, 17 April 2003, 6 October 2003 and 19 January 2004, 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 third instalment. The reports were distributed to all claimant Governments and submitting entities, including the Palestinian Authority, as well as the Government of the Republic of Iraq ("Iraq").
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 4 above and has reviewed the category “C” claims in this instalment in accordance with the principles and methodologies that were described in its report and recommendations concerning the first instalment of Palestinian “late claims”² and its report and recommendations concerning the second instalment of Palestinian “late claims”.³

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.⁴ 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 the review of the reasons proffered by claimants as to why they were unable to file claims during the regular filing period to determine whether the eligibility requirement established by the Governing Council is satisfied (“reasons review”).

9. Since the second instalment, the Panel has elaborated certain refinements to the reasons review procedure and addressed new issues in its eligibility assessment of claims in the third instalment. These procedural refinements and guidelines are discussed below.

A. Review procedures

10. As described in its First Report,⁵ the Panel found that, in many instances, claimants do not provide sufficient information in their original submissions in respect of their reasons for late filing to enable the Panel to conduct its eligibility assessment. The Panel therefore devised a questionnaire or notification to elicit further information from claimants. The Panel has noted that a large majority of claims require the issuance of such notifications. In response, the Panel has revised its review procedures in order to conduct its eligibility assessment after receipt of the response to the notification (“reasons response”), to avoid a double review of the reasons for late filing. If no response is received by the due date stipulated in the notification, the claim is assessed as it is.

11. The Panel has also noted in its review of third instalment claims that some claimants have submitted further documentation in their responses that contain additional identifier information. The Panel therefore directed the secretariat to conduct manual searches in the UNCC database for matching and related claims⁶ using all relevant identifier information submitted by the claimant in addition to the electronic search conducted through the general matching programme that automatically runs in the UNCC database.⁷ The search for matching and related claims is important since the Panel has determined that the existence of a previously filed claim may indicate that the claimant had a full and effective opportunity to file claims during the regular filing period.⁸ As a result of these manual searches, additional matching and related claims have been identified.

B. Inconsistent reasons statements

12. The Panel is mindful that its First and Second Reports, which contain the guidelines established by the Panel in its assessment of the eligibility of claims, have been in the public domain since their

publication on 18 December 2003 and 11 March 2004, respectively. Therefore the Panel closely scrutinizes both the reasons statements submitted by claimants as part of their original submissions and their reasons responses to determine whether claimants are manipulating their factual assertions so as to fit into the guidelines for eligibility to participate in the late-claims programme.

13. The Panel has identified some instances where claimants have provided inconsistent explanations as to their whereabouts during the regular filing period. For example, one claimant asserted in his initial submission that he resided in Kuwait during the regular filing period. The same claimant, in his reasons response, asserts that he resided in the West Bank during the entire regular filing period.

14. The Panel determines that where there is an irreconcilable factual contradiction between the claimant's initial submission and the reasons response, the claimant has failed to provide satisfactory reasons for late filing and is therefore ineligible to participate in the late-claims programme.

C. Claimants who were imprisoned

15. In its First and Second Reports, the Panel considered the situation of claimants who resided in Kuwait during the regular filing period.⁹ Some claimants assert that they did not have a full and effective opportunity to file claims at that time because they were imprisoned in Kuwait for the entire period. The Panel finds that claimants who assert that they were unable to file claims because they were held in detention throughout the regular filing period are ineligible to participate in the late-claims programme unless these claimants can establish that they were held in detention specifically as a result of being Palestinian. Such claimants must provide evidence that confirms the circumstances of their detention and its duration.

16. Some claimants who were imprisoned during the regular filing period had family members who filed claims on their behalf at that time. A few of these claimants assert that such claims were filed without their knowledge and did not encompass all of the losses that they suffered as a result of Iraq's invasion and occupation of Kuwait. However, the Panel notes that these claimants were awarded and paid compensation and that there is no indication that these claimants repudiated the claims filed on their behalf or renounced the compensation paid for their claims. The Panel determines that the imprisonment of such claimants during the entire regular filing period did not deprive these claimants of a full and effective opportunity to file claims at that time. These claimants are therefore ineligible to participate in the late-claims programme.

17. One claimant was imprisoned in the United States during the entire regular filing period for a criminal offence. He asserts that he was unable to file a claim at that time because he was in prison. The Panel finds that the claimant's imprisonment was unrelated to his status as a stateless Palestinian and determines that the reasons proffered for his inability to file a claim during the regular filing period are outside the parameters of the late-claims programme. Therefore the Panel determines that this claimant is ineligible to participate in the late-claims programme.

D. Claimants who held passports issued by a State (other than Jordan)¹⁰

18. The Panel stated in its First Report that its starting premise in the eligibility assessment of claims is that only stateless Palestinians are eligible to participate in the late-claims programme. The Panel identified the two requirements that must be met for the claimant to pass these threshold criteria. First, claimants must establish that they are Palestinian and secondly, that they are not nationals of a State.¹¹

19. Some claimants in the third instalment held passports issued by a State (other than Jordan) that were valid during the regular filing period. Some of these claimants did not indicate the date when they became nationals of that State. Unless otherwise indicated by the claimant, the Panel presumes that it takes at least six months for the administrative procedure to be completed before a naturalized individual could be issued his or her new passport. The Panel further considers that possession of the new nationality for 12 months or longer is a sufficient period for the claimant to have settled and to have made inquiries to file a claim through the country of his or her new nationality. Therefore the Panel determines that claimants who held a passport issued by a State (other than Jordan) on or before 1 July 1995 had a full and effective opportunity to file claims through their country of nationality and are therefore ineligible to participate in the late-claims programme.

E. Claimants who decided not to file during the regular filing period

20. Some claimants state that they did not file claims during the regular filing period on account of their belief that the Commission's compensation programme would not be successful or because they lacked supporting documentation.

21. In this regard, the Panel notes that claim forms for categories "C" and "D" state that the claimant will be informed if there is a need for additional information or documentation in respect of the circumstances and amount of damages claimed. The Panel finds that claimants were not precluded from filing claims during the regular filing period on account of their belief that the programme would not be successful or because they lacked supporting documents. Therefore the Panel determines that these claimants have failed to provide satisfactory reasons for late filing and are ineligible to participate in the late-claims programme.

F. Claimants who held Syrian travel documents

22. In its First Report, the Panel considered claims from individuals who held Syrian travel documents. The Panel noted that during the regular filing period the Government of the Syrian Arab Republic filed claims on behalf of Palestinians who held Syrian travel documents and resided in Kuwait or Syria.¹² Subsequently, the Panel has received confirmation from the Government of the Syrian Arab Republic that it accepted claims from Palestinians holding Syrian travel documents only through its relevant offices in Syria or its embassy in Kuwait. No claims from Palestinians were received from its embassies in other countries. In the light of this information, the Panel finds that Palestinians who held Syrian travel documents and resided in Syria 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 the Syrian Arab Republic. Such claimants are therefore ineligible to participate in the late-claims programme.

23. The Panel considers that individuals who stayed in Syria 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 Syria during the regular filing period.

G. Irregularities

24. In its First Report, the Panel outlined the procedures that it has established to identify and deal with claims with irregularities in the supporting documentation submitted by some claimants in connection with their reasons for late filing.¹³ In its Second Report, the Panel identified three types of irregularities that it had detected in such supporting documentation.¹⁴ The Panel employs both electronic and manual search and matching techniques to identify such irregularities. Where the Panel determines that such irregularities exist, the claim is ineligible for inclusion in the late-claims programme.

25. As stated above, the Panel has previously determined that irregularities in documents proffered to establish a claimant's eligibility to participate in the late-claims programme will adversely affect the Panel's assessment of his or her eligibility. In the third instalment the Panel has observed as well irregularities in the supporting documentation submitted by some claimants in connection with their asserted losses. For example, the Panel noted that the names and dates on some invoices submitted in support of alleged direct losses resulting from Iraq's invasion and occupation of Kuwait had been altered. After examining a number of such claims and carefully considering the matter, the Panel determines that such irregularities should not adversely impact on the claimant's eligibility to participate in the late-claims programme. In making this determination the Panel is mindful of the mass processing nature of category "C" claims, the fact that the electronic compensation formulae were designed to take into account evidentiary shortcomings, and the desirability of ensuring consistency with the regular category "C" programme. With respect to category "D" claims, the Panel is mindful that other panels of Commissioners will, consistent with the approach in the regular category "D" programme, individually review these claims as part of the verification and valuation process and that methodologies will be applied that provide for adjustments to be made in cases where the sufficiency or authenticity of supporting documents is called into question. In order to facilitate such individual review, the Panel will forward its information concerning such irregularities to those panels of Commissioners so that they can be considered in the substantive processing of the claims.

III. SUBSTANTIVE PROCESSING

A. Overview of the third instalment

26. The third instalment of category “C” Palestinian “late claims” comprises 21,551 claims with a total claimed amount of 1,175,069,590.79 United States dollars (USD). The Panel finds that 1,784 of these claims, with a total amount claimed of USD 83,766,136.34, are eligible for inclusion in the late-claims programme. The remainder of the third instalment claims are ineligible for inclusion.

27. In its First Report, the Panel outlined 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. No new loss type was considered by the Panel in the second instalment. For the third instalment, the Panel considers all loss types including C3-Death and C7-Real Property losses.

28. As a result of data obtained from the sample review of claims with C3-Death losses, the Panel determines that a modification to the methodology established by the category “C” Panel of Commissioners (“category ‘C’ Panel”) is necessary in respect of the criteria for the compensability of C3-Death claims. This modification and its rationale are explained in paragraphs 37-44 below. In respect of claims for C7-Real Property, the Panel determines that no modification to the methodology established by the category “C” Panel is necessary.

29. The Panel also considers two new issues in this instalment. The first concerns claims from individuals who were minors at the time of Iraq’s invasion and occupation of Kuwait. On the basis of a statistical comparative analysis of category “C” claims submitted by minors in the Palestinian late-claims programme and those filed by minors in the regular category “C” programme, the Panel determines that “late claims” from minors are to be processed like other claims in the late-claims programme. The rationale for the Panel’s determination is explained in paragraphs 60-62 below.

30. The second issue concerns potential duplication of losses in multiple claims. Multiple claims are two or more claims submitted by individuals who are related to each other.¹⁵ The Panel has considered the methodology established in the regular category “C” programme for dealing with these claims¹⁶ and determines that a modification to the methodology established by the category “C” Panel is necessary. This modification and its rationale are explained in paragraphs 63-65 below.

31. As outlined in its First Report, the Panel finds that there is a risk of overstatement in the Palestinian “late claims” arising from 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”. In addition, the average of the total amounts claimed and number of loss types per claim have increased substantially in comparison to those claims filed in the regular category “C” programme. The Panel has therefore applied a global adjustment to the recommended amounts for loss types that are processed according to established methodologies except for C6-Salary and C6-Support losses.¹⁷

B. Losses claimed

1. C1-Money

32. 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 634 claims in the third 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.¹⁸ The Panel recommends awards of compensation in respect of 484 claims and no awards of compensation in respect of 150 C1-Money claims in the third instalment.

2. C1-Mental Pain and Anguish ("MPA")

33. 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 90 claims for C1-MPA (hostage taking) and 430 claims for C1-MPA (forced hiding) in the third 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.¹⁹

34. The Panel recommends awards of compensation in respect of 67 C1-MPA (hostage taking) and 415 C1-MPA (forced hiding) claims and no awards of compensation in respect of 23 C1-MPA (hostage taking) and 15 C1-MPA (forced hiding) claims in the third instalment.

3. C2-Money

35. C2-Money claims encompass medical expenses relating to the following personal injuries as stated on the C2 page of the category "C" 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 308 claims for C2-Money losses in the third 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.²⁰ The Panel recommends awards of compensation in respect of 211 claims and no awards of compensation in respect of 97 C2-Money claims in the third instalment.

4. C2-MPA

36. 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 163 claims for C2-MPA losses in the third 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.²¹ The Panel recommends awards of compensation in respect of 26 claims and no awards of compensation in respect of 137 C2-MPA claims in the third instalment.

5. C3-Death

37. C3-Death claims seek compensation for the death of a spouse, child or parent of the claimant. Under this loss type, claimants may submit claims for medical, burial and other expenses and for the loss of support resulting from the death of their spouse, child or parent (collectively called “C3-Money” claims). Claimants may also submit claims for mental pain and anguish for the death of a spouse, child or parent as a result of Iraq’s invasion and occupation of Kuwait, either for witnessing the intentional infliction of events leading to that death, or resulting from the fact of death as such (referred to as “C3-MPA” claims). There are 26 claims in the third instalment asserting C3-Death losses.

38. The category “C” Panel determined that claims for C3-Death losses (both C3-Money and C3-MPA) required an individual review on the issue of compensability. The category “C” Panel generally determined that claims for C3-Death losses were compensable if (a) the claim was for the death of a spouse, child or parent of the claimant, (b) the claimant had provided a date of death, and (c) the death occurred either (i) within the jurisdictional period of 2 August 1990 to 2 March 1991 and as a direct result of Iraq’s invasion and occupation of Kuwait, or (ii) after 2 March 1991, in specific circumstances (such as mine explosions) that were directly attributable to Iraq’s invasion and occupation of Kuwait.²²

39. With respect to causation, the category “C” Panel determined that it was reasonable to presume that deaths occurring during the jurisdictional period were likely to be attributable to Iraq’s activities associated with its invasion and occupation of Kuwait. Such claims are individually reviewed to determine whether the presumption has been rebutted. The category “C” Panel further determined that deaths occurring prior to 2 August 1990 were not attributable to Iraq’s invasion and occupation of Kuwait, and hence not compensable, and that deaths occurring after 2 March 1991 might warrant recovery only in certain exceptional circumstances.²³

40. A search of the UNCC database revealed that more than half of the Palestinian “late claims” for C3-Death losses had a date of death after 2 March 1991. To address the issue of causation in relation to these claims, the Panel directed that a sample review be performed of C3-Death losses with dates of death after the jurisdictional period to determine whether the death-related losses were directly attributable to Iraq’s invasion and occupation of Kuwait.

41. The sample review indicated that, in an overwhelming majority of the claims (93 per cent), either (a) the claimants had not claimed for the death of their spouse, child or parent, or (b) in the vast majority of claims, deaths were not directly caused by Iraq’s invasion and occupation of Kuwait.

42. The most prevalent examples of claims for death in the sample that failed on the issue of causation were cases where the deceased died of cancer, a heart attack or some other illness a number of years after 2 March 1991, without any evidence in the claim file to prove a direct link between the death and Iraq’s invasion and occupation of Kuwait.

43. Based on the results of the sample review, the Panel considers it necessary to modify the methodology established by the category “C” Panel for the processing of C3-Death claims. The Panel will reject claims for C3-Death losses with dates of death after the jurisdictional period and will continue the individual review of claims for C3-Death losses with a date of death within the jurisdictional period.

44. On the basis of the foregoing, the Panel recommends no awards of compensation in respect of all 26 C3-Death claims in the third instalment.

6. C4-Personal Property

45. 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 785 claims for C4-CPHO losses and 274 claims for C4-MV losses in the third 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.²⁴ The Panel recommends awards of compensation in respect of all 785 C4-CPHO and 198 C4-MV claims and no awards of compensation in respect of 76 C4-MV claims in the third instalment.

7. C5-Bank Accounts (“BA”) and C5-Stocks and Other Securities (“SOS”)

46. C5 claims are for losses relating to bank accounts and stocks or securities. There are 42 C5-BA and 23 C5-SOS claims in the third instalment. In its First Report, the Panel adopted the methodologies established by the category “C” Panel for these loss types.²⁵

47. The Panel finds that none of the claimants have established that the C5-BA losses are compensable as a direct result of Iraq’s invasion and occupation of Kuwait. The Panel further finds that only three claims for C5-SOS are compensable. The Panel therefore recommends awards of compensation in respect of three C5-SOS claims and no awards of compensation in respect of 20 C5-SOS claims and all 42 C5-BA claims in the third instalment.

48. Further, the Panel finds that 35 claims for C5-BA in the third 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.²⁶

8. C6-Salary

49. C6-Salary claims are for employment-related losses such as salary and wages, indemnities and other benefits. There are 1,275 claims for C6-Salary in the third instalment. The Panel has adopted the methodologies established by the category “C” Panel for this loss type in its First Report.²⁷ The Panel recommends awards of compensation in respect of all 1,275 C6-Salary claims in the third instalment.

9. C6-Support

50. C6-Support claims are for the loss of financial support to the claimant. There are 28 claims for C6-Support in the third instalment. The Panel has adopted the methodologies established by the category “C” Panel for this loss type in its First Report.²⁸ The Panel recommends awards of compensation in respect of 10 claims and no awards of compensation in respect of 18 C6-Support claims in the third instalment.

10. C6-MPA

51. 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 14 claims for C6-MPA losses in the third instalment. In its First Report, the Panel adopted the procedures established by the category “C” Panel for C6-MPA claims²⁹ and accordingly has individually reviewed the third instalment claims to determine their compensability. The Panel recommends no awards of compensation in respect of all 14 C6-MPA claims in the third instalment.

11. C7-Real Property

52. C7-Real Property claims seek compensation for losses related to real property, including costs incurred for repairs and other losses. There are two claims for C7-Real Property in the third instalment.

53. A review of C7-Real Property losses in claims included in the third instalment indicates that they do not raise new issues from the regular category “C” programme. Nor do they present claim characteristics different from claims in the regular category “C” programme. Therefore the Panel adopts the compensability criteria and valuation methodologies established by the category “C” Panel for these losses.³⁰ Consistent with these methodologies, it has individually reviewed C7-Real Property claims in the third instalment to determine if claimants have established ownership, the fact of loss and causation.

54. On the basis of the individual review, the Panel recommends no awards of compensation in respect of the two claims for C7 Real Property in the third instalment.

12. C8-Business losses

55. There are 96 claims for C8-Business losses in the third 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.³¹ In doing so, however, the Panel established a new set of parameters for the valuation of business losses in Palestinian “late claims”.³²

56. The Panel recommends awards of compensation in respect of 93 claims and no awards of compensation in respect of three C8-Business claims in the third instalment.

57. There are also two claimants in this instalment whose individual claims for C8-Business losses were determined to be claims for corporate losses. The Panel discusses these claims in paragraph 66 below.

13. CS-Other losses

58. There are 121 claims for CS-Other losses in the third instalment. In its First Report, the Panel adopted the procedures established by the category “C” Panel in the substantive review of this loss type.³³ Consistent with these procedures, claims in the third 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 resulted directly from Iraq’s invasion and occupation of Kuwait. The Panel therefore recommends no awards of compensation in respect of all 121 claims for CS-Other in the third instalment.

IV. OTHER ISSUES

A. Duplicate claims

59. Duplicate claims are two or more claims filed by an individual in the same claims category. There are 39 instances where claimants filed duplicate claims in the third instalment. These claims were reviewed and the claim that was processed was selected according to the criteria established by the Panel as outlined in its First Report.³⁴ The claims that were considered duplicative were not processed and the Panel recommends no awards of compensation in respect of these claims. The Palestinian Authority will be provided with a confidential report identifying these claims.

B. Claims submitted by minors

60. The Panel instructed the secretariat to perform a detailed comparative statistical analysis between category “C” claims submitted by minors in the Palestinian late-claims programme and category “C” claims filed by minors during the regular filing period to determine whether minors in the late-claims programme assert substantially higher total amounts claimed and more loss types than minors who filed claims in the regular category “C” programme.

61. The statistical comparative analysis showed that minors who submitted category “C” claims in the late-claims programme followed the pattern that the Panel had previously observed in the First Report with respect to the general category “C” Palestinian “late claims” population,³⁵ in that minors assert substantially higher total amounts claimed and more loss types than comparable claims in the regular category “C” programme. Taking into account the global adjustment applied to the recommended amounts for all loss types (except for C6-Salary and C6-Support losses) asserted by the general category “C” “late claims” population, the results showed that there is no statistically significant difference between the amounts awarded to minors during the regular category “C” programme and the projected recommendations for minors who submitted “late claims”.

62. Based on the results of the analysis, the Panel determines that claims from minors are to be processed like other claims in the late-claims programme, with the same adjustments being applied.

C. Multiple claims

63. Due to the availability of more advanced electronic search techniques, the number of multiple claims identified in this late-claims programme is significantly higher than the number identified during the regular category “C” programme, both in relative and absolute terms. In these circumstances, the Panel considers it necessary, within the context of mass claims processing, to adjust the previous methodology established by the category “C” Panel.

64. The Panel recognizes that there is a risk that the losses claimed in multiple claims may overlap, potentially giving rise to overcompensation. The Panel considers that the risk of potential overcompensation is the highest in relation to C1-Money losses and C4-Personal Property losses, with the exception of clothing. The Panel considers that it is probable that families either departed together (thereby incurring joint departure-related expenses) or were forced to stay in Kuwait or Iraq together (thereby incurring joint living expenses). The Panel is mindful that such family members may have claimed for entire amounts of jointly incurred expenses in their individual claims. In relation to C4-Personal Property losses, the risk stems from the fact that personal property items in a household (with the exception of clothing) are usually jointly owned.

65. To address such risk of potential overcompensation, the Panel determines that an adjustment should be made to the claimed amounts for C1-Money and C4-Personal Property (with the exception of clothing) in all multiple claims.

D. Severance of claims for corporate business losses

66. The Panel found that two claims for C8-Business losses in the third instalment were for corporate losses. Governing Council decision 123 (S/AC.26/Dec.123(2001)) provides the mechanism for the processing of corporate business losses claimed by an individual. Accordingly, the Panel instructed the secretariat to sever and transfer to category “D” the C8-Business losses of these two claims for processing as “stand alone” claims.³⁶ The other loss types in these two claims have been processed and are reported in this instalment.

E. Deductions

67. There are three 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.³⁷

68. The Panel notes that the category “A” claim form included an option providing that a claimant could select higher lump-sum amounts provided that the claimant agreed not to submit claims under any other form or category. In its decision 21 (S/AC.26/Dec.21(1994)), the Governing Council provided that any claimant who selected a higher amount under category “A” and who has also filed a claim or claims in other categories would be deemed to have selected the lower amount under category “A”.³⁸

69. In accordance with Governing Council decision 21, claimants who have filed category “C” “late claims” and who selected the higher lump-sum amounts on their category “A” claim form are deemed to have selected the lower amounts. The category “A” awards will be corrected and reduced under article 41 of the Rules. The difference between the selected higher amounts and the lower amounts will be set off against any awards recommended to the claimants for their category “C” “late claims”.

F. Interest

70. The Governing Council has addressed the matter of interest in its decision 16 (S/AC.26/1992/16), which provides, inter alia, that interest will be awarded from the date the loss occurred until the date of payment. The Panel notes that in the “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), the category “C” Panel fixed the date of loss as 2 August 1990, the date of Iraq’s invasion of Kuwait.³⁹ The Panel concurs and adopts the date of 2 August 1990 as the date of loss for category “C” Palestinian “late claims”.

V. RECOMMENDATIONS

71. The Panel determines that 19,767 category “C” claims in this instalment have failed to satisfy the threshold eligibility requirement and are therefore ineligible for inclusion in the late-claims programme.

72. The Panel recommends a total of USD 28,972,289.88 in compensation in respect of 1,784 eligible category “C” claims in the third instalment. The Panel recommends that no compensation be awarded for 69 eligible category “C” claims in the third instalment.

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

Table 1. Summary of third 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>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	21,551	1,175,069,590.79	1,784	19,767	83,766,136.34	28,972,289.88

74. 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

75. Since its Second Report, the Panel has substantially completed the reasons review of category “D” Palestinian “late claims”. The Panel has determined that a further 273⁴⁰ 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 1,695 category “D” claims are ineligible for inclusion in the late-claims programme.

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

VII. SUBMISSION OF THE REPORT

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

Geneva, 21 July 2004

(Signed)

M.C. Pryles
Chairman

(Signed)

K. Hossain
Commissioner

(Signed)

N. Comair-Obeid
Commissioner

Notes

¹ This number includes (a) two category “C” claims which the Panel determined should be processed under category “D” in the light of the claimants’ express intent to file category “D” claims notwithstanding their submission of category “C” claim forms, and (b) two claims for corporate business losses that will be processed in accordance with Governing Council decision 123.

² “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”), paragraphs 77-146.

³ “Report and recommendations made by the Panel of Commissioners concerning the second instalment of Palestinian ‘late claims’ for damages up to USD 100,000 (category “C” claims)” (S/AC.26/2004/3) (“Second Report”), paragraphs 23-40.

⁴ First Report, paragraphs 21-72.

⁵ Ibid., paragraph 37.

⁶ See glossary at the front of this report.

⁷ The Panel instructed the secretariat, as a first step in the eligibility assessment of claims, to undertake electronic searches with respect to each Palestinian “late claim” using the general matching programme that runs in the UNCC database. See First Report, paragraphs 23-24.

⁸ First Report, paragraphs 25-26.

⁹ Ibid., paragraphs 63–70; Second Report, paragraphs 10-15.

¹⁰ The situation of claimants holding Jordanian passports is addressed in the First Report, paragraphs 34 and 44-70 and the Second Report, paragraphs 10-15.

¹¹ First Report, paragraphs 30 and 34.

¹² Ibid., paragraph 70.

¹³ Ibid., paragraph 72.

¹⁴ Second Report, paragraphs 20-21.

¹⁵ The term “multiple claims”, as used in the category “C” programme, encompasses two types of claims. The first type refers to “two or more identifiable individuals (who) submitted one claim for separately identified non-MPA losses together in one claim file with one assigned claim number”; the second type refers to “two or more claims that were submitted by individuals related to each other (usually family submissions)”. See 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”), paragraph 23. In the late-claims programme, only the second type of multiple claims exists. See also glossary at the front of this report.

¹⁶ Seventh “C” Report, paragraphs 23-24.

¹⁷ First Report, paragraphs 145-146.

¹⁸ First Report, paragraphs 98-105. See also the Seventh “C” Report, paragraphs 84-92.

¹⁹ First Report, paragraphs 108-109. See also Seventh “C” Report, paragraphs 94-112.

²⁰ First Report, paragraphs 111-116. See also Seventh “C” Report, paragraphs 113-133.

²¹ First Report, paragraphs 118-121. See also Seventh “C” Report, paragraphs 135-140.

²² Seventh “C” Report, paragraphs 142-157.

²³ Ibid., paragraphs 156 and 157.

²⁴ First Report, paragraphs 123-127. See also Seventh “C” Report, paragraphs 178-220.

²⁵ First Report, paragraphs 129-130. See also Seventh “C” Report, paragraphs 222-248.

²⁶ First Report, paragraph 130. See also Seventh “C” Report, paragraph 226.

²⁷ First Report, paragraph 131. See also Seventh “C” Report, paragraphs 249-281.

²⁸ First Report, paragraphs 132-133. See also Seventh “C” Report, paragraphs 283-290.

²⁹ First Report, paragraphs 135-136. See also Seventh “C” Report, paragraphs 292-298.

³⁰ Seventh “C” Report, paragraphs 300-325.

³¹ First Report, paragraphs 138-140. See also Seventh “C” Report, paragraphs 327-367.

³² First Report, paragraph 140.

³³ First Report, paragraphs 142-143. See also Seventh “C” Report, paragraph 369.

³⁴ First Report, paragraph 150.

³⁵ First Report, paragraphs 9, 10 and 145.

³⁶ The term “stand alone” is defined in Governing Council decision 123 and refers to claims filed by individuals in categories “C” and “D” for direct losses sustained by a Kuwaiti corporate entity, where the Kuwaiti company has not filed a claim in category “E” for such losses.

³⁷ First Report, paragraph 152.

³⁸ See also Seventh “C” Report, paragraphs 60-62.

³⁹ Paragraph 33. See also Seventh “C” Report, paragraph 377.

⁴⁰ See note 1 above.
