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REPORT AND RECOMMENDATIONS OF THE "D1" PANEL OF COMMISSIONERS
CONCERNING THE LATE-FILED CATEGORY "A" AND CATEGORY "C" CLAIMS
PROGRAMME

CONTENTS

| | <u>Paragraphs</u> | <u>Page</u> |
|---|-------------------|-------------|
| Introduction | 1-5 | 3 |
| I. BACKGROUND | 6-10 | 5 |
| A. Considerations..... | 6 | 5 |
| B. Applicable evidentiary standards | 7-10 | 5 |
| II. DETERMINATIONS OF THE GOVERNING COUNCIL CONCERNING THIS LATE-CLAIMS PROGRAMME..... | 11-14 | 5 |
| A. Introduction..... | 11 | 5 |
| B. Criteria established by the Governing Council..... | 12-13 | 6 |
| C. Terms of reference of the claims to the Panel | 14 | 7 |
| III. REVIEW BY THE PANEL OF THE CLAIMS IN THIS LATE-CLAIMS PROGRAMME..... | 15-42 | 7 |
| A. Introduction..... | 15-17 | 7 |
| B. Category “A” claims filed by Iran..... | 18-21 | 7 |
| C. Category “A” claims filed by Pakistan..... | 22-25 | 8 |
| D. Category “C” claims filed by Pakistan..... | 26-28 | 9 |
| E. Category “A” claims filed by the Philippines..... | 29-32 | 9 |
| F. Category “C” claims filed by the Philippines | 33-35 | 9 |
| G. Category “A” claims filed by Sri Lanka | 36-39 | 10 |
| H. Category “C” claims filed by Sri Lanka..... | 40-42 | 10 |
| IV. OTHER ISSUES | 43-45 | 11 |
| A. Exchange rates | 43-44 | 11 |
| B. Interest..... | 45 | 11 |
| V. RECOMMENDED AWARDS | 46 | 11 |
| VI. SUBMISSION OF THE REPORT | 47 | 13 |
| Notes..... | | 14 |

Introduction

1. This is the twenty-fourth report to the Governing Council of the United Nations Compensation Commission (the “Commission”) submitted pursuant to article 37(e) of the Provisional Rules for Claims Procedure (S/AC.26/1992/10) (the “Rules”) by the “D1” Panel of Commissioners (the “Panel”), being one of two Panels appointed to review individual claims for damages above 100,000 United States dollars (USD) (category “D” claims). This report contains the determinations and recommendations of the Panel in respect of certain category “A” and category “C” claims submitted by the Governments of the Islamic Republic of Iran (“Iran”), Pakistan, Philippines and Sri Lanka that were accepted for filing by the Governing Council as “late” claims (this “late-claims programme”) and submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules.
2. At its fifty-first session on 7-9 March 2004, the Governing Council accepted requests for permission to submit late-claims from the Governments of Iran, Pakistan, Philippines and Sri Lanka. The Governing Council permitted the filing of these late-claims based on certain criteria established by the Council. A total of 3,450 category “A” claims and 672 category “C” claims were filed by the four Governments as part of this late-claims programme. As neither the category “A” Panel of Commissioners (the “A’ Panel”) nor the category “C” Panel of Commissioners (the “C’ Panel”) were in existence, the Governing Council directed that these claims be referred to the Panel for review.
3. The determinations and recommendations of the Panel set out in this report in respect of this late-claims programme concern 3,289 category “A” claims and 494 category “C” claims. Five category “C” claims filed by Pakistan that include claims for C8 (individual business) losses remain under review by the Panel. As a result of database searches and matching searches undertaken by the secretariat at the request of the Panel, these five category “C” claims for business losses have been identified as potentially competing with other claims for business losses filed with the Commission. The Panel is undertaking further investigations in respect of these claims. The Panel has also deferred a further 161 category “A” claims and 173 category “C” claims filed by Pakistan pending further clarification from the Governing Council as to the eligibility of these claimants to participate in this late-claims programme. The Panel’s findings and recommendations concerning all of these deferred claims will be included in a subsequent report of the Panel.
4. In addition to ad hoc communications among the Commissioners and with the secretariat, the Panel held meetings at the Commission’s headquarters in Geneva on 4-6 October, 22-24 November and 14-16 December 2004. During these meetings, issues pertaining to this late-claims programme were considered by the Panel.
5. Table 1 below sets out the number of claims filed by each Government as part of this late-claims programme, including the number of claims resolved in this report in respect of this programme.

Table 1. Summary of claims by submitting entity in this late-claims programme

| <u>Submitting entity</u> | <u>Number of category "A" claims submitted</u> | <u>Number of category "A" claims resolved in this report</u> | <u>Number of category "C" claims submitted</u> | <u>Number of category "C" claims resolved in this report</u> | <u>Total number of claims submitted</u> | <u>Total number of claims resolved in this report</u> | <u>Number of claims deferred by the Panel</u> |
|--------------------------|--|--|--|--|---|---|---|
| Iran | 2,513 | 2,513 | 0 | 0 | 2,513 | 2,513 | 0 |
| Pakistan | 429 | 268 | 462 | 284 | 891 | 552 | 339 |
| Philippines | 240 | 240 | 65 | 65 | 305 | 305 | 0 |
| Sri Lanka | 268 | 268 | 145 | 145 | 413 | 413 | 0 |
| <u>Total</u> | 3,450 | 3,289 | 672 | 494 | 4,122 | 3,783 | 339 |

I. BACKGROUND

A. Considerations

6. In reviewing the claims in this late-claims programme, the Panel has taken into consideration relevant material, including information accompanying the submission of these claims provided by the Executive Secretary pursuant to article 32 of the Rules. The Panel has also considered the reports of the “A” Panel and the “C” Panel in so far as these reports set out the methodologies and compensation criteria that are relevant to the claims included in this report.¹

B. Applicable evidentiary standards

7. The relevant evidentiary standards to be applied in reviewing category “A” and category “C” claims are set out in Governing Council decision 1 (S/AC.26/1991/1), and more specifically in article 35 of the Rules. Article 35(1) imposes the evidentiary requirement that:

“Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991). Each panel will determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted.”

8. With respect to category “A” claims, article 35(2)(a) of the Rules provides that “... claimants are required to provide simple documentation of the fact and date of departure from Iraq or Kuwait. Documentation of the actual amount of loss will not be required.”

9. With respect to category “C” claims, article 35(2)(c) of the Rules provides that the “... claims must be documented by appropriate evidence of the circumstances and amount of the claimed loss.” This article stipulates that 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 USD 20,000.”

10. The Panel has applied these evidentiary standards when reviewing the category “A” and category “C” claims included in this report.

II. DETERMINATIONS OF THE GOVERNING COUNCIL CONCERNING THIS LATE-CLAIMS PROGRAMME

A. Introduction

11. On various occasions from 2000 to 2004, the Governments of Iran, Pakistan, Philippines and Sri Lanka approached the Governing Council with requests to file claims with the Commission on behalf of some of their nationals who were allegedly unable to file claims for losses resulting from Iraq’s invasion and occupation of Kuwait during the Commission’s regular filing period.² The Governing Council obtained detailed information from each Government concerning the reasons why its nationals were unable to file claims during the regular filing period and the Council considered sample claims

filed by claimants from all four countries. After lengthy deliberations, the Governing Council determined at its fifty-first session that certain category “A” and category “C” claims from Iran, Pakistan, Philippines and Sri Lanka be accepted for late-filing as these claims complied with the established criteria for the late-filing of claims, on the basis that the claimants did not have an opportunity to file their claims during the Commission’s regular filing period due to the existence of a war-like situation, civil disorder or natural disaster in their country.

B. Criteria established by the Governing Council

12. Having determined that an event of a war-like situation, civil disorder or natural disaster had existed or occurred in each of the four countries during the regular filing period, the Governing Council identified particular geographical regions (the “eligible regions”) in each country that it determined were adversely affected by these events. The Governing Council concluded that claimants resident in these geographical regions would have suffered significant difficulties in filing their claims with the Commission during the regular filing period and on this basis, they were permitted to submit late-claims. The determination of the Governing Council in relation to the eligible regions is as follows:

(a) In respect of Iran, claims were accepted for late-filing from claimants residing in the provinces of Kurdistan, Kermanshah and Khuzestan;

(b) In respect of Pakistan, claims were accepted for late-filing from claimants residing in Pakistani-administered Jammu and Kashmir, and in the Jhelum district of the province of Punjab;

(c) In respect of the Philippines, claims were accepted for late-filing from claimants residing in the Central Luzon and Mindanao regions; and

(d) In respect of Sri Lanka, claims were accepted for late-filing from claimants residing in the Northern and Eastern Provinces.

13. At its fifty-fourth session held on 7-9 December 2004, the Governing Council clarified its earlier determination concerning the eligible regions for Pakistan and the Philippines. This clarification provided that in respect of Pakistan, claimants living in Pakistani-administered Jammu and Kashmir and in areas affected by the Jhelum River and Chenab River floodings in 1992 in the Punjab Province are eligible to file claims with the Commission. In respect of the Philippines, the clarification of the Governing Council provided that claimants who were either residing in Mindanao or in all regions affected by the Mount Pinatubo volcanic eruption, including Central Luzon, are eligible to file claims with the Commission. Both Pakistan and the Philippines have submitted documentary evidence to establish the geographical areas that were affected by flooding and volcanic activity respectively. The Panel has referred to this material when reviewing the claims submitted by these two Governments.

C. Terms of reference of the claims to the Panel

14. The Governing Council, at its fifty-first session, while referring the claims submitted by Iran, Pakistan, Philippines and Sri Lanka comprising this late-claims programme to the Panel for review, directed that the Panel "... be required to verify that each claimant was resident in the particular province or region of their respective country ..." as set out in paragraphs 12 and 13 above.

III. REVIEW BY THE PANEL OF THE CLAIMS IN THIS LATE-CLAIMS PROGRAMME

A. Introduction

15. Before commencing its review of the claims comprising this late-claims programme, the Panel undertook an electronic matching of all the late-filed claims as against all of the other claims filed with the Commission. The results of this matching indicate that certain claimants who filed claims in this late-claims programme had previously filed one or more claims with the Commission in categories "A", "B", "C" or "D". In such cases, the Panel finds that the claimants are not eligible to participate in this late-claims programme as they had an opportunity to file claims during the regular filing period, and availed themselves of that opportunity. Consequently, the Panel recommends no award of compensation in respect of claimants who have previously filed claims with the Commission in any claims category.

16. Having determined that certain claimants are ineligible to participate in this late-claims programme as a result of the matching process described in paragraph 15 above, the Panel proceeded to review the remaining claims filed with the Commission. In accordance with the determinations of the Governing Council concerning this late-claims programme set out in chapter II of this report, the Panel examined every claim filed with the Commission as part of this late-claims programme to determine whether the claimant was resident in an eligible region and if so, the Panel proceeded to review each such eligible claim and recommends awards of compensation as set out hereafter in accordance with the applicable category "A" and category "C" methodologies and compensation criteria.

17. In respect of claimants who were found not to be resident in an eligible region, in accordance with the criteria established by the Governing Council, the Panel recommends no award of compensation.

B. Category "A" claims filed by Iran

18. Iran submitted 2,513 category "A" claims as part of this late-claims programme. No category "C" claims were submitted by Iran. As a result of matching, the Panel finds that five claimants are ineligible to participate in this late-claims programme as these claimants filed claims with the Commission during the regular filing period.

19. The Panel finds that in respect of the remaining 2,508 claims submitted by Iran, the claimants resided in an eligible region and therefore, all 2,508 claimants are eligible to participate in this late-claims programme.

20. The Panel did not encounter any new factual or legal issues in its review of the 2,508 Iranian claims that it determined were eligible to participate in this late-claims programme. Applying the category “A” methodology developed by the “A” Panel in its review of these claims, the Panel finds that 2,483 out of the 2,508 eligible Iranian claims satisfy requirements of that methodology and recommends awards of compensation in accordance with the category “A” methodology.

21. In respect of the remaining 25 Iranian claims, the Panel recommends no awards of compensation as they do not satisfy the requirements of the category “A” methodology. In some cases claimants have filed duplicate claims within this late-claims programme and the Panel recommends an award of compensation in respect of only one of the duplicate claims. In other cases, claimants departed from Kuwait or Iraq outside of the Commission’s jurisdictional period of 2 August 1990 to 2 March 1991 or they did not provide documentary evidence to establish that they had departed from Kuwait or Iraq at all.

C. Category “A” claims filed by Pakistan

22. Pakistan submitted a total of 891 claims for filing in this late-claims programme. This total number comprises 429 category “A” claims and 462 category “C” claims, 57 of which were submitted on category “D” claim forms. As the Governing Council determined that this late-claims programme was to comprise category “A” and category “C” claims only, these category “D” claims were converted to and reviewed as category “C” claims by the Panel, in accordance with the Governing Council’s direction. As stated in paragraph 3 above, 161 category “A” claims and 178 category “C” claims from Pakistan remain under review by the Panel and no recommendations are made in respect of these 339 claims in this report.

23. In respect of the remaining 552 claims from Pakistan resolved by the Panel in this report, the Panel finds that seven claimants are ineligible to participate in this late-claims programme as a result of matching as these claimants filed claims with the Commission during the regular filing period.

24. For the remaining category “A” claims that were not eliminated by matching or deferred pending further clarification by the Governing Council, the Panel finds that all 267 claimants resided within the eligible regions set by the Governing Council and are therefore eligible to participate in this late-claims programme.

25. The Panel did not encounter any new factual or legal issues in its review of the 267 category “A” claims that it determined were eligible to participate in this late-claims programme. Applying the category “A” methodology developed by the “A” Panel, the Panel finds that 264 of the 267 eligible category “A” claims satisfy the requirements of that methodology and recommends awards of compensation accordingly. In relation to the remaining three eligible category “A” claims, the Panel recommends no awards of compensation as the claimants’ asserted departure from Iraq or Kuwait during the jurisdictional period has not been established.

D. Category “C” claims filed by Pakistan

26. In respect of the category “C” claims filed by Pakistan, the Panel reviewed 278 claims that were not either eliminated through matching or deferred by the Panel pending further investigation or Governing Council clarification. The Panel finds that all 278 claimants resided within the eligible regions set by the Governing Council and are therefore eligible to participate in this late-claims programme.

27. The Panel notes that in the eligible category “C” claims from Pakistan, the claimants generally seek compensation for C1 (relocation) expenses, C4 (personal property) losses, C6 (loss of salary) and C8 (individual business) losses.

28. The Panel did not encounter any new factual, legal or valuation issues in its review of these category “C” claims. Applying the category “C” methodologies and compensation criteria developed by the “C” Panel in its review of these claims, the Panel recommends awards of compensation accordingly. The Panel recommends no compensation in respect of two category “C” claims that are duplicates of two other claims filed within this late-claims programme.

E. Category “A” claims filed by the Philippines

29. The Philippines submitted a total of 305 claims for filing in this late-claims programme. This total comprises 240 category “A” claims and 65 category “C” claims.

30. As a result of matching, the Panel finds that 22 claimants are ineligible to participate in this late-claims programme as these claimants filed claims with the Commission during the regular filing period.

31. In respect of the category “A” claims filed by the Philippines, the Panel finds that 204 claimants resided within the eligible regions set by the Governing Council and are therefore eligible to participate in this late-claims programme, while 19 claimants did not reside within an eligible region and are therefore not eligible to participate in this late-claims programme.

32. The Panel did not encounter any new factual or legal issues in its review of the 204 category “A” claims that it determined were eligible to participate in this late-claims programme. Applying the category “A” methodology developed by the “A” Panel in its review of these claims, the Panel finds that 200 of the 204 eligible category “A” claims satisfy the requirements of that methodology and recommends awards of compensation accordingly. For the remaining four eligible category “A” claims, the Panel recommends no awards of compensation as the Panel finds that the claimants’ asserted departure from Iraq or Kuwait during the jurisdictional period has not been established.

F. Category “C” claims filed by the Philippines

33. In respect of the category “C” claims filed by the Philippines, after excluding claims that were eliminated through matching, the Panel finds that 46 claimants resided within the eligible regions set by the Governing Council and are therefore eligible to participate in this late-claims programme, while

the remaining 14 claimants did not reside within an eligible region and are therefore not eligible to participate in this late-claims programme.

34. The Panel notes that in respect of those 46 eligible category “C” claims from the Philippines, the claimants seek compensation for C4 (personal property) losses and C6 (loss of salary).

35. The Panel did not encounter any new factual, legal or valuation issues in its review of these category “C” claims. Consequently, the Panel applies the category “C” methodologies and compensation criteria developed by the “C” Panel in its review of these claims and recommends awards of compensation accordingly.

G. Category “A” claims filed by Sri Lanka

36. Sri Lanka submitted a total of 413 claims for filing in this late-claims programme. This total comprises 268 category “A” claims and 145 category “C” claims.

37. As a result of matching, the Panel finds that ten claimants are ineligible to participate in this late-claims programme as these claimants filed claims with the Commission during the regular filing period.

38. In respect of the category “A” claims filed by Sri Lanka, the Panel finds that all 264 claimants who were not otherwise eliminated by matching resided within the eligible regions.

39. The Panel did not encounter any new factual or legal issues in its review of the 264 category “A” claims that it determined were eligible to participate in this late-claims programme. Applying the category “A” methodology developed by the “A” Panel in its review of these claims, the Panel finds that 249 of the 264 eligible category “A” claims satisfy the requirements of that methodology and recommends awards of compensation accordingly. For the remaining 15 eligible category “A” claims, the Panel recommends no awards of compensation as these claims either do not satisfy the requirements of the category “A” methodology or are duplicates of other claims filed within this late-claims programme.

H. Category “C” claims filed by Sri Lanka

40. In respect of the category “C” claims filed by Sri Lanka, after excluding claims eliminated through matching, the Panel finds that all 139 claimants resided within the eligible regions set by the Governing Council.

41. In these 139 eligible category “C” claims from Sri Lanka, the claimants generally seek compensation for C4 (personal property) losses and C6 (loss of salary).

42. The Panel did not encounter any new factual, legal or valuation issues in its review of these category “C” claims. Consequently, the Panel applies the category “C” methodologies and compensation criteria developed by the “C” Panel in its review of these claims and recommends awards of compensation accordingly.

IV. OTHER ISSUES

A. Exchange rates

43. For the purpose of calculating recommended amounts, the “C” Panel determined that for claims stated in Kuwaiti dinars, the currency exchange rate is the rate of exchange in effect on 1 August 1990 for converting Kuwaiti dinars into United States dollars. The Panel adopts the exchange rate determined by the “C” Panel in the calculation of the recommended amounts for the category “C” claims included in this report.

44. The Panel notes that the issue of exchange rates is not relevant to category “A” claims where the recommended awards comprise fixed amounts set by the Governing Council.

B. Interest

45. The Panel notes the view expressed by the “A” Panel in the First “A” Report³ that the phrase “the date the loss occurred” in Governing Council decision 16 (S/AC.26/1992/16)⁴ should be interpreted to be a single fixed date for all category “A” claims and that the date of Iraq’s invasion and occupation of Kuwait, namely 2 August 1990, should serve as the fixed date. The Panel also notes that the “C” Panel in the First “C” Report adopted the same date in respect of awards of interest for all category “C” claims.⁵ The Panel therefore applies this interpretation to the claims included in this report.

V. RECOMMENDED AWARDS

46. Tables 2 and 3 below list the category “A” and category “C” awards recommended by the Panel for each Government for the claims resolved in this report in respect of this late-claims programme. Table 4 below sets out a summary of the determinations and recommendations made by the Panel in respect of all of the claims included in this report. Each Government will be provided with a confidential list containing the individual recommendations made in respect of its claimants. As will be seen from table 2, the total amount claimed in respect of all category “A” claims included in this report is USD 22,896,500. Against this total claimed amount, the Panel recommends a total award of compensation of USD 22,327,500. As will be seen from table 3, the total amount claimed in respect of all category “C” claims included in this report is USD 81,697,154.27. Against this total claimed amount, the Panel recommends a total award of compensation of USD 7,752,162.04. As will be seen from table 4, the total amount claimed in respect of all claims included in this report is USD 104,593,654.27. Against this total claimed amount, the Panel recommends a total award of compensation of USD 30,079,662.04 in respect of 3,656 successful claims.

Table 2. Summary of recommendations in respect of the category “A” claims in this late-claims programme

| <u>Submitting entity</u> | <u>Number of claims not recommended for payment</u> | <u>Number of claims recommended for payment</u> | <u>Total amount claimed (USD)</u> | <u>Amount of compensation recommended (USD)</u> |
|--------------------------|---|---|-----------------------------------|---|
| Iran | 30 | 2,483 | 20,060,000.00 | 19,756,000.00 |
| Pakistan | 4 | 264 | 815,500.00 | 785,000.00 |
| Philippines | 41 | 199 | 950,500.00 | 793,500.00 |
| Sri Lanka | 19 | 249 | 1,070,500.00 | 993,000.00 |
| <u>Total</u> | 94 | 3,195 | 22,896,500.00 | 22,327,500.00 |

Table 3. Summary of recommendations in respect of the category “C” claims in this late-claims programme

| <u>Submitting entity</u> | <u>Number of claims not recommended for payment</u> | <u>Number of claims recommended for payment</u> | <u>Total amount claimed (USD)</u> | <u>Amount of compensation recommended (USD)</u> |
|--------------------------|---|---|-----------------------------------|---|
| Pakistan | 8 | 276 | 80,969,396.79 | 7,368,753.05 |
| Philippines | 19 | 46 | 279,338.94 | 151,191.96 |
| Sri Lanka | 6 | 139 | 448,418.54 | 232,217.03 |
| <u>Total</u> | 33 | 461 | 81,697,154.27 | 7,752,162.04 |

Table 4. Summary of recommendations in respect of all claims in this late-claims programme

| <u>Submitting entity</u> | <u>Total number of claims filed</u> | <u>Number of claims deferred by the Panel</u> | <u>Number of claims not eligible for late filing</u> | <u>Number of claims eligible for late filing</u> | <u>Number of claims not recommended for payment</u> | <u>Number of claims recommended for payment</u> | <u>Total amount claimed (USD)</u> | <u>Amount of compensation recommended (USD)</u> |
|--------------------------|-------------------------------------|---|--|--|---|---|-----------------------------------|---|
| Iran | 2,513 | 0 | 5 | 2,508 | 30 | 2,483 | 20,060,000.00 | 19,756,000.00 |
| Pakistan | 891 | 339 | 7 | 545 | 12 | 540 | 81,784,896.79 | 8,153,753.05 |
| Philippines | 305 | 0 | 55 | 250 | 60 | 245 | 1,229,838.94 | 944,691.96 |
| Sri Lanka | 413 | 0 | 10 | 403 | 25 | 388 | 1,518,918.54 | 1,225,217.03 |
| <u>Total</u> | 4,122 | 339 | 77 | 3,706 | 127 | 3,656 | 104,593,654.27 | 30,079,662.04 |

VI. SUBMISSION OF THE REPORT

47. The Panel hereby submits this report through the Executive Secretary to the Governing Council pursuant to article 37(e) of the Rules.

Geneva, 14 January 2005

(Signed) R.K.P. Shankardass
Chairman

(Signed) G. Abi-Saab
Commissioner

(Signed) M.C. Pryles
Commissioner

Notes

¹ The Panel has reviewed the category “A” claims included in this late-claims programme and recommends awards of compensation in accordance with the methodologies and compensation criteria established by the “A” Panel, as set out in chapters III and IV of the “Report and recommendations made by the Panel of Commissioners concerning the first instalment of claims for departure from Iraq or Kuwait (category ‘A’ claims)” (S/AC.26/1994/2) (the “First ‘A’ Report”). The Panel also referred to chapters III and IV of the “Report and recommendations made by the Panel of Commissioners concerning the fourth instalment of claims for departure from Iraq or Kuwait (category ‘A’ claims)” (S/AC.26/1995/4) and chapter II of the “Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of claims for departure from Iraq or Kuwait (category ‘A’ claims)” (S/AC.26/1996/3). Similarly, the Panel has reviewed the category “C” claims included in this late-claims programme and recommends awards of compensation in accordance with the methodologies and compensation criteria established by the “C” Panel, as set out in chapter IV of 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 “First ‘C’ Report”). The Panel also referred to chapter IV of 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).

² The Commission’s regular filing period was from 1 January 1992 to 1 January 1996.

³ See pages 21-23 of the First “A” Report.

⁴ Governing Council decision 16 provides that “[i]nterest 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.” The methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time.

⁵ See page 33 of the First “C” Report.
