



Security Council

Distr.
GENERAL

S/AC.26/2005/3
10 March 2005

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

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

CONTENTS

| | <u>Paragraphs</u> | <u>Page</u> |
|--|-------------------|-------------|
| Glossary | | 4 |
| Introduction | 1-6 | 5 |
| I. THE PROCEEDINGS | 7-9 | 5 |
| II. THE THRESHOLD ELIGIBILITY REQUIREMENT | 10-25 | 6 |
| A. Matching | 11-13 | 6 |
| B. Reasons review | 14-22 | 7 |
| 1. Overview | 14-16 | 7 |
| 2. Claimants whose spouses filed claims during the regular filing period | 17-22 | 7 |
| C. Irregularities | 23-26 | 8 |
| III. SUBSTANTIVE PROCESSING | 27-61 | 9 |
| A. Overview of the fourth instalment | 27-32 | 9 |
| B. Losses claimed | 33-61 | 10 |
| 1. C1-Money | 33-34 | 10 |
| 2. C1-Mental Pain and Anguish (“MPA”) | 35-37 | 11 |
| 3. C2-Money | 38-39 | 11 |
| 4. C2-MPA | 40-41 | 12 |
| 5. C3-Death | 42-43 | 12 |
| 6. C4-Personal Property | 44-45 | 12 |
| 7. C5-Bank Accounts (“BA”) and C5-Stocks and Other Securities (“SOS”) | 46-49 | 13 |
| 8. C6-Salary | 50-51 | 13 |
| 9. C6-Support | 52-53 | 13 |
| 10. C6-MPA | 54-55 | 14 |
| 11. C7-Real Property | 56-57 | 14 |
| 12. C8-Business losses | 58-61 | 14 |
| 13. CS-Other losses | 62 | 15 |
| IV. OTHER ISSUES | 63-72 | 15 |
| A. Duplicate claims | 63 | 15 |
| B. Deficiencies | 64-65 | 15 |

| | | |
|--|-------|----|
| C. Severance of claims for corporate business losses | 66 | 16 |
| D. Deductions..... | 67-69 | 16 |
| E. Withdrawn claims..... | 70-71 | 16 |
| F. Interest | 72 | 16 |
| V. RECOMMENDATIONS | 73-76 | 17 |
| VI. CATEGORY “D” CLAIMS | 77-79 | 17 |
| VII. SUMMARY STATISTICS FOR THE PALESTINIAN LATE-CLAIMS PROGRAMME | 80 | 18 |
| VIII. SUBMISSION OF THE REPORT..... | 81 | 19 |

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 establish 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 has conducted the threshold eligibility assessment directed by the Governing Council in respect of each Palestinian “late claim”. This assessment required the Panel to determine whether claimants establish that they did not have a full and effective opportunity to file claims during the regular filing period. The Panel has also reviewed the merits of those category “C” claims that satisfied the threshold eligibility requirement. The category “D” claims that have satisfied the threshold eligibility requirement are being reviewed on their merits separately by the “D2” Panel of Commissioners (the “D2” Panel).
3. This is the fourth and final 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 19,364 category “C” and 38 category “D” claims.¹ It also includes the Panel’s recommendations on the merits of 4,724 category “C” claims (the “fourth instalment claims”).
5. At its fifty-second session held from 29 June to 2 July 2004, the Governing Council considered the request of the Palestinian Authority to file replacement claims in respect of 95 claims that were misplaced or lost in transit and were not received by the Commission during the filing period for Palestinian “late claims”.² In responding to the request of the Palestinian Authority, the Governing Council requested the Panel to determine, on a case-by-case basis, whether these claims should be accepted for filing in the late-claims programme. The Palestinian Authority submitted 78 claims out of the 95 initially stated. The Panel has reviewed these claims and has accepted 41 category “C” and five category “D” claims for filing. These claims are included in this report.
6. With this report, the Panel completes the eligibility assessment of all 45,971 Palestinian “late claims”,³ comprised of 43,597 category “C” and 2,374 category “D” claims,⁴ and its review on the merits of a total of 7,797 eligible category “C” claims.⁵

I. THE PROCEEDINGS

7. This report covers the claims reviewed and work performed by the Panel in connection with the fourth instalment claims. The Panel met on 4 August, 6 October and 13-14 December 2004, and also regularly conferred among themselves and with the secretariat.

8. 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 statistics concerning the categories of claims submitted by the Palestinian Authority in respect of the number of claims and the total claimed amount in each category. These article 16 reports covered most of the claims in the fourth 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"). The statistics relating to the few remaining claims will be included in the next article 16 report, scheduled for March 2005.

9. 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 report and recommendations concerning the first instalment of Palestinian "late claims",⁶ its report and recommendations concerning the second instalment of Palestinian "late claims"⁷ and its report and recommendations concerning the third instalment of Palestinian "late claims".⁸

II. THE THRESHOLD ELIGIBILITY REQUIREMENT

10. The Panel 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.⁹ The first step was 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, conducted in respect of those claims that passed the matching procedures, was 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 was satisfied ("reasons review").

A. Matching

11. As stated in its First Report, the Panel directed the secretariat to perform electronic searches in respect of each Palestinian "late claim", using a general matching programme that automatically runs in the UNCC claims database.¹⁰ As a result, over 4,000 Palestinian "late claims" were identified to have matching claims that were filed during the regular filing period.¹¹ Additional matching claims were subsequently identified as a result of manual searches in the UNCC database, as elaborated by the Panel in its Third Report.¹²

12. In its First Report, the Panel determined that claimants who filed claims during the regular filing period in the same claim category had a full and effective opportunity to file claims with the Commission at that time.¹³ Therefore, these claimants are not eligible to participate in the late-claims programme. The Panel further determined that the existence of a previously filed claim in another claim category might, but does not necessarily, indicate that the claimant had a full and effective opportunity to file a claim during the regular filing period. In such cases, the Panel considered the

particular circumstances of the claimant in determining whether he or she was eligible to participate in the late-claims programme.¹⁴

13. As a result of these matching procedures, the Panel determined that a total of 4,282 claims or nine per cent of the total claims population were not eligible for inclusion in the late-claims programme. Most of these claims were reported in the third instalment.¹⁵ However, there are 89 such claims reported in the fourth instalment.

B. Reasons review

1. Overview

14. In its three previous reports, the Panel established guidelines that addressed the numerous and complex issues raised by the claims in the course of reasons review.¹⁶ The Panel also elaborated certain refinements to its procedure in connection with the issuance of reasons review notifications in order to avoid a double review of the claimants' reasons for late filing.¹⁷

15. In completing its reasons review of the claims in the fourth instalment, the Panel has completed a case-by-case analysis of the Palestinian "late claims" which extended over nearly three years.¹⁸ During that time, notifications were issued in respect of 28,911 claims, representing 63 per cent of the total claims population, to elicit further information concerning the claimants' reasons for late filing. Of these, responses were received in relation to 23,605 or 82 per cent of the claims.

16. Overall, there are 31,870 claims that the Panel has determined to be ineligible for inclusion in the late-claims programme because the claimants failed to provide satisfactory reasons for late filing. Of this number, 14,239 claims are reported in the fourth instalment.

2. Claimants whose spouses filed claims during the regular filing period

17. As a result of manual searches for matching and related claims, a number of claims were identified in the fourth instalment that were submitted by wives whose husbands had filed claims, predominantly in category "A", during the regular filing period. Most of these wives resided in the West Bank with their husbands and were listed as family members in the category "A" claims¹⁹ filed by their husbands.

18. The Panel considered the situation of claims filed by spouses in its First Report.²⁰ The Panel determined that spouses who lived together throughout the regular filing period would have had the same opportunity to file claims. Therefore, where a husband was able to file a claim during the regular filing period and in the absence of a satisfactory explanation from the wife for her failure to file a claim at the same time, the Panel determined that the wife had a full and effective opportunity to file claims during the regular filing period and is not eligible to participate in the late-claims programme.

19. In its First Report, the Panel also considered the case of claimants who relocated to the West Bank during the regular filing period after departure from Kuwait.²¹ The Panel found that only a

limited number of claims forms were provided for distribution in the West Bank and that their distribution and collection were confined to a brief period within the regular filing period. Given the uncertainty that surrounded the administration of the UNCC compensation programme in the West Bank, the Panel determined that it would consider the circumstances of these claimants on a case-by-case basis, having particular regard to the claimant's explanation of his or her attempts to file a claim in the West Bank.

20. In light of these findings, the Panel determines that claimants who (a) establish residence in the West Bank throughout the regular filing period, (b) whose spouses filed claims at that time that included the claimants' losses or listed the claimants as family members in their category "A" claims, and (c) did not provide satisfactory explanations for their inability to file claims at the same time as their husbands, had a full and effective opportunity to file claims during the regular filing period. Therefore, these claimants are not eligible to participate in the late-claims programme. The Panel further determines that those claimants who demonstrate that they made attempts to file in the West Bank but were unsuccessful due to the lack of claim forms have provided satisfactory reasons for late filing and are therefore eligible to participate in the late-claims programme.

21. In one claim, a husband who filed a category "A" claim during the regular filing period explained that he was unable to file a category "C" claim at the same time because no claim forms were available. The Panel determines that he is eligible to participate in the late-claims programme. In his category "A" claim, the claimant named his wife as a family member who departed Kuwait with him. The claimant's wife, however, while asserting that she remained with her husband during the regular filing period, did not explain the reasons for her inability to file a category "C" claim at that time, although she was asked to do so.

22. The Panel notes that there may be several possible reasons for the wife's failure to file. One is an inability to obtain a claim form. Another is the circumstance, asserted by some claimant wives, that they believed they would not get anything from the Commission's compensation programme. The inability to obtain a claim form is a satisfactory explanation for failure to file a claim. However, as determined by the Panel in its Third Report, the failure to file a claim during the regular filing period on account of a claimant's belief that the programme would not be successful is not a satisfactory reason for late filing.²² Consequently, in the absence of an explanation, the Panel has no information as to why the wife did not file a claim during the regular filing period. The Panel therefore determines that she is not eligible to participate in the late-claims programme.

C. Irregularities

23. Since its First Report, the Panel has addressed issues that relate to irregularities detected in documents submitted by claimants as part of its eligibility assessment of claims. As outlined in its three previous reports, the Panel developed procedures to identify and deal with various types of irregularities in the supporting documentation submitted by some claimants.²³ The Panel determined that irregularities in documents that relate to the claimant's reasons for participation in late filing, such as passports and other identification documents, result in the claimant's exclusion from the late-claims programme.²⁴ The Panel also determined that irregularities in documents that support the losses

asserted do not adversely impact on the claimant's eligibility to participate in the late-claims programme.²⁵ The Panel considers that irregularities in documents that support asserted losses adversely affect the loss type or loss elements²⁶ to which the supporting document relates. Accordingly, the Panel determines that no awards for compensation are to be recommended for loss types or loss elements supported by documents containing irregularities.

24. During the course of its review of claims in the fourth instalment, the Panel encountered various irregular documents in support of asserted losses, such as (a) invoices and receipts submitted in support of C4-CPHO losses, (b) motor vehicle registration documents submitted in support of C4-MV losses, (c) death certificates submitted in support of C3-Death losses, (d) employment certificates submitted in support of C6-Salary losses and (e) lease contracts and business licence documents submitted in support of C8-Business losses. For example, in one instance the date of death on a death certificate was altered to make the date appear to fall within the Commission's jurisdictional period. As the altered death certificate was proffered in support of the claimant's C3-Death loss, the Panel recommends no compensation be awarded for that loss type. In other instances, the name and date of purchase were altered on purchase invoices submitted in support of C4-CPHO losses to make it appear that the claimant purchased the claimed items prior to Iraq's invasion and occupation of Kuwait.

25. As set out in the First Report,²⁷ where the authenticity of photocopied documents is in doubt, claimants were issued notifications requesting them to provide the originals of the documents in question for the Panel's inspection. A number of claimants did not respond to the notifications or failed to submit the original documents without providing satisfactory explanations for such failure. In the absence of a satisfactory response or the submission of the original document that relates to the claimant's reasons for late filing, the Panel finds that the claimant is not eligible to participate in the late-claims programme. Where the claimant fails to provide the originals of documents that support his or her asserted losses, the Panel determines that such loss types or loss elements will not be recommended for compensation.

26. During the course of the Panel's eligibility assessment of claims, a total of 10,635 claims were scrutinized for potentially irregular documents submitted by claimants. Notifications for clarification or explanation and/or production of original documents were sent in respect of 290 claims. Of these, responses were received in relation to 162 or 56 per cent of the claims. With the completion of the irregularities review of claims, the Panel has determined that a total of 1,692 claims are not eligible for inclusion in the late-claims programme due to irregularities. There are 364 such claims reported in the fourth instalment.

III. SUBSTANTIVE PROCESSING

A. Overview of the fourth instalment

27. The fourth instalment of category "C" Palestinian "late claims" comprises 19,364 claims with a total claimed amount of 1,228,480,775 United States dollars (USD). The Panel finds that 4,724 of these claims, with a total amount claimed of USD 226,866,203.14, are eligible for inclusion in the late-claims programme. The remainder of the fourth instalment claims are not eligible for inclusion.

28. In its previous reports, the Panel outlined the methodologies to be applied to the substantive processing of category “C” Palestinian “late claims” with respect to all loss types.²⁸ No new loss type has been considered by the Panel in the fourth instalment.

29. A number of claims in the fourth instalment raise the issue of irregularities in documents supporting asserted losses. As discussed in paragraphs 23-24 above, the Panel recommends no award of compensation in respect of the loss types or loss elements to which the irregular documents relate. Accordingly, the Panel recommends no compensation in respect of particular loss types or loss elements in 50 claims in the fourth instalment. The Palestinian Authority will be provided with a report identifying these claims.

30. Some claims in the fourth instalment lacked either (a) the claimant’s signature affirming the information provided in the claim and the losses being claimed, or (b) evidence of authority on the part of the individual who filed the claim on behalf of the claimant. Although claimants were given an opportunity to correct these formal deficiencies, many did not. The Panel determines that claims with such deficiencies fail to comply with the formal requirements under article 14 of the Rules. Consistent with its approach to other deficient claims described in the First Report,²⁹ the Panel finds that these claims are materially deficient and therefore are not compensable. The rationale for the Panel’s determination is explained in paragraphs 64-65 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 of Commissioners (“category ‘C’ Panel”), wherein the methodologies are described in some detail, were in the public domain throughout the filing period for Palestinian “late claims”. In addition, the average total amounts claimed and the number of loss types per claim increased substantially in comparison to those of the claims filed in the regular category “C” programme. The Panel 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.³⁰ This adjustment has been made to all of the eligible category “C” claims in the fourth instalment.

32. The Panel recognized in its Third Report that there is a risk that the losses claimed in multiple claims may overlap, potentially giving rise to overcompensation. To address this risk, the Panel made further adjustments to the claimed amounts for C1-Money and C4-Personal Property (with the exception of clothing) in all multiple claims.³¹ Similar adjustments have been made, where applicable, to the claims in the fourth instalment.

B. Losses claimed

1. C1-Money

33. 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 1,834 claims in the fourth 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.³² The Panel recommends awards of compensation in respect of 1,402 claims and no awards of compensation in respect of 432 C1-Money claims in the fourth instalment.

34. No compensation has been recommended for C1-Money losses where the losses relate to departure and the date of departure was not within the jurisdictional period.³³ Further, no compensation has been recommended for losses relating to relocation, where claimants either indicate a date of departure outside the period of 1 June 1990 to 2 March 1991 or departed between 1 June 1990 and 1 August 1990 but fail to establish their residence in Iraq or Kuwait prior to Iraq's invasion of Kuwait.³⁴

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

35. 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 287 claims for C1-MPA (hostage taking) and 1,231 claims for C1-MPA (forced hiding) in the fourth 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.³⁵

36. The Panel recommends awards of compensation in respect of 201 C1-MPA (hostage taking) and 1,186 C1-MPA (forced hiding) claims and no awards of compensation in respect of 86 C1-MPA (hostage taking) and 45 C1-MPA (forced hiding) claims in the fourth instalment.

37. No compensation has been recommended for C1-MPA (hostage taking) claims, where the number of days in detention was three days or less and claimants fail to establish, upon an individual review of the claims, that they were taken hostage as a direct result of Iraq's invasion and occupation of Kuwait in circumstances indicating an imminent threat to their lives.³⁶ No compensation has been recommended for C1-MPA (forced hiding) claims where the number of hiding days was three days or less.³⁷

3. C2-Money

38. 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 975 claims for C2-Money losses in the fourth 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.³⁸ The Panel recommends awards of compensation in respect of 587 claims and no awards of compensation in respect of 388 C2-Money claims in the fourth instalment.

39. No compensation has been recommended for C2-Money losses where the claimant fails to provide any date of injury³⁹ or the date of injury is outside the jurisdictional period and the claimant fails to establish, upon an individual review of the claim, that the injury was a direct result of Iraq's invasion and occupation of Kuwait.⁴⁰

4. C2-MPA

40. C2-MPA claims relate to damages for mental pain and anguish arising from a serious personal injury or from witnessing the intentional infliction of serious injury to a spouse, child or parent. There are 574 claims for C2-MPA losses in the fourth 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.⁴¹ The Panel recommends awards of compensation in respect of 39 claims and no awards of compensation in respect of 535 C2-MPA claims in the fourth instalment.

41. No compensation has been recommended for C2-MPA losses where claimants do not provide any information in relation to the serious personal injury allegedly suffered or, in instances where information is provided, where it is insufficient to establish the fact of a serious personal injury or a causal link to Iraq’s invasion and occupation of Kuwait.

5. C3-Death

42. 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 (referred to as “C3-MPA” claims). There are 555 claims in the fourth instalment asserting C3-Death losses. In its Third Report, the Panel outlined the modifications that it applies to the methodologies established by the category “C” Panel in the substantive processing of C3-Death losses.⁴² The Panel recommends awards of compensation in respect of 76 claims and no awards of compensation in respect of 479 C3-Death claims in the fourth instalment.

43. No compensation has been recommended for C3-Death losses where the death occurred outside the jurisdictional period⁴³ or, in cases where the death occurred within the jurisdictional period, the claimant was either not a spouse, parent or child of the deceased or the death was not attributable to Iraq’s invasion and occupation of Kuwait.⁴⁴

6. C4-Personal Property

44. 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 2,174 claims for C4-CPHO losses and 665 claims for C4-MV losses in the fourth 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.⁴⁵ The Panel recommends awards of compensation in respect of 2,169 C4-CPHO and 419 C4-MV claims and no awards of compensation in respect of five C4-CPHO claims and 246 C4-MV claims in the fourth instalment.

45. No compensation has been recommended for the five C4-CPHO claims on account of irregularities in supporting documents and for C4-MV losses where claimants did not prove ownership of their motor vehicles.⁴⁶

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 104 C5-BA and 53 C5-SOS claims in the fourth instalment. In its First Report, the Panel adopted the methodologies established by the category “C” Panel for these loss types.⁴⁷

47. The Panel finds that none of the claimants with C5-BA losses in the fourth instalment 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 one claim for C5-SOS is compensable. The Panel therefore recommends an award of compensation in respect of one C5-SOS claim and no awards of compensation in respect of 52 C5-SOS claims and all 104 C5-BA claims in the fourth instalment.

48. The Panel finds that 88 claims for C5-BA in the fourth instalment have been put forward for the loss of bank accounts in Kuwait. Consistent with procedures established by the category “C” Panel in 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.⁴⁸

49. No compensation has been recommended for C5-BA losses where the bank account was held in Kuwait⁴⁹ or, in cases where the bank account was held in Iraq, claimants fail to meet the criteria for compensability (that is, the fact of ownership, loss and causation).⁵⁰

8. C6-Salary

50. C6-Salary claims are for employment-related losses such as salary and wages, indemnities and other benefits. There are 3,124 claims for C6-Salary in the fourth instalment. The Panel has adopted the methodologies established by the category “C” Panel for this loss type in its First Report.⁵¹ The Panel recommends awards of compensation in respect of 3,112 C6-Salary claims in the fourth instalment.

51. No compensation has been recommended for 12 C6-Salary claims on account of irregularities in supporting documents.

9. C6-Support

52. C6-Support claims are for the loss of financial support to the claimant. There are 120 claims for C6-Support in the fourth instalment. The Panel has adopted the methodologies established by the category “C” Panel for this loss type in its First Report.⁵² The Panel recommends awards of compensation in respect of 42 claims and no awards of compensation in respect of 78 C6-Support claims in the fourth instalment.

53. No compensation has been recommended for C6-Support losses where claimants fail to provide any information in support of their C6-Support claim or where the information provided is insufficient to prove that their claim falls within one of the established categories for C6-Support.⁵³

10. C6-MPA

54. 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 52 claims for C6-MPA losses in the fourth instalment. In its First Report, the Panel adopted the procedures established by the category "C" Panel for C6-MPA claims⁵⁴ and accordingly has individually reviewed the fourth instalment claims to determine their compensability. The Panel recommends no awards of compensation in respect of all 52 C6-MPA claims in the fourth instalment.

55. No compensation has been recommended for C6-MPA losses where claimants fail to provide any information in support of their C6-MPA claim or where the information provided is insufficient to establish a deprivation of all economic resources that seriously threatened the claimant's survival and that of his or her family.⁵⁵

11. C7-Real Property

56. C7-Real Property claims seek compensation for losses related to real property, including costs incurred for repairs and other losses. There are four claims for C7-Real Property in the fourth instalment. The Panel has adopted the compensability criteria and valuation methodologies established by the category "C" Panel for this loss type in its Third Report⁵⁶ and accordingly has individually reviewed the fourth instalment claims to determine their compensability. The Panel recommends no awards of compensation in respect of the four claims for C7-Real Property in the fourth instalment.

57. No compensation has been recommended for C7-Real Property losses where claimants fail to establish the fact of ownership. There is one claim in this instalment where the claimant established that she owned real property in Iraq; however, her claim for C7-Real Property losses fails as she did not establish the fact of loss.

12. C8-Business losses

58. There are 184 claims for C8-Business losses in the fourth 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.⁵⁷ In doing so, however, the Panel established a new set of parameters for the valuation of business losses in Palestinian "late claims".⁵⁸

59. The Panel recommends awards of compensation in respect of 175 claims and no awards of compensation in respect of 9 C8-Business claims in the fourth instalment.

60. There are also three 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.

61. No compensation has been recommended for C8-Business losses on account of irregularities in supporting documents. Further, two of the nine non-compensable claims for C8-Business losses were individually reviewed pursuant to the established category “C” methodology as the claimants had not indicated on their claim forms that their businesses were located in either Iraq or Kuwait.⁵⁹ Neither claimant was able to establish the existence of an operating business.

13. CS-Other losses

62. There are 381 claims for CS-Other losses in the fourth instalment. In its First Report, the Panel adopted the procedures established by the category “C” Panel in the substantive review of this loss type.⁶⁰ Consistent with these procedures, claims in the fourth instalment have been individually reviewed for recategorization to defined loss types. None of the claims could be recategorized to defined loss types. Moreover, the claimants 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 381 claims for CS-Other in the fourth instalment.

IV. OTHER ISSUES

A. Duplicate claims

63. Duplicate claims are two or more claims filed by an individual in the same claims category. There are 104 instances where claimants filed duplicate claims in the fourth 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.⁶¹ The claims that were considered duplicated were not processed and the Panel recommends no awards of compensation in respect of these claims. The Palestinian Authority will be provided with a report identifying these claims.

B. Deficiencies

64. In its First Report, the Panel considered claims with material deficiencies. A claim is materially deficient if the claimant has not asserted any identifiable loss type or indicated the amount of loss being claimed. In the absence of such basic and fundamental information, the Panel is unable to consider such claims.⁶²

65. As addressed in paragraph 30 above, in the fourth instalment the Panel has encountered claims that are deficient in other respects. These claims lack either the claimant’s signature or evidence of authority to act on the part of the individual who filed the claim on behalf of the claimant.⁶³ Under the Rules, claimants are required to provide an affirmation as to the accuracy of the information contained in the claim and the losses being asserted.⁶⁴ The affirmation is provided when the claimant or his or her authorized representative signs the claim. Where the required affirmation has not been given by the claimant, the Rules provide that the claimant should be notified so that he or she may remedy the

defect.⁶⁵ Although claimants in the fourth instalment were sent such notifications, many did not respond. Therefore, in the absence of the claimant's signature or evidence of authority to act, the formal requirements established under the Rules are not met. The Panel considers such claims to be materially deficient and determines that they are not compensable.

C. Severance of claims for corporate business losses

66. The Panel finds that three claims for C8-Business losses in the fourth instalment are for corporate losses. Governing Council decision 123 provides the mechanism for the processing of corporate business losses claimed by an individual. The Panel instructed the secretariat to sever and transfer such corporate losses for processing as "stand alone"⁶⁶ or overlapping claims⁶⁷ in accordance with decision 123. The other loss types in these three claims have been resolved by the Panel and are reported in this instalment.

D. Deductions

67. There are 26 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.⁶⁸

68. The Panel notes that the category "A" claim form included an option for a claimant to select higher lump-sum amounts provided that he or she agreed not to submit claims in any other claims 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 also filed a claim or claims in other categories would be deemed to have selected the lower lump-sum amount under category "A".⁶⁹

69. In accordance with Governing Council decision 21, claimants who filed category "C" "late claims" but who selected the higher lump-sum amounts on their category "A" claim forms 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".

E. Withdrawn claims

70. Some claimants have withdrawn part or all of their claims through the Palestinian Authority. Where the withdrawal relates only to particular losses, the remaining losses have been processed and reported. Where the entire claim has been withdrawn, it has not been processed.

71. There are a total of 261 withdrawn claims included in this report. The Palestinian Authority will be provided with a report in respect of these claims.

F. Interest

72. The Governing Council has addressed the matter of interest in its decision 16 (S/AC.26/1992/16). 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.⁷⁰ The Panel concurs and adopts the date of 2 August 1990 as the date of loss for category “C” Palestinian “late claims”.

V. RECOMMENDATIONS

73. The Panel determines that 14,640 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.

74. The Panel recommends a total of USD 70,221,890.04 in compensation in respect of 4,724 eligible category “C” claims in the fourth instalment. The Panel recommends that no compensation be awarded for 203 eligible category “C” claims in the fourth instalment.

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

Table 1. Summary of fourth 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 | 19,364 | 1,228,480,775 | 4,724 | 14,640 | 226,866,203.14 | 70,221,890.04 |

76. The Palestinian Authority will be provided with reports setting out the Panel’s determinations in respect of each claim in the instalment.

VI. CATEGORY “D” CLAIMS

77. In this report, the Panel completes its eligibility assessment of all category “D” Palestinian “late claims”. The Panel determines that a further 19 category “D” claims⁷¹ are eligible for inclusion in the late-claims programme in addition to the 411 category “D” claims that were reported as eligible in its three previous reports. The 19 category “D” claims have been transferred to the “D2” Panel for review.

78. The Panel had previously reported a total of 1,926 category “D” claims that are ineligible to participate in the late-claims programme. The Panel determines in this report that a further 19 category “D” claims are not eligible for inclusion in the late-claims programme.

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

VII. SUMMARY STATISTICS FOR THE PALESTINIAN LATE-CLAIMS PROGRAMME

80. For its final report, the Panel provides the following tabulation of the Palestinian “late claims” population. Table 2 shows the number of category “C” and “D” claims by step in their eligibility assessment. Table 3 provides a breakdown of eligible category “C” claims by step in their substantive processing.

Table 2. Category “C” and Category “D” claims

| <u>Number of claims by step in their eligibility assessment</u> ^a | <u>Category “C” claims</u> | <u>Category “D” claims</u> | <u>Total</u> |
|--|----------------------------|----------------------------|--------------|
| Total number of claims (including withdrawn claims) | 43,855 | 2,378 | 46,233 |
| Ineligible claims due to matching | 4,129 | 153 | 4,282 |
| Ineligible claims resulting from reasons review | 30,091 | 1,781 | 31,872 |
| Ineligible claims due to irregularities | 1,662 | 30 | 1,692 |
| Materially deficient claims ^b | 341 | - | 341 |
| Withdrawn claims | 257 | 4 | 261 |
| Eligible claims | 7,797 | 430 | 8,227 |

^a A claim could fail more than one of the elements that comprise the threshold eligibility assessment. Therefore, there is an overlap in the number of ineligible claims that fail matching, irregularities, reasons review and those that are materially deficient.

^b Category “D” claims are reviewed for deficiencies during their substantive processing by the “D2” Panel.

Table 3. Eligible category “C” claims

| <u>Total number of claims reported by the Panel</u> | <u>Number of duplicate claims</u> | <u>Number of claims that receive zero recommended award</u> | <u>Number of claims that receive awards of compensation</u> | <u>Number of claims with irregularities in documents that relate to particular loss types or loss elements</u> | <u>Number of claims not reported by the Panel</u> ^a |
|---|-----------------------------------|---|---|--|--|
| 7,797 | 170 | 293 | 7,329 | 50 | 19 |

^a These are category “C” claims for which the substantive processing has been deferred pending the verification of the C8-business losses for stand alone, competing and overlapping issues. See note 5 below. These claims will be reported by the “D2” Panel.

VIII. SUBMISSION OF THE REPORT

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

Geneva, 31 December 2004

(Signed) M.C. Pryles
Chairman

(Signed) K. Hossain
Commissioner

(Signed) N. Comair-Obeid
Commissioner

Notes

¹ This number includes 19 claims for corporate business losses that were severed from category “C” and “D” claims for processing in accordance with Governing Council decision 123 (S/AC.26/Dec.123(2001)).

² The deadline for the Commission’s receipt of Palestinian “late claims” was 30 September 2002.

³ This does not include withdrawn claims which are discussed in paragraphs 70 and 71.

⁴ The Panel reported on the eligibility of a total of 24,207 category “C” and 2,337 category “D” claims in its three previous reports.

⁵ There are 19 category “C” claims for which the substantive processing has been deferred pending the verification of the C8-business losses for stand alone, competing and overlapping issues. Stand alone claims are corporate business losses filed by individuals. See note 66 below. Competing claims refer to claims in different categories filed by different individuals for the same business losses. Overlapping claims relate to claims by both the shareholder and the corporate entity for losses pertaining to the same corporate business. See note 67 below. Where the C8-business loss is confirmed to be a stand alone or overlapping claim, it is severed and reviewed by the “D” and “E4” panels of Commissioners, respectively. Where the C8-business loss is confirmed to compete with a D8/D9-business claim, it is being reviewed by the “D2” Panel, taking into account the existence of the competing claim. These category “C” claims that have been deferred will be reported by the “D2” Panel in its report and recommendations in respect of the eligible category “D” claims.

⁶ “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 21-152.

⁷ “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 8-42.

⁸ “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)” (S/AC.26/2004/14) (“Third Report”), paragraphs 8-70.

⁹ Paragraphs 21-72.

¹⁰ First Report, paragraph 23.

¹¹ Ibid., paragraph 24.

¹² Paragraph 11.

¹³ First Report, paragraph 25.

¹⁴ Ibid., paragraph 26.

¹⁵ In the third instalment, there were 3,266 ineligible claims that were reported on account of matching claims in the regular filing period.

¹⁶ First Report, paragraphs 29-71; Second Report, paragraphs 10-19; and Third Report, paragraphs 12-23.

¹⁷ Third Report, paragraph 10.

¹⁸ Reasons review commenced in May 2002.

¹⁹ Category “A” claims are for departure-related losses. Claimants had the option to file departure-related losses for family members who should have been listed in the claim form.

²⁰ Paragraph 71.

²¹ First Report, paragraphs 56-57.

²² Third Report, paragraphs 20-21.

²³ First Report, paragraph 72; Second Report, paragraphs 20-22; and Third Report, paragraphs 24-25.

²⁴ Second Report, paragraphs 20-21.

²⁵ Third Report, paragraph 25.

²⁶ Loss type refers to the main categories of losses while loss elements refer to the sub-categories of losses subsumed under a particular loss type.

²⁷ Paragraph 72.

²⁸ First Report, paragraphs 77-146 and Third Report, paragraphs 26-69. No new issues in respect of substantive processing were dealt with by the Panel in the Second Report.

²⁹ Paragraph 144.

³⁰ First Report, paragraphs 145-146.

³¹ Third Report, paragraphs 63-65.

³² 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.

³³ First Report, paragraphs 100 and 103.

³⁴ Ibid., paragraph 99.

³⁵ Ibid., paragraphs 108-109. See also Seventh “C” Report, paragraphs 94-112.

³⁶ Seventh “C” Report, paragraph 96.

³⁷ Ibid., paragraph 108.

³⁸ First Report, paragraphs 111-116. See also Seventh “C” Report, paragraphs 113-133.

³⁹ First Report, paragraph 116. The only exception is that C2-Money claims for “other injury requiring medical attention” without a date of injury were individually reviewed.

⁴⁰ Ibid., paragraph 113.

⁴¹ Ibid., paragraphs 118-121. See also Seventh “C” Report, paragraphs 135-140.

⁴² Third Report, paragraphs 37-43. See also Seventh “C” Report, paragraphs 142-172 and 174-176.

⁴³ Seventh “C” Report, paragraph 157 and Third Report, paragraphs 38 and 43.

⁴⁴ Third Report, paragraph 38.

⁴⁵ First Report, paragraphs 123-127. See also Seventh “C” Report, paragraphs 178-220.

⁴⁶ Seventh “C” Report, paragraph 214.

⁴⁷ First Report, paragraphs 129-130. See also Seventh “C” Report, paragraphs 222-248.

⁴⁸ First Report, paragraph 130. See also Seventh “C” Report, paragraph 226.

⁴⁹ Seventh “C” Report, paragraph 226.

⁵⁰ Ibid., paragraphs 231-236.

⁵¹ Paragraph 131. See also Seventh “C” Report, paragraphs 249-281.

⁵² Paragraphs 132-133. See also Seventh “C” Report, paragraphs 283-290.

⁵³ See First Report, paragraph 132 and endnote 46.

⁵⁴ First Report, paragraphs 135-136. See also Seventh “C” Report, paragraphs 292-298.

⁵⁵ First Report, paragraphs 135-136.

⁵⁶ Paragraphs 52-53. See also Seventh “C” Report, paragraphs 300-325.

⁵⁷ First Report, paragraphs 138-140. See also Seventh “C” Report, paragraphs 327-367.

⁵⁸ First Report, paragraph 140.

⁵⁹ Seventh “C” Report, paragraphs 347-350. Where claimants state on their claim forms that their business is located in either Iraq or Kuwait, the claim is not individually reviewed but electronically processed.

⁶⁰ First Report, paragraphs 142-143. See also Seventh “C” Report, paragraph 369.

⁶¹ Paragraph 150.

⁶² First Report, paragraph 144.

⁶³ Consistent with the regular category “C” programme, no evidence of authority is required if the claim form is signed by the claimant’s spouse or by a parent of a claimant who is a minor. See Seventh “C” Report, paragraph 22.

⁶⁴ Article 14 of the Rules provides that one of the formal requirements for claims filed with the Commission is that “all required affirmations have been given by each claimant”.

⁶⁵ Article 15 of the Rules provides that if a claim does not meet one of the formal requirements established by the Governing Council, the claimant will be notified about that circumstance and will be given time within which to remedy the defect.

⁶⁶ 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.

⁶⁷ The term “overlapping” 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 filed a claim in category “E” for such losses.

⁶⁸ First Report, paragraph 152.

⁶⁹ See also Seventh “C” Report, paragraphs 60-62.

⁷⁰ Paragraph 33. See also Seventh “C” Report, paragraph 377.

⁷¹ See note 1 above. These figures include corporate business losses that have been severed from their main claim since they will be processed pursuant to Governing Council decision 123.
