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

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Introduction

1. This is the twenty-fifth 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).
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 the Islamic Republic of Iran (“Iran”), Pakistan, Philippines and Sri Lanka (this “late-claims programme”). 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. In September 2004, the Panel commenced its review of the 3,450 category “A” claims and 672 category “C” claims. The Panel’s determinations and recommendations in respect of 3,289 category “A” claims and 494 category “C” claims were set out in an earlier report.¹
4. The remaining 339 claims that are the subject of this report (the “second late-claims report”), all of which were filed by the Government of Pakistan, were not included in the first late-claims report. The 339 claims include:
 - (a) Five category “C” claims that were deferred by the Panel for further investigation, as they contain claims for C8 (individual business) losses that were identified as potentially competing with other claims for business losses filed with the Commission;
 - (b) 161 category “A” claims and 171 category “C” claims which were deferred by the Panel pending clarification from the Governing Council as to the eligibility of these claims for inclusion in this late-claims programme; and
 - (c) Two category “C” claims which were deferred by the Panel to enable them to be valued together with their related category “A” claims which are included in this second late-claims report.
5. 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, 14-16 December 2004, 31 January-1 February and 22-24 March 2005. During these meetings, issues pertaining to this late-claims programme were considered by the Panel.

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 second late-claims report.²

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 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 second late-claims report.

II. REVIEW BY THE PANEL OF THE CLAIMS IN THIS REPORT

A. Four competing claims for business losses

11. As noted in paragraph 3 above, the Panel deferred five category “C” claims that were identified as potentially competing with other claims for business losses filed with the Commission. Although five claims were deferred, two of these five claims were filed by the same claimant, and only one of these two contained a competing business loss, leaving four claims for investigation by the Panel.³

1. First set of competing claims

12. In the first set of competing claims, a Jordanian category “D” claimant and a Pakistani category “C” claimant filed separate claims with the Commission seeking compensation for the losses arising from the same retail watch business that operated in Kuwait prior to Iraq’s invasion and occupation of Kuwait. Each claimant asserted that he was the sole owner of the business as at 2 August 1990. Neither claimant made reference to the other in his claim. In accordance with Kuwaiti law, the licence in respect of which the business was registered was in the name of a Kuwaiti national (the “business licence holder”). Each claimant alleged that he was renting the business licence from the business licence holder, who filed a claim with the Commission, but not in respect of the disputed business.

13. The Panel reviewed the Jordanian national’s claim in the fifteenth instalment of category “D” claims and recommended that USD 78,413.29 be awarded to the claimant in respect of the losses sustained by the business. This recommendation was subsequently approved by the Governing Council and the award has been paid to the Jordanian claimant.

14. The documentary evidence submitted by the Jordanian claimant included a pre-invasion lease for the business premises and pre-invasion invoices for the purchase of stock for the business. The Pakistani claimant submitted a “rent-a-permit” agreement between himself and the business licence holder, entitling him to utilise the business licence for a fee. He also submitted pre-invasion invoices for the purchase of stock for the business.

15. During a technical mission to Kuwait, the secretariat interviewed the business licence holder. He confirmed that the Jordanian claimant had owned the business at the time of Iraq’s invasion of Kuwait, and had left Kuwait as a result of the invasion. The business licence holder stated that the Pakistani claimant did not own the business until after the liberation of Kuwait and that he continues to own it today. While residing in Kuwait, the Pakistani claimant did not turn up for interviews scheduled by the secretariat.

16. Each claimant was asked to comment on the assertions and evidence submitted by the other in the light of their competing claims. No response was received from either claimant, but the business licence holder confirmed in writing the information that he had provided during the interview and stated that it was not his signature on the “rent-a-permit” agreement submitted by the Pakistani claimant. As the business licence holder had filed a claim with the Commission, the Panel was able to compare his signature on documents submitted with his claim against the signature on the rent-a-permit agreement. The Panel finds that these signatures appear to be different.

17. On the basis of the totality of the evidence, the Panel finds that the Jordanian claimant was the owner of the business as at the time of Iraq’s invasion of Kuwait. The Panel therefore recommends no award of compensation in respect of the Pakistani claimant’s C8 (individual business) loss claim.

2. Second set of competing claims

18. In the second set of competing claims, a Kuwaiti category “D” claimant and a Pakistani category “C” claimant filed separate claims with the Commission seeking compensation for the losses of the same construction business that operated in Kuwait prior to Iraq’s invasion and occupation of Kuwait. The Kuwaiti claimant asserts that he was the sole owner of the business as at 2 August 1990 and he did not mention the Pakistani claimant in his claim. He provided registration documents for the business, which he possessed in his capacity as the business licence holder. The Panel reviewed his claim in the nineteenth instalment of category “D” claims and recommended an award of USD 404,204.16 for the losses of the business. The Governing Council subsequently approved that recommendation and the award has been paid in full.

19. The Pakistani claimant asserts that he and the Kuwaiti claimant were partners in the business. He has provided two partnership agreements, the first dated 14 October 1983 and the second dated 16 May 1990. The 1983 agreement which is signed by both claimants specifies, *inter alia*, that the assets of the business were to be shared equally between both parties and that the Pakistani claimant was entitled to 30 per cent of the profits of the business in his capacity as general manager. The remaining 70 per cent of the profits was to be divided equally between the two parties.

20. The Pakistani claimant asserts that after the 1983 agreement had been concluded, the parties were involved in a dispute over the business, but thereafter settled their dispute and agreed to return to their business partnership arrangement in respect of the business. A new agreement, dated 16 May 1990, was then concluded by the two claimants. This agreement states that the same terms and conditions of the earlier 1983 agreement apply except that the Pakistani claimant’s ownership interest would be 49 per cent while the Kuwaiti claimant’s share would be 51 per cent. The Pakistani claimant states that he and the Kuwaiti claimant had agreed that they would both file for the losses of the business before the Commission in accordance with their ownership interests.

21. During a technical mission to Kuwait, two interviews were scheduled with the Kuwaiti claimant but he was unable to meet with the secretariat on either occasion, claiming illness.

22. The secretariat wrote to the Kuwaiti claimant on 18 January 2005, asking him to state whether the partnership agreement dated 16 May 1990 provided by the Pakistani claimant accurately reflected the ownership of the business as at 2 August 1990, and if this was the case to explain why he had claimed for 100 per cent of the losses of the business. No response was received from the Kuwaiti claimant.

23. On the basis of the totality of the evidence submitted by both claimants, and in the absence of any response from the Kuwaiti claimant, the Panel finds that the Pakistani claimant has established a 49 per cent ownership interest in the business at the date of Iraq’s invasion and occupation of Kuwait. The Panel therefore recommends that the Pakistani claimant be compensated for the losses sustained by the business in accordance with his ownership interest therein, in the amount of USD 45,096.66.

3. Third set of competing claims

24. The third set of competing claims comprise five Pakistani claimants all asserting ownership of a jewellery business with the same name. Four of these claims were filed as category “D” claims in the regular claims programme, while the fifth claimant filed a category “C” claim in this late-claims programme.

25. As the four category “D” claims were reviewed in the twelfth and eighteenth instalments, claim development had already been undertaken in respect of these four claims, showing that the four claimants, who were members of the same family, were not claiming for the losses of the same business, but rather were operating different branches of the same business, rented from the same business licence holder.

26. The documentary evidence submitted by the Pakistani category “C” claimant includes a pre-invasion lease agreement for the business premises. This lease was not submitted in any of the category “D” claims. Two of the category “D” claimants provided pre-invasion tenancy agreements with different landlords to that of the category “C” claimant, and the remaining two did not provide pre-invasion lease agreements. The five claimants’ shops were all located in the same shopping complex, but the four category “D” claimants had specified that they were operating from different shops. The category “C” claimant did not specify his shop number, and this shop number is not stated on the pre-invasion lease agreement.

27. Questions were asked of the four category “D” Pakistani claimants and the category “C” claimant to determine whether their claims are in respect of the same business as the category “C” claimant. The secretariat received a response from the category “C” claimant in which he states that he was the sole owner of his business and has no relationship to or contact with the other four claimants. He states that he rented the business from the business licence holder. No response was received from the four category “D” claimants.

28. Based on the totality of the evidence, the Panel finds that the category “C” claimant is not claiming in respect of the same business as the other four claimants. The Panel recommends that the Pakistani category “C” claimant be compensated for the losses sustained by his business in accordance with the applicable category “C” methodology, in the amount of USD 42,415.35.

4. Fourth set of competing claims

29. With respect to the fourth set of claims identified as potentially competing claims, the Pakistani category “C” claimant and a Palestinian category “D” claimant each filed for losses in connection with a motor vehicle spare parts business. Claim development of the Palestinian claim has revealed that the claimant was not claiming for the losses of the business, but rather for a debt owed to him by the business. Review of the Pakistani claim indicates that the Pakistani claimant is claiming for the loss of tangible property of the business.

30. The Panel finds that there is no competing claim issue in respect of these two claims. As the Pakistani claimant has provided the requisite documentary evidence in support of his C8 individual business loss in accordance with the category “C” methodology, the Panel therefore recommends that he should be compensated for the losses sustained by the business, in the amount of USD 42,516.04.

31. The Panel finds that all of the competing Pakistani claims meet the eligibility requirements established by the Governing Council and can therefore participate in this late-claims programme.

B. Claims deferred pending clarification from the Governing Council

32. As noted in paragraph 4 above, the Panel deferred 332 claims from the first late-claims report pending clarification from the Governing Council as to the eligibility of these claims for inclusion in this late-claims programme.

33. The Panel refers to paragraphs 12 and 13 of the first late-claims report, which set out the criteria established by the Governing Council concerning the eligibility requirements of this late-claims programme and the particular geographical regions in each of the four countries (Iran, Pakistan, Philippines and Sri Lanka) that it determined were adversely affected by an event of a war-like situation, civil disorder or a natural disaster.

34. The Panel sought clarification from the Governing Council regarding certain regions in Pakistan that had not previously been expressly identified by the Council. The Council clarified that these regions were included in its earlier determination of eligible regions in Pakistan.

C. All category “A” claims included in this report

35. As stated in paragraph 15 of the first late-claims report, before commencing its review of all of the claims included in 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.

36. In respect of the 161 category “A” claims resolved in this report, the Panel finds that none of the claims match claims filed with the Commission during the regular filing period. The Panel finds that out of the 161 claims, 139 claimants resided in an eligible region and therefore are eligible to participate in this late-claims programme.

37. The Panel did not encounter any new factual or legal issues in its review of the 139 category “A” claims. Applying the category “A” methodology developed by the “A” Panel, the Panel finds that all 139 eligible category “A” claims satisfy the requirements of that methodology and recommends awards of compensation accordingly.

D. All category “C” claims included in this report

38. In respect of the 178 category “C” claims resolved by the Panel in this report, as a result of matching, the Panel finds that one claimant is ineligible to participate in this late-claims programme as he filed a claim with the Commission during the regular filing period.

39. The Panel finds that in respect of the remaining 177 claims, 154 claimants resided in an eligible region and therefore are eligible to participate in this late-claims programme.

40. The Panel notes that in the 154 eligible category “C” claims, the claimants generally seek compensation for C1 (relocation) expenses, C4 (personal property) losses, C6 (loss of salary) and C8 (individual business) losses.

41. 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.

42. The Panel recommends no compensation in respect of three category “C” claims that are duplicates of three other claims filed within this late-claims programme.

III. 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 in United States dollars, as set by the Governing Council.

B. Interest

45. In its decision 16 (S/AC.26/1992/16), the Governing Council specified that it would consider the methods of calculation and of payment of interest at a future date. Therefore in its previous reports and recommendations, the Panel only identified the date of loss from which interest on any award of compensation could run. The Panel notes that at its 55th session held on 8-10 March 2005, the Governing Council determined that it would not set a rate for the payment of interest on awards of compensation and in the result, interest will not be paid on awards of compensation.

IV. RECOMMENDED AWARDS

46. Tables 1 and 2 below list the respective category “A” and category “C” awards recommended by the Panel for the claims resolved in this report. Table 3 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. The Government of Pakistan will be provided with a confidential list containing the individual recommendations made in respect of its claimants.

Table 1. Summary of recommendations in respect of the category “A” claims in this second late-claims report

<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>
22	139	458,500.00	393,500.00

Table 2. Summary of recommendations in respect of the category “C” claims in this second late-claims report

<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>
27	151	20,955,613.25	4,164,964.99

Table 3. Summary of recommendations in respect of all claims in this second late-claims report

<u>Total number of claims filed</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>
339	46	293	49	290	21,414,113.25	4,558,464.99

V. 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, 15 April 2005

(Signed) R.K.P. Shankardass
Chairman

(Signed) G. Abi-Saab
Commissioner

(Signed) M.C. Pryles
Commissioner

Notes

¹ “Report and recommendations of the ‘D1’ Panel of Commissioners concerning the late-filed category ‘A’ and category ‘C’ claims programme” (S/AC.26/2005/2) (the “first late-claims report”).

² See 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”), 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). See also 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”) and 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).

³ The two claims filed by the same claimant contained different losses; one contained C4CPHO personal property losses only, while the claim with a competing business loss contained C1 relocation and C8 individual business losses. All losses in the two claims were therefore consolidated in one claim with the second claim receiving a nil award.
