Introductory Note to Decisions 36 Through 42 and Associated Panel Reports of the United Nations Compensation Commission

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As the United Nations Compensation Commission (UNCC) approaches the end of its sixth year, it has reached a transition point in meeting its mandate to provide compensation to those directly injured by the unlawful invasion and occupation of Kuwait by Iraq. This point of transition is marked by four changes. First, the UNCC is close to completing its assessment of the “urgent” claims of individuals which make up categories A, B and C -- respectively individual claims for departure, serious personal injury or death, and damages up to US$100,000. With the Decisions reported upon in this collection of documents, the UNCC has...
completed its assessment of Categories A and B claims and foresees an additional two or three installments of claims to complete Category C. Second, the initiation of Iraqi petroleum sales in 1997 pursuant to the “oil for food” mechanism established under Security Council Resolution 986 (1995), with the requirement that thirty percent of such revenue be allocated to the Compensation Fund administered by the UNCC, has allowed the Commission to make the first substantial payments to successful claimants. On March 12, 1997, the UNCC made available US$144,019,945 to sixty-three governments and one international organization for distribution to 57,636 successful claimants in Categories A and C.1 Third, the Commission has begun addressing the remaining claims for damage to individuals in excess of US$100,000 (Category D), claims of corporations (Category E), and claims of governments (Category F). These claims tend to be more complex and differentiated than the more precisely defined groups present in Categories A, B, and C thus requiring the UNCC to alter its approaches to claims processing has employed thus far so successfully for the “urgent” claims. Moreover, even as the panels of Commissioners appointed in the summer of 1996 proceed with their work on these new categories of claims, a panel appointed in 1995 has completed its work on what is termed the Kuwaiti “Well Blowout Control Claim,” a Category E claim. Fourth, all of these changes in the work of the Commission have been accompanied by a change in leadership with the retirement of the first Executive Secretary of the UNCC, Carlos Alzamora, and the appointment of his successor, Jean-Claude Aimé, on February 14, 1997.

The selection of UNCC documents included in this fifth ILM installment are introduced in this note under three headings:

- Decisions on Category “A” Claims -- Decisions 38 and 42 with associated Panel Report;

- Decisions on Category “C” Claims -- Decisions 36, 37, 39 and 41 with associated Panel Reports; and

- Decision on Category “E” Claims, the “Well Blowout Control” Claim -- Decision 40 with associated Panel Report.

The texts of Decisions 36 through 42 and associated Panel Reports follow this brief introductory note in chronological order.

DECISIONS ON CATEGORY “A” CLAIMS

The Sixth and Final Installment of Category “A” Claims -- Decision 38. Decision 38 of the Governing Council approves, without change, the recommendations made by a panel of Commissioners (Kamal Hossain (Chairman), Matti Pellonpää, and Rafael Rivas Posada) concerning the sixth and final installment of claims for departure from Iraq or Kuwait (Category “A” claims). In so doing, the Decision approves the award of US$ 319,730,500 for 80,456 claims of individuals submitted by sixty countries, the United Nations Development Programme (UNDP) and the United Nations High Commissioner for Refugees (UNHCR).

The Report of the Panel indicates how the panel in this installment continued its work utilizing innovative sampling methodologies in the processing of claims in order to prevent delays which would otherwise be unacceptable. These sampling methodologies are discussed at some length in the Panel’s Report for the Fourth Installment of A Claims. After having resolved close to 350,000 category “A” claims in the first three installments of recommended awards on the basis of computerized verification and matching, the Panel commenced in the Fourth Installment to use sampling methodologies for those claims which could not be verified through such computerized verification and matching. In the Sixth and final installment of Category A claims, the Panel employed the sampling methodology and for a small number of claims performed individual reviews. It should also be noted that the Panel in the Sixth Installment addressed the compensability of Category A claims by Iraqi dual nationals. Decision 1 of the Governing Council provided that Iraqi nationals could be eligible to be a claimant only if they had a bona fide nationality of another state. The Panel concluded that the requirement of a bona fide nationality did not require an inquiry into effectiveness, but rather could be assumed if the second nationality was acquired or applied for prior to the Governing Council’s issuance of Decision 1.

**DECISIONS ON CATEGORY C CLAIMS**

The Second through Fifth Installments of Category “C” Awards of Compensation -- Decisions 36, 37, 39 and 41. Decisions 36, 37, 39 and 41 of the Governing Council approve the recommendations made by a panel of Commissioners (L. Yves Fortier (Chairman), Sergei N. Lebedev, Philip K.A. Amoah) concerning individual claims for damages up to US$ 100,000 (“Category “C” claims):

- Decision 36 addressing the Second Installment approves (1) the award of US$ 425,057,699.08 for 62,121 claims of individuals submitted through sixty-eight countries, UNDP and UNHCR; and (2) the recommendation that no payment be made for 216 claims;

- Decision 37 addressing the Third Installment approves (1) the award of US$ 323,776,505.21 for 64,065 claims of individuals submitted through either Egypt or Kuwait; and (2) the recommendation that no payment be made for 2 claims;

- Decision 39 addressing the Fourth Installment approves (1) the award of US$ 637,643,444.35 for 70,558 claims of individuals submitted through fifty-one countries, UNDP, UNHCR and UNRWA; and (2) the recommendation that no payment be made for 1,145 claims; and

- Decision 41 addressing the Fifth Installment approves (1) the award of US$ 720,924,558.14 for 76,720 claims of individuals submitted through forty-three countries, UNDP and UNHCR; and (2) the recommendation that no payment be made for 31 claims.

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3 In Decision 42 (June 26, 1997) of the Governing Council, corrections were made to recommended awards in the Second and Sixth Installments of Category “A” claims.
The Reports of the Panel for these installments are important for their further discussion and refinement of the innovative approach the UNCC has developed for the mass processing of category “C” claims. The Panel in these installments continues its decision to address first those claims that can be processed through the “fast track” method discussed in the Reports for First and Second Installments. Basically, the “fast track” is a methodology in which processing criteria relating to causation, evidence and valuation were developed for various loss types present in the Category “C” claims. The processing criteria have been repeatedly refined as statistical expertise and specialized computer facilities have enhanced the modeling approach adopted by the Panel. Annex I to the Report and Recommendations for the Second Installment reproduces the Expert Opinion of Professors Balasko and Ritschard which concludes that “the criteria and procedures applied and the statistical models obtained thereby are satisfactory and in accordance with the state of the art in statistical modelling [and] [t]he results of the modelling process thus may serve as a basis for the Panel’s independent determination of the amount of compensation to be recommended with respect to the claims concerned.”

DECISION ON CATEGORY E CLAIMS -- THE WELL BLOWOUT CONTROL CLAIM

Decision 40 of the Governing Council approves the recommendations made by a panel of Commissioners (Allan Philip (Chairman), Bola A. Ajibola, and Antoine Antoun) concerning the “Well Blowout Control” (WBC) Claim submitted by the Kuwait Oil Company (KOC). The Decision in so doing approves the award of US$ 610,048,547 to KOC on behalf of Kuwait’s public oil sector as whole. KOC has a series of claims before the Commission representing the various stages of its effort to rebuild its oil industry and to gain compensation for the physical assets lost. The WBC claim as amended sought US$ 950,715,662. The reduction in the claimed amount by the Panel reflects, almost entirely, capital expenses by KOC that the Panel concluded should be apportioned between, and therefore considered in the context of, several of the other claims submitted by the KOC. The Panel rejected a claim for $2,804,390 for the costs of KOC’s own firefighting team on the ground that the “Claimant would have had to make such salary payments even if there had been no invasion” and the Panel therefore was “not prepared to regard these costs as loss, damage or injury sustained as a direct result of Iraq’s invasion and occupation of Kuwait.” The Panel also rejected a claim for $250,000 for costs incurred in supporting the firefighting effort in the Wafra area of Kuwait. In doing so, the Panel noted their view that “the compensability of indirect costs is necessarily linked to the compensability of the direct costs to which they relate.”

4The WBC claim was filed with the Commission as a Category E (Corporate) claim. Two preliminary and related issues raised as a consequence were whether the claim should have been filed as a Category F (Government) claim and whether KOC was the proper party to raise the claim. The Panel concluded that “the categorization of a claim as a category E or F claim does not entail any substantive consequences.” The question of whether KOC was the proper party in the claim was addressed through the conclusion that KOC claimed on behalf of Kuwait’s petroleum sector as a whole.

It should be noted that unlike the pattern of one panel per category which has been followed for Categories A, B, and C, it is envisaged that the claims in at least Categories E and F will be addressed via several panels per category. The WBC Panel is the first E panel and is thus termed the “El Panel.” The El Panel was reappointed by the Governing Council in June 1997 to address all Kuwait petroleum sector claims.
In response to a statement by Iraq that many of the oil well fires were caused by Coalition air strikes, the Panel noted that “the bulk of the oil-well fires” were directly caused by Iraq. Furthermore, in any event, the Panel noted that the Governing Council in Decision 7 had defined Iraq’s liability for the invasion and illegal occupation of Kuwait, as stated in Security Council Resolution 687, to include “any loss suffered as a result of ... [m]ilitary operations or threat of military action by either eitherside during the period 2 August 1990 to 2 March 1991.”

CONCLUSION

Before the end of 1998, the Governing Council likely will have approved reports and recommendations concerning D, E, and F claims. These Decisions will address key remaining issues concerning the jurisdiction of the Commission and, it is hoped, set the pattern for how the claims in these three categories will be handled. With such a pattern set, it should then be possible to estimate very roughly how long it will take the Commission to complete its verification and valuation of all claims. As for the satisfaction of the approved awards, for the immediate future it appears that monies will be directed to the Compensation Fund only as a consequence of the limited oil sales permitted under the “oil for food” mechanism authorized by the Security Council.

I.L.M. Content Summary

[DECISIONS 38 AND 42 ON CATEGORY "A" CLAIMS WITH ASSOCIATED PANEL REPORTS] ................................................................. I.L.M. Page 1291

Decision [38] Concerning the Sixth Instalment of Claims for Departure from Iraq or Kuwait (Category "A" Claims) taken by the Governing Council of the United Nations Compensation Commission at its 64th meeting, held on 15 October 1996 at Geneva ... I.L.M. Page 1291

[Approving the recommendation of the Panel of Commissioners concerning 80,456 claims; country-by-country list of aggregate amounts of compensation recommended; the total recommended amount is US$319,730,500; corrected recommended award amounts for the first 5 installments; countries shall distribute payments within 6 months of receiving payment; no compensation for certain claims]

[16 October 1996]

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE SIXTH INSTALMENT OF CLAIMS FOR DEPARTURE FROM IRAQ OR KUWAIT (CATEGORY "A" CLAIMS) ........................................ I.L.M. Page 1294

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Introduction .................................................. I.L.M. Page 1295
[On 2 August 1990, Iraq invaded and occupied Kuwait, causing damage for which the UNSC declared Iraq to be liable; the UNSC established the UN Compensation Commission to process claims and administer the Compensation Fund; category "A" claims are for serious personal injury and death resulting from the invasion and occupation, specifically for forced departure from Iraq or Kuwait from 2 August 1990 to 2 March 1991]
1-4 [Category "A" claims are among the most urgent; summary of first 5 reports; the sampling methodology is described in the fourth report]

I. COMPOSITION OF THE SIXTH INSTALMENT OF CATEGORY "A" CLAIMS .................................. I.L.M. Page 1296
5-8 [All claims were verified either through the sampling methodology or by individual examination]

II. THE PROCESSING OF THE SIXTH INSTALMENT ......... I.L.M. Page 1296
9-44 [Claims with insufficient claimant identity information; improper family claims; appropriate compensation amount codes; duplicate claims; limitations on claiming in more than one category; claims filed on behalf of Iraqi nationals; methodology for individual review of claims]

III. CORRECTIONS OF DECISIONS ....................... I.L.M. Page 1301
[Reasons for corrections; tabular country-by-country list of corrected aggregate amounts for the first five installments]

IV. RECOMMENDED COMPENSATION FOR THE SIXTH INSTALMENT OF CATEGORY "A" CLAIMS ............. I.L.M. Page 1303
[ Recommending compensation of US$319,730,500 for 80,456 claims by 59 governments and 7 IOs; tabular country-by-country list of the number of claims recommended for payment and the aggregate amount of compensation those claims represent; the table includes, for each country, the number of claims not recommended for payment; this is the final installment of category "A" claims; payments should be expedited]

[10 July 1996]
[Signatures]

Notes

[Correcting the awards of 3 claims from the second installment and 7 claims from the sixth installment; setting forth the corrected aggregate amounts for the second (Jordan and Sudan) and sixth (Bangladesh, Kuwait, Sweden, and the UK) installments]
FIRST REPORT OF THE EXECUTIVE SECRETARY PURSUANT TO ARTICLE 41 OF THE PROVISIONAL RULES FOR CLAIMS PROCEDURE (Category "A" Claims) ........................................ I.L.M. Page 1307

1 [Article 41]
2 [Reports to the Governing Council]
3 [Recommended Corrections to Category "A" Claims]
4 [Table of Corrections to Second and Sixth Installments]

[26 June 1996]

[DECISIONS 36, 37, 39 AND 41 ON CATEGORY "C" CLAIMS WITH ASSOCIATED PANEL REPORTS] ........................................ I.L.M. Page 1309

Decision [36] Concerning the Second Instalment of Individual Claims for Damages up to US$ 100,000 (Category "C" Claims) taken by the Governing Council of the United Nations Compensation Commission at its 60th meeting, held on 29 May 1996 at Geneva ........................................ I.L.M. Page 1309

[Approving the recommendation of the Panel of Commissioners concerning 62,337 claims; country-by-country list of aggregate amounts of compensation recommended; the total recommended amount is US$425,057,699; countries shall distribute payments within 6 months of receiving payment; no compensation for certain claims]

[30 May 1996]

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE SECOND INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES UP TO US$ 100,000 (CATEGORY "C" CLAIMS) ...................... I.L.M. Page 1311

INTRODUCTION ........................................ I.L.M. Page 1312

[Category "C" claims are for individual losses up to $US100,000 arising from departure from Iraq or Kuwait, inability to leave Iraq or Kuwait, hostage-taking or other illegal detention, personal injury, death of a spouse, child or parent, personal property or financial losses, salary losses, and real property losses]

1-5 [Background; summary of contents of report]

I. GENERAL FRAMEWORK ........................................ I.L.M. Page 1312

6-7 [Applicable law and principles; category "C" claims are urgent claims and must be processed on an expedited basis]

II. PROCESSING APPROACH AND SCOPE OF WORK ........ I.L.M. Page 1312

8-14 [Describes the expedited processing approaches that have been developed; description of the types of losses that the claims cover]

III. ORGANIZATION AND PREPARATION OF CLAIMS ....... I.L.M. Page 1314

15-23 [Registration and organization of claims; entry of claims data into a database; checking of claims data; application of processing criteria; reporting of awards]
IV. PROCESSING METHODOLOGIES AND RESULTS .......... I.L.M. Page 1315
24-51 [Describes the expedited processing methodologies used for different types of losses; statistical sampling for mental-pain-and-anguish claims; statistical modelling for food-lodging-relocation-transportation and for personal-property-loss claims; other methodologies for motor-vehicle, bank-account, and salary-loss claims]

V. RECOMMENDATIONS .................................... I.L.M. Page 1318
52-57 [See Annexes; 62,121 claims are recommended for payment for an aggregate amount of US$425,057,699.08; 216 claims are not recommended for payment]

[30 March 1996]
[Signatures]

Notes

[Annexes]
[Not reproduced]

[Annex I contains a detailed description of the modelling process and the expert opinion of statistical consultants on the approach; Annex II contains a country-by-country (including IOs) list of the recommended compensation amounts; Annex III contains a breakdown of the recommended amounts by individual claimant]

Decision [37] Concerning the Third Instalment of Individual Claims for Damages up to US$100,000 (Category "C" Claims) taken by the Governing Council of the United Nations Compensation Commission at its 62th meeting, held on 23 July 1996 at Geneva ......................................... I.L.M. Page 1321

[Approving the recommendation of the Panel of Commissioners concerning 64,067 claims; country-by-country list of aggregate amounts of compensation recommended; the total recommended amount is US$323,776,505; countries shall distribute payments within 6 months of receiving payment; no compensation for certain claims]

[24 July 1996]

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE THIRD INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES UP TO US$100,000 (CATEGORY "C" CLAIMS) .......... I.L.M. Page 1322

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INTRODUCTION .............................................. I.L.M. Page 1323
1-3 [64,067 category "C" claims in the third installment; the claims are submitted by Kuwait and Egypt]

I. CLAIMS PROCESSING APPROACH ..................... I.L.M. Page 1323
4-6 [Applicable law and principles; category "C" claims are urgent claims and must be processed on an expedited basis; use of statistical sampling and modelling techniques]

II. CLAIMS INCLUDED IN THE THIRD INSTALMENT ...... I.L.M. Page 1323
7-8 [Description of the types of losses covered by the claims]
III. RECOMMENDATIONS ........................................ I.L.M. Page 1324
9-12 [64,065 claims are recommended for payment for an aggregate amount
of $US323,776,505.21; 216 claims are not recommended for payment; a
country-by-country table is included]

[Done at Geneva on 14 June 1996]
[Signatures]

Notes

Decision [39] Concerning the Fourth Instalment of Individual Claims for Damages up to US$ 100,000 (Category "C" Claims) taken by the Governing Council of the United Nations Compensation Commission at its 66th meeting, held on 17 December 1996 at Geneva ......................................... I.L.M. Page 1325

[Approving the recommendation of the Panel of Commissioners concerning
71,703 claims; country-by-country list of aggregate amounts of compensation
recommended; the total recommended amount is US$637,643,444; corrected
recommended award amounts for the first 2 installments; countries shall distribute
payments within 6 months of receiving payment; no compensation for certain
claims]

[18 December 1996]

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FOURTH INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES UP TO US$ 100,000 (CATEGORY "C" CLAIMS) ........................................ I.L.M. Page 1327

Introduction ........................................ I.L.M. Page 1328
1-3 [71,703 claims in the fourth installment of category "C" claims]

I. PROCESSING APPROACH AND SCOPE OF WORK ............ I.L.M. Page 1328
4-6 [Applicable law and principles; category "C" claims are urgent claims and
must be processed on an expedited basis; use of statistical sampling and
modelling techniques]

II. CLAIMS INCLUDED IN THE FOURTH INSTALMENT ........ I.L.M. Page 1329
7-10 [Description of the types of losses covered by the claims; computer cross-
checking was performed to prevent double payments]

III. RECOMMENDATIONS ........................................ I.L.M. Page 1329
11-16 [70,558 claims are recommended for payment for an aggregate amount
of $US637,643,444.35; 1145 claims are not recommended for payment; a
country-by-country table is included; also included are tables of corrections to
the first and second installment recommendations]

[Done at Geneva on 16 October 1996]
[Signatures]
NOTES
Decision [411 Concerning the Fourth Instalment of Individual Claims for Damages up to US$ 100,000 (Category "C" Claims) taken by the Governing Council of the United Nations Compensation Commission at its 69th meeting, held on 24 June 1996 at Geneva ......................................... I.L.M. Page 1333

[Approving the recommendation of the Panel of Commissioners concerning 76,751 claims; country-by-country list of aggregate amounts of compensation recommended; the total recommended amount is US$720,924,558; corrected recommended award amounts for the first 2 installments; countries shall distribute payments within 6 months of receiving payment; no compensation for certain claims]

[25 June 1997]

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE FIFTH INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES UP TO US$ 100,000 (CATEGORY "C" CLAIMS) .............. I.L.M. Page 1335

INTRODUCTION ........................................... I.L.M. Page 1335

1-3 [76,751 claims in the fifth installment of category "C" claims]

I. PROCESSING APPROACH AND SCOPE OF WORK ........... I.L.M. Page 1336
4-6 [Applicable law and principles; category "C" claims are urgent claims and must be processed on an expedited basis; use of statistical sampling and modelling techniques]

II. PROCESSING METHODOLOGIES AND RESULTS .......... I.L.M. Page 1336
7-16 ["Fast-track" processing methodologies were used; statistical sampling was used for mental-pain-and-anguish and motor-vehicle claims; statistical modelling was used for salary-loss, personal-property, and food-lodging-relocation-transportation claims]

III. CLAIMS INCLUDED IN THE FIFTH INSTALMENT ......... I.L.M. Page 1338
17-18 [Description of the types of losses covered by the claims; computer cross-checking was performed to prevent double payments]

IV. RECOMMENDATIONS .................................... I.L.M. Page 1338
19-22 [76,720 claims are recommended for payment for an aggregate amount of $US720,924,558.14; 31 claims are not recommended for payment; a country-by-country table is included; also included are tables of corrections to the first and second instalment recommendations]

[Done at Geneva on 15 May 1997]
[Signatures]
NOTES