UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/1996/893
31 October 1996

ORIGINAL: ENGLISH

LETTER DATED 16 OCTOBER 1996 FROM THE ACTING PRESIDENT OF THE GOVERNING COUNCIL OF THE UNITED NATIONS COMPENSATION COMMISSION ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to transmit herewith, through you, for the information of the Security Council, the following details concerning the twenty-second regular session of the Governing Council of the United Nations Compensation Commission, held at Geneva on 14 and 15 October 1996.

At its sixty-third meeting, the Governing Council heard statements by the representatives of Iraq, Kuwait, Pakistan and Sudan.

Having received on 27 July 1996 a comprehensive request from the Government of Iraq on different matters concerning the work of the Commission, the Governing Council granted the Government of Iraq the time necessary to present, at this session of the Council, its views on issues that were within the mandate and the jurisdiction of the Council and the order of the proceedings, within the reasonable time limits allotted to presentations by non-member States.

The delegation of Iraq was headed by Dr. Riyadh M. F. Al-Qaysi, Under-Secretary of the Ministry of Foreign Affairs. The Governing Council discussed the request made by the Government of Iraq, as well as the presentation made by the Iraqi delegation on this occasion (annex I), and agreed upon a Chairman's statement (annex II).

It required in particular that the Security Council be informed that some of the issues raised in the presentation, such as the establishment of the United Nations Compensation Commission, including its structure and composition, and the use of the Compensation Fund for the Government of Iraq to ensure its "need for proper legal defence", were found to be matters within the sole competence of the Security Council.

At its sixty-third meeting, the Governing Council also heard a comprehensive report by the Executive Secretary, Carlos Alzamora, on the activities of the Commission (S/AC.26/1996/R.24).

Concerning the well blow-out control claim (WBC claim) put forward by the Kuwait Oil Company for the cost of extinguishing the oil well fires, the Council

noted that the Panel would meet at the end of October to further review its draft final report for presentation to the Governing Council within the mandated time-frame.

At its sixty-fourth meeting, the Council adopted the sixth report of the Panel (annex III) regarding the last instalment of the category "A" claims (claims for departure from Iraq or Kuwait). With this sixth instalment, another 80,456 claims have been awarded compensation for a total amount of nearly US$ 320 million (see annex IV). Thus, the Commission has completed the processing of all category "A" claims that it had received. As a result, of the more than 922,000 claims that were reviewed by the Panel, more than 862,000 have been awarded compensation for a total award of close to $3.2 billion.

Further, the Council approved the Commissioner candidates nominated by the Secretary-General to make up new panels of Commissioners for claims in categories "E" (corporate claims) and "F" (governmental claims). The composition of the Panels is as follows:

Category "E" claims (corporate claims):

Mr. Werner Melis (Austria)	Chairman
Mr. Sompong Sucharitkul (Thailand)	Commissioner
Mr. David W. Mace (New Zealand)	Commissioner

Category "F" claims (governmental claims):

Mr. Michael Kerr (United Kingdom)	Chairman
Ms. Eva Horvath (Hungary)	Commissioner
Mr. Jen Shek Voon (Singapore)	Commissioner

The candidates have been selected on the basis of their professional backgrounds, authority, specialization and experience, in particular in the fields of law and accountancy, having duly in mind the need for geographical distribution.

The Council had also before it reports submitted by Governments on the distribution of compensation awarded to the successful claimants in category "B" (claims for serious personal injury or death). The Council noted with appreciation that the payments process is being completed in a transparent manner as provided for by decision 18 [S/AC.26/Dec.18 (1994)]. A summary report prepared by the Commission secretariat on the matter is attached (annex V).

In addition, the Council examined the situation of a number of category "E" claims (corporate claims) submitted to the Commission after the expiration of the time limits for filing such claims. Four such claims have been accepted for filing given the explanation provided by the Government concerned. The Council determined that the late filing of claims in category "E" or "F" will be further accepted only where the claims are "based on strong original contemporary evidence, confirming the good faith of the claiming party", but that after 1 January 1997 no such claim may be accepted for filing under any circumstances.

The Council expressed its continuing concern on the availability of funds, which largely depends on the implementation of Security Council resolution 986 (1995). The Council expressed the view that all parties involved should act in an effective manner towards the expeditious implementation of that resolution. It represents an indispensable step in favour of the compensation of hundreds of thousands of victims of a conflict that occurred more than five years ago.

Short of an early implementation of Security Council resolution 986 (1995), only bridging funds coming from voluntary contributions from donor countries, to be reimbursed pursuant to the mechanism of resolution 778 (1992), would prevent the work of the Commission from being disrupted. The Security Council may wish to consider the manner in which it would contribute to securing the Commission's budget and ensure the normal continuation of the operation that it entrusted to the Commission.

The next session of the Governing Council will be held from 16 to 18 December 1996.

I avail myself of this opportunity to thank you and the members of the Security Council for the Council's continuing interest and concern in the work of the Commission.

(Signed) Ludwik DEMBINSKI
Acting President, Governing Council
United Nations Compensation Commission

Annex I

Statement made on 14 October 1996 by Dr. Riyadh Al-Qaysi, Under-Secretary of the Ministry of Foreign Affairs of Iraq, before the twenty-second session of the Governing Council of the United Nations Compensation Commission on the request of the Government of Iraq filed on 27 July 1996

Mr. Chairman,

We have received your communication of 4 October in which we were informed, inter alia, that we will be granted the time necessary to present our views on issues within the mandate and jurisdiction of the Governing Council and the order of proceedings, within the reasonable time limits allotted to non-member States' presentations. While we appreciate the generosity of the Governing Council for granting us this opportunity to present the request filed by my Government on 27 July 1996, permit me to say that insofar as the work of the Council is concerned, Iraq is not an ordinary non-member State. Iraq is the sole defendant, and consequently the payor, of all the compensation claims processed by the United Nations Compensation Commission. I should like, therefore, to request a fair hearing on the part of the Council. I so urge because since we filed our request, which generated much interest, we have learned that a very limited minority of members of the Council have embarked upon a démarche here in the Council and in the capitals voicing the concern that our request reflects a tactical move designed to obstruct, delay and eventually negate the process. I should like to assure all the members of the Governing Council, as I will explain in my presentation, that Iraq is prompted by good faith, and we expect to be treated in a similar fashion. As we view them, the issues at stake are far more serious than to permit a facile treatment on the basis of tactical ploys and political pressures. On my part, I certainly have the strong belief that you will listen to us carefully and consider our arguments responsibly.

It is necessary to explain the political position of my Government underlying the request before you. After the Gulf War, Iraq accepted liability under interntional law through accepting Security Council resolutions 686(1991) and 687(1991) which pronounced the principle of liability on that basis. This position has not changed. This request is not designed to set in motion a process for the ventual denial of that liability. Rather, it is designed to ensure, by way of dynamic posture engagement on our part, that the principle of liablity pronounced by the relevant Security Council resolutions are implemented in strict conformity with international law. If you permit, I would like to structure my presentation by taking three main steps. First, it is necessary to address the principal issues of procedure that the Request by the Government of the Republic of Iraq has raised with the Governing Council. Second, I intend to argue the inevitable need to introduce respect for the due process of law, the equality of the Parties and for elementary standards of procedural justice, including the need for proper legal defence of Iraq, especially in the "higher categories of claims filed by corporate entities, Governments and international organizations. Third, I will address this issue in some more detail with regard to the new type of claims in Category "F" for environmental damage and depletion of natural resources, both from the perspective of international law and under the applicable internal UNCC rules adopted by the Governing Council for the categorization and processing of claims.

I. The General Issues of Procedure Presented to the UNCC Governing Council

1.The lack of standing and proper defence of Iraq before the UNCC and the requirements of due process and fundamental procedural rights under international law

In essence, the procedure so far applied by the Commission can be best described as "mass claims processing" in order to cope with the large number of cases before the UNCC. In fact, it has been designed with the advice of American experts on the experience with forms of action that have been used in the United States in mass torts situations.[1] "Mass claims processing" in Categories "A", "B" and "C" has been primarily in the hands of the Secretariat on the basis of using "test cases", "statistical methods", "sampling", "regression analysis" and computer programmes, to "verify" hundreds of thousands of Claims in one batch.[2] The fourth report of the Panel of Commissioners in

Category "A" attempts to justify this procedure with comparative references to the use of such methods in some national jurisdictions and international fora.[3]

The irrelevance of these comparative references to proceedings against a State on the international level under the conditions imposed by the UN Security Council is a matter which could be separately argued[4]. The main counter-argument, however, is that even in the cases of alleged "mass claims processing" invoked by the UNCC as examples, there has always been full legal standing and full legal defence available to the defendant and the decisions were taken by independent courts and tribunals applying legal principles, norms and procedures according to the rule of law. That is exactly not the case with regard to the position of Iraq as the Respondent State before the UNCC, as will be shown below.

Albeit certain disclosure and other rules are adopted from the practice of international arbitration, the Commissioners are not in the position of arbitrators as known in international practice. On the one hand, they have to heavily rely on the preliminary assessment of the claims prepared by the legal staff of the Secretariat and its services when the Commissioners come to Geneva. The Panels are under strict constraints to finalise the review of claims within very short time-limits and unequal time is given to the Claimants to prepare their claims and to Iraq to react to the claims, as far as Iraq is at all allowed to respond. On the other hand, their power is limited to making only recommendations. The ultimate and final decision, not subject to any appeal or review, is taken by a political body, the Governing Council, which "may review the amounts recommended and, where it determines circumstances require, increase or reduce them".[5]

The working language is English only and Arabic documents must all be submitted translated into English. This is a highly practical disadvantage to Iraq. The difference to the practice of the Iran-United States Claims Tribunal where documents must be submitted in both English and Farsi and simultaneous translation is required to be provided in oral proceedings is striking. It is particularly striking because the UNCC is a body of the United Nations and Arabic is one of the official languages of the United Nations

Moreover, Iraq has not only been excluded from the Governing Council, the central body shaping the whole UNCC process in political, legal and judicial terms, but it has also been excluded, as a matter of right, from the procedure of determining individual claims on the level of the Panels, which at

any rate can only make "recommendations", subject to the approval and ultimate decision of the Governing Council. Iraq has strongly and specifically protested also against the establishment of this scheme.[6] This choice has been a deliberate one and made against even some of the most modest proposals from the UNCC Secretariat in the drafting process of the Provisional Rules for Claims Procedure to give Iraq at least some minimum form of standing in the process.[7]

Thus, originally, the Report of the Secretary-General suggested that:

> *"Iraq will be informed of all claims and will have the right to present its comments to the Commissioners within time-delays to be fixed by the Governing Council or the Panel dealing with the individual claim."*[8]

The draft rules prepared by the Secretariat for consideration by the Governing Council accordingly provided for a draft Article 17 requiring Iraq to be informed of all claims submitted to the Commission and a draft Article 18 permitting Iraq to submit comments with regard to claims in Categories "A", "B" and "C" within two months and in respect of other Categories within six months. However, this was not accepted by the Governing Council. Instead, Article 16 of the Provisional Rules for Claims Procedure merely provides that

> *"[t]he Executive Secretary will make periodic reports to the Governing Council concerning claims received. These reports shall be made as frequently as required to inform the Council of the Commission's case load but not less than quarterly."*[9]

These reports, which have to be submitted by the Executive Secretary before a Claim can be dealt with by a Panel of Commissioners, contain only very general information on Governments, international organizations or other eligible claimants that have submitted claims, the Categories of claims presented, the number of claimants in each consolidated claim, and the total amount of compensation sought in each consolidated claim. In addition, "each report may indicate significant legal and factual issues raised by the claims, if any".[10] In essence, these reports give a statistical overview of the claims submitted to the Commission without including any information on the individual claimants or their claims. Such reports are to be "promptly" circulated to Iraq and all governments and international organizations that have submitted claims. So far 14 of such "Article 16 Reports" have been submitted by the Executive Secretary.

The only express procedural right granted to Iraq, as well as at the same time to claimant Governments and international organizations, is to present "additional information and views concerning the report" within 30 days in the case of claims in Categories "A", "B" and "C", and within 90 days in the case of other Categories.[11] The comments must be submitted in English and in accordance with the other formal requirements of the Rules[12] with no extensions of the time-limits allowed.[13] The comments are to be submitted to the Executive Secretary who transmits them to the Panels of Commissioners.[14]

This means that at the preliminary assessment stage, Iraq is refused to have any opportunity to raise objections against the admissibility of the claims, be it concerning the time-limits or categorisation of the claims, be it on grounds of lack of requisite nationality, exhaustion of local remedies, non-exclusiveness of the Commission's jurisdiction, or on any other grounds.[15] It has no right to access to relevant information and documentation. In principle, all records received or developed by the Commission are confidential[16] and Panels are required to "conduct their work in private".[17] Iraq even does not have a right to appear before the Commissioners. It does not have a right to question the applicable law,[18] challenge the composition or procedure of the Panel, its liability or the amount of damages, including the type of compensable damage, the standard of compensation and the method of valuation, or the supporting evidence.[19] At numerous occasions, Iraq protested against these violations of its rights.

By March 1996, the Commission had completed its work on 800,000 of the 910,000 "A" Claims, on all of the 6,000 "B" Claims, and it is expected that it will complete work on 250,000 of the 410,000 "C" Claims by the end of 1996. The results of this processing so far are laid down in 9 reports of the 3 Panels of Commissioners that were instituted to deal with theses Categories of Claims. In fact, Iraq's role in the "processing" of about one million Claims in Categories "A", "B" and "C" in all of the cases so far decided has been limited to be allowed to submit "comments" under Article 16.

Under the Provisional Rules for Claims Procedure there are only few avenues for Panels of Commissioners to compensate the lack of standing of Iraq as the defendant State. One avenue is under Article 36 (a), according to which a Panel may

"a) in unusually large or complex cases, request further written

submissions and invite individuals, corporations or other entities, Governments or international organizations to present their views in oral proceedings;

b) request additional information from any other source, including expert advice, as necessary."

Another avenue, with regard to certain claims, especially in Categories "E" and "F", is under Article 38, stipulating:

"b) Panels may adopt special procedures appropriate to the character, amount and subject-matter of the particular types of claims under consideration.

...

d) Unusually large or complex claims may receive detailed review, as appropriate. If so, the panel considering such a claim may, in its discretion, ask for additional written submissions and hold oral proceedings...."

However, it is extraordinary that the same provision, Article 38 d), expressly gives the individual, corporation, Government, international organization or other entity making the claim the right to "present the case directly to the Panel" and to "be assisted by an attorney or other representative of choice" without mentioning any corresponding rights of the defendant State at all.

A further avenue left to Commissioners to improve the position of Iraq is Article 43, stating that

"[s]ubject to the provisions of these procedures, Commissioners may make such additional procedural rulings as may be necessary to complete work on particular cases or categories of cases",

and that in doing so, the Commissioners may rely on the relevant UNCITRAL Rules.[20] The intention, however, of the Provisional Rules for Claims Procedure is clearly that the Panels complete their work within the very short and strict time-limits provided for, the observance of which is controlled by the Governing Council, the master of the procedure.

None of this amounts to any meaningful position of defence by Iraq as of right. An essential part of the review of claims has been done on the national

level by claimant Governments in the process of the consolidation of claims which is more or less "rubber-stamped" by the Commission in a summary administrative fashion using "sample methods" and computerised mass comparison of claims on a statistical basis. The responsibility of Iraq with respect to any of the listed situations of admissible claims is irrefutable, relieving claimants of any substantial burden of proof and the presentation of evidence, although a differentiation is made with regard to the amounts claimed by individuals in Categories "A", "B", and "C" and with regard to the larger cases in Categories "D", "E" and "F".

As a matter of principle, the entire process of determining claims is taken *in camera* with the elimination of the participation and adequate information of the defendant State. This includes even the stage when decisions are finally made public. Article 40 (5) of the Procedural Rules provides:

> *"Decisions of the Governing Council and, after the relevant decision is made, the associated report of the panel of Commissioners, will be made public, except the Executive Secretary will delete from the reports of panels of Commissioners the identities of individual claimants and other information determined by the panels to be confidential or privileged."*[21]

The structural deficiency of the UNCC from the viewpoint of the lack elementary procedural rights and the proper legal defence of Iraq can only be mitigated to a certain extent, but not cured by the commendable initiative of two recent Panels, which remains at their discretion, to go a step further within the limits of the Procedural Rules and to schedule an exchange of written submissions, an oral hearing and to permit Iraq also to respond to questions from the Panel.[22] The inherent schizophrenia in such practice is characterised by the fact that the Orders of UNCC Panels refer to the Claimants as "Claimants", but to the Respondent only as "The Government of the Republic of Iraq", while when both sides are addressed, they are referred to as "Parties".

It has been noted that the UNCC "promises to be radically different from any international claim settlement scheme ever proffered"[23] and that it constitutes "a significant departure from previous international arbitral practice".[24]

> As noted above, the UN Secretary-General's report already indicated:
> *"The process by which funds will be allocated and claims paid, the appropriate procedures for evaluating losses, the listing of claims and*

the verification of their validity and the resolution of disputed claims as set out in paragraph 19 of resolution 687 (1991) - the claims procedure - is the central purpose and object of paragraphs 16 to 19 of resolution 687 (1991). It is in this area of the Commission's work that the distinction between policy-making and function is most important. The Commission is not a court or an arbitral tribunal before which the parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying their validity, evaluating losses, assessing payments and resolving disputed claims. It is only in this last respect that a quasi-judicial function may be involved. Given the nature of the Commission, it is all the more important that some element of due process be built into the procedure. It will be the function of the commissioners to provide this element. As the policy-making organ of the Commission, it will fall to the Governing Council to establish the guidelines regarding the claims procedure. The commissioners will implement the guidelines in respect of claims that are presented and in resolving disputed claims. They will make the appropriate recommendations to the Governing Council, which in turn will make the final determination..."

It is respectfully submitted that the opinion expressed by the Secretary-General in this paragraph, which considers the so-called "claims procedure" as the central purpose and object of paragraphs 16 to 19 of resolution 687 (1991)1,

---

1 UN Security Council Resolution 687 (1991) provides in the pertinent part as follows :

"16, *Reaffirms* that Iraq, without prejudice to its debts and obligations arising prior to 2 August 190, which will be addressed through the normal mechanisms, is liable under international law for any direct loss, damage - including environmental damage and the depletion of natural resources - or injury to foreign Governments, nationals and corporations as a result of its unlawful invasion and occupation of Kuwait;

17. *Decides* that all Iraqi statements made since 2 August 1990 repudiating its foreign debt are null and void, and demands that Iraq adhere scrupulously to all of its obligations concerning servicing and repayment of its foreign debt;

18. *Decides* also to create a fund to pay compensation for claims that fall within paragraph 16 and to establish a commission that will administer the fund;

19. *Directs* the Secretary-General to develop and present to the Council for decision, no later than thirty days following the adoption of the present resolution, recommendations for the Fund to be established in accordance with paragraph 18 and for a programme to implement the decisions in paragraphs 16 to 18, including the following: administration of the Fund; mechanisms for determining the appropriate level of Iraq's contribution to the Fund, based on a percentage of the value of its exports of petroleum and petroleum products, not to exceed a figure to be suggested to the Council by the Secretary-General, taking into account the requirements of the people of Iraq, Iraq's payment capacity as assessed in conjunction with the international financial institutions taking into consideration external debt service, and the needs of the Iraqi economy; arrangements for

is far from accurate. It is clear that paragraph 16 sets out the basic rule of liability as being one " under international law ", which knows no such procedure for the settlement of compensation claims. Paragraph 17 deals with a point that does not relate directly to the question of settlement of compensation claims, namely the determination as null and void of all past Iraqi statements repudiating its foreign debts. Paragraph 18 simply records the decision to establish the compensation fund for claims falling within paragraph 16, that is claims of compensation based on liability of Iraq under international law. As for paragraph 19, it is true that the paragraph directed the Secretary-General to present recommendations on " appropriate procedures for evaluating losses, listing claims in respect of Iraq's liability. " But this was to be done, as paragraph 19 specifically provides, in relation to " Iraq's liability as specified in paragraph 16 above." Thus, again the requirement of liability under international law is once more stressed. Moreover, there is nothing in the paragraph which justifies the denial of Iraq's standing in the UNCC.

Similarly, the Executive Secretary of the Commission noted in a publication that:

> *"It is an original system, which is neither traditional arbitration, nor a tribunal or a court, but a special procedure suited to the circumstances and to the need to bring effective and swift justice to the millions of victims of Iraq's invasion of Kuwait".*[25]

He further observed:

> *"... that the unique and unprecedented nature of the Compensation Commission arises out of a particular context, i.e. the circumstances and situations resulting from the Gulf War. The Commission is not a court of arbitration before which the parties are to appear: the Commissioners are not judges. It is a political body, whose principal function is to consider and verify claims and to evaluate and determine the amount of any losses. It must also be pointed out that, given the nature of the Commission, particular importance attaches to ensuring compliance with the formal requirements of the procedure.*

---

ensuring that payments are made to the Fund; the process which funds will be allocated and claims paid; appropriate procedure for evaluating loses; listing claims and verifying their validity, and resolving disputed claims in respect of Iraq's liability as specified in paragraph 16; and the composition of the Commission designated above;..."

The aim is to establish an efficient procedure that is free from the constraints which generally encumber judicial proceedings. This means, in short, that the Commission is fundamentally political and administrative in nature, but that it does not entirely dispense with elements of judicial settlement, even if a large part of its task is not juridical in nature".[26]

Specifically addressing the issue of the participation of Iraq, the Executive Secretary states:

"In this regard, account should be taken of the fact that the Security Council has held Iraq liable and that Iraq has agreed to bear the consequences. Accordingly, a simple, rapid and, in some cases almost automatic procedure has been put into place to verify that damage sustained is a direct result of the invasion and occupation of Kuwait and that the amount claimed is justified. The Council has also taken into consideration historical precedents, in which interminable procedural debates held up compensation processes for years, a situation inconceivable in the present circumstances. In this procedure, Iraq's participation may be regarded as necessarily secondary...."[27]

Such line of argument has been supported by leading American practitioners in international claims settlement to justify the rejection of using the Tribunal model for dealing with the claims against Iraq arising out of the Gulf War.[28] The argument is not compelling and it would require a more extensive analysis of the work and experience of the Iran-United States Claims Tribunal to rebut it which is beyond the scope of the present argument.[29] In the present context it suffices to note that, in an article published in 1991, even Arthur Rovine, the first United States Agent to the Iran-United States Claims Tribunal 1981-1983, found "good reasons for establishing such a tribunal" to deal with the Iraq claims process:

"First, for large claims, complex claims, and test cases for small claims, an adversarial approach is likely to be most productive and just. The truth of a disputed matter, a claimant's entitlement to an award, and the size of such an award, are issues more likely to be settled fairly if both sides of a claim are heard and decided by independent arbitrators. More importantly, it is desirable, as part of the process of establishing peace in the Middle East, to bring Iraq into a general program of peaceful and legal settlement of international disputes. In my view, because of the

Hague Tribunal, the Iranian government is now more interested in legal processes for the resolution of financial claims than it was prior to its revolution. That is a very good thing, and the hope is that a similar structure and process can be established with respect to Iraq, and for the same reason.

An international tribunal would also enhance the development both of international mechanisms for dispute resolution and of international commercial law, even if the tribunal is limited (as it should be) to major claims. Certainly, the Iran-U.S. Claims Tribunal has made substantial contributions, in terms of both procedural and substantive law. An international tribunal handling major Iraq claims is likely to do the same. These are, of course, long range and abstract considerations, but are nevertheless important, and should be taken into account in any system for the resolution of claims against Iraq."[30]

The arguments advanced by the UN Secretary-General, the Executive Secretary of the UNCC and others that any other scheme than the one adopted by the Security Council would have been "impracticable", may also be questioned under the consideration that, on the contrary, it is most likely that without cooperation and proper legal defence of Iraq on the basis of the equality of the parties, the compensation scheme may prove to be impossible to implement effectively on the long run. At any rate, "special circumstances" and considerations of "practicability" never permit to completely dispense with elementary rules of procedural justice, albeit it is clear that a balance must be found to do justice in time to needy individuals. The equality of the parties and the right to defence belong to the fundamental aspects of due process of law, to which the argument now turns.

2. Due Process, Fundamental Procedural Rights and Denial of Justice in International Law

The "Provisional Rules for Claims Procedure" fail to meet the general requirements of procedural justice and minimum procedural standards under international law which could be established with extensive references to customary international law, international treaties, the procedural rules of international courts and tribunals, judicial and arbitral decisions, and the writings of eminent scholars of international law. Within the limited scope of this submission, however, the following is restricted to some very basic argument.

These requirements and standards include, *inter alia*, two basic and closely interrelated principles: *audi alteram partem* (the right of each party to be heard) and the equality of the parties. Both standards are the foundations of a number of "fundamental procedural rights".[31] Both principles cannot be separated from the concept of impartiality. Furthermore, the right to be heard does not exist without recognising that the parties have equal procedural rights and must have equal opportunity to present their case. Without procedural equality of the parties there is no impartial judgement and partiality constitutes injustice *per se*. Moreover, in international law, procedural equality reflects that international jurisdiction is in essence based on the consent of States and the principle of sovereign equality.

It is essential to note that there are five functions of the widely recognised procedural norms in State practice. First, they serve to establish confidence of the parties in the decision-maker and its authority. Second, they ensure the cooperation of sovereign parties. Third, in the words of a well-known authority, their function is

> *to endow the tribunal with adequate opportunities to gather all relevant material concerning a dispute, and thereby enable it to perform a well reasoned, rational, and in the circumstances, just, adjudication of the controverted claims . . .What is more, they tend to eliminate chances of hasty decision-making by the tribunal".*[32]

Fourth, they serve to provide for effective participation of the parties in the process with procedural rules concerning the presentation of evidence and argument by the parties. Fifth, the fundamental procedural norms aim at preventing that one party achieves any special and material advantage over the other party.

It is especially inadmissible to restrict one side in stating its case. These fundamental procedural rights include the right to be heard, the right to due deliberation by a duly constituted tribunal, the right to a reasoned judgement, the right to a tribunal free from corruption, the right to proceedings free from fraud, and the right to the correct composition of the tribunal.[33]

Three specific aspects deserve particular attention in the present context. The first aspect concerns the implications of the right to be heard which "eliminates chances of rough and ready methods to arrive at adjudication and prescribes an orderly process".[34]

In the words of Mani :

"The right to be heard envelops the whole range of the communicative process commencing from the moment of institution of the proceedings. It involves each party's right to present its claims, expound them with arguments based on analysis of fact and the law, put forth all conceivable legitimate defences, demonstrate them with adequate evidence, rebut the other party's evidence, and so on. It also covers each party's right to know, with sufficient notice, what is up against it. Each party has a right not to be taken by surprise. In short, the right to be heard constitutes the king pin of the international adversary procedure."[35]

The second important aspect is the right to due deliberation by a duly constituted tribunal, including adequate representation of each party by counsel of its own choice.

The third relevant aspect is the right to a reasoned judgement in accordance with the evidence and arguments presented by the parties and with established legal standards concerning the submission of evidence and the burden of proof.[36] This is completely different from "a pre-decisional process on the legislative, administrative or political plane".[37]

Finally, it is clear that non-observance of these fundamental procedural norms leads to the legal effect that the decision is arbitrary, a denial of justice, and therefore null and void and not binding.[38]

Supporting arguments can be derived by way of analogy to the concept of the denial of justice to be found as an elementary principle of international law in connection with the judicial protection of aliens.[39] Already in 1758, the classical writer Vattel stated:

"Now, justice may be refused in several ways: (1) By an outright denial of justice or by a refusal to hear the complaints of a State or of its subjects or to allow the subjects to assert their rights before the ordinary tribunals. (2) By pretended delays, for which no good reason can be given; delays equivalent to a refusal or even more injurious than one. (3) By a decision manifestly unjust and one-sided."[40]

The notion, rules and legal consequences of the denial of justice, which

were developed in customary international law by decisions of international courts and tribunals, have been reflected in codification attempts by the Institut de Droit International (in 1927), the Hague codification conference of 1930 and thorough studies of the Harvard Law School in 1929 and 1961. It is argued that the underlying principles of the concept of the denial of justice are not limited to the issue of the failure of States to grant adequate judicial protection to aliens within their national legal system, but express general procedural notions of justice and equity. This is in line with the relevant provisions of the existing international human rights instruments on the global and regional level. Examples can be found in Articles 7 and 10 of the Universal Declaration of Human Rights, adopted by the UN General Assembley on 10 December 1948, and paragraph (1) of Article 14 of the International Covenant on Civil and Political Rights of 19 December 1966.

This result could easily be confirmed by a comparative study of the major national legal systems, which is one method of establishing general principles of international law in the sense of Article 38 of the Statute of the International Court of Justice, containing a recognised list of the sources of international law.[41] Such analysis would demonstrate the inadmissibility in principle of substituting elementary procedural rights and fair proceedings by a summary administrative-political proceeding without *locus standi* of the defendant.

It should also be noted, with all respect, that the position taken on the international level by certain members of the Security Council against Iraq contravenes their own internal constitutional requirements. The fourteenth amendment of the Constitution of the United States, for example, contains a strict notion of due process and equal protection of the law and requires an evidentiary hearing approximating a judicial trial before property can be taken away.[42]

Moreover, direct support for the present argument can be in found in the legal system of the United Kingdom pertaining to the application of European Community Regulation 3155/90 of 29 October 1990 (implementing the UN sanctions adopted against Iraq), which provided that the provision of non-financial services with the object or effect of promoting the economy of Iraq or Kuwait carried out in or from Community territory was prohibited.[43] It was not entirely clear whether this also applied to the provision of legal or auditing services in the sense whether they were "acts calculated to promote" the economy of Iraq or Kuwait.[44] However, the prevailing view, also confirmed in letters from the European Commission, was that the Regulation was broad

enough to prevent law firms in member States of the Community from providing legal representation for the Republic of Iraq or Iraqi companies in matters relating to the securing of funds. The national implementing agencies in the event granted exemption to English solicitors representing the Republic of Iraq in litigation before English courts in *Kuwait Airlines Corp. v. Iraq Airways Co. and Republic of Iraq* in 1992.[45] The Department of Trade and Industry gave the permission to provide legal services and the Bank of England authorised payment of legal fees on the basis of the reasoning that if applications for individual licences to provide legal services were not granted this would compromise Iraq's right to a fair trial. Furthermore, in the *Re Rafidain Bank* case[46] the Embassy of Iraq was represented by legal counsel[47] in which the judge ordered 20,000 Pounds Sterling to be made available to the Iraqi Embassy out of the provisional liquidator's fund for the purpose of enabling legal advice and representation to be obtained.

It is further submitted that the structure of the UNCC process and the nature of the reparations regime imposed upon Iraq by the Security Council is unworthy of the United Nations and in conflict with its goals and principles. The Preamble to the United Nations Charter states, *inter alia*:

> *"WE THE PEOPLES OF THE UNITED NATIONS DETERMINED*
>
> *...to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained..."*

Furthermore, Article 1 (1) of the Charter lays down as one of the purposes of the United Nations :

> *"...to bring about by peaceful means, and in conformity with the principles of justice and international law [emphasis added], adjustment or settlement of international disputes or situations which might lead to a breach of the peace;..."*

Article 2 of the Charter, after clarifying that :

> *"1. The Organization is based on the principle of the sovereign equality of all its Members."*

emphasises that

"3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice [emphasis added], are not endangered."

It is argued that the above commitments in the Charter to justice and international law also require the respect by the United Nations of elementary notions of procedural justice and of international law when dealing with the settlement of a dispute with a sovereign and equal Member State.

3. The divergence of the UNCC process from international law and practice of the settlement of war damages and disputes between States (to be less emphasized before the Panel)

The purpose of the comparison of the Commission with the international practice of settling war damages in this part of the argument is to show that the method adopted by the Security Council is unprecedented in the history of international law and international relations and at variance with normal settlement practices usually adopted after the cessation of hostilities and the methods of claims settlement adopted by sovereign States. This practice rests upon the basic principle of the sovereign equality of States. It ultimately reflects the consensual nature of the international legal system which knows neither a central legislature nor compulsory adjudication or arbitration of disputes between States without the consent of the parties[48]. Let may say at once that the UNCC is a subsidiary organ of the Security Council, and consequently, what I shall say is not out of order in this meeting.

There are fundamental objections to the method of establishing the UNCC, to the characteristics of its procedure and to the substantive rules and principles it applies which cannot be fully argued in this submission. The central problem lies in the fact that the Security Council, as a political body, albeit with the support of a large number of States interested in compensation, has assumed both the judicial function in substituting the normal forms of international dispute settlement by an administrative and political processes (which it controls), as well as the legislative function by replacing traditional norms of State responsibility in international law with some different rules to be applied by the UNCC. The Security Council has no authority under Chapter VII to do this, as will be shown below.[49]

The method adopted by the Security Council is unprecedented in the history of international law and deviates from normal settlement practices

usually adopted after the cessation of hostilities and the forms of claims settlement adopted by sovereign States. This practice has rested, although not always fully observed, upon the basic principle of the sovereign equality of States.

In view of the peculiar mechanics of the Geneva process, it is not surprising that the literature is becoming more and more critical, even if the UNCC is only considered in by-passing in a much broader context of analysis. Thus, in a recent publication by Benevisti and Zamir on "Private Claims to Property Rights in the Future Israeli-Palestinian Settlement", published in 1995 in the American Journal of International Law, the authors note:

> *" In any case, the model of the UN Compensation Commission seems more suitable for one-sided solutions similar to those dictated by the victorious Allied powers following the two world wars. No government is likely to accept willingly such fact-finding procedures and the across-the-board assumption of responsibility. Such a model does not suit parties that must fashion peaceful relationships."*[50]

A further point to make is that (even where there is no peace treaty), as a rule, the settlement of international claims for war damages adopts the normal methods of dispute settlement between States as mentioned in Article 33 in the Charter of the United Nations[51] and other international instruments. In cases of a large number of claims, negotiations may lead to lump sum agreements which are based on treaties.[52] With regard to settlements imposed by force or by duress by one party unilaterally, the legal validity of such arrangements, at a minimum, is doubtful. At any rate, the established procedure to seek a final and binding third party settlement is to use either arbitration or adjudication, which always requires the consent of all State parties involved.

4. The lack of consent and acquiescence by Iraq

A further point that needs to be addressed is the contention that the UNCC process is justified because of Iraq's consent to it. As noted above, also the Executive Secretary of the UNCC seems to hold this view when stating that "... the Security Council has held Iraq liable and that Iraq has agreed to bear the consequences."[53] There are several lines of arguments which can be invoked against this.

First, it has been noted that Iraq had no choice but to accept these

conditions since the Security Council confirmed the authorisation in Resolution 678 (1990) of Kuwait and its allies to use force, after the devastation of Iraq.[54] The issue, as already noted above, is the validity in international law of consent given under the threat of force. Article 52 of the 1969 Vienna Convention on the Law of Treaties which was prepared by the United Nations International Law Commission states :

> *"A treaty is void if its conclusion has been produced by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations."*

Without entering into full argument of this proposition, it should only be noted that, although the Vienna Convention applies directly only to agreements made between States, Article 3 (b) of the Convention clarifies that its rules can be applied to other international agreements, e.g. between a State and an international organization, if they reflect customary international law. The latter is the case with regard to the rule contained in Article 52.[55]

Second, at most, Iraq has agreed, under the aforementioned circumstances, to accept its liability in principle, as was required in Security Council Resolution 686 (1991).[56] It did not agree to accept the specific form of implementation of such liability as imposed by the Security Council with the establishment of the reparations regime under the UNCC with Resolution 687 (1991), 692 (1991) and later Governing Council decisions, which, at any rate, exceeds the limits of the authority of the Council under Chapter VII of the Charter.[57] It is important to note the sudden change of language in Resolution 687 (1991) concerning Iraq's liability and the unexpected terms under which such liability was to be imposed[58], as compared with Resolution 686 (1991). These terms were further altered by the 1991 Report of the Secretary-General[59] and the implementing Resolution 692 (1991).

On the contrary, Iraq has put its protest against the conditions of the imposed settlement and against the procedure of the Commission on record[60]. This also bars the application of the international law doctrines of acquiescence or the principle of estoppel. Iraq has continuously repeated its objections in principle against the unfair procedure of the UNCC in every phase in which it was able and willing to cooperate with the Commission in order to try to safeguard its interests under the circumstances imposed upon it. Iraq has therefore not waived its right to object.[61]

Third, finally, even if, arguendo, one would start from the premise that the consent of Iraq is a valid basis of the UN compensation mechanism, this imposes limitations on the freedom of action of the Security Council and the UNCC. As noted by Lady Fox :

> *"If the validity of the process rest on consent of a party to the agreement, then the implementation and interpretation of the provisions are subject to that consent. At the very least, the defendant State which consents to an international settlement process is entitled to put forward its view both as to law and fact on the matters to which it has agreed. Thus, it will be argued that whether the basis of the UN compensation process is seen as the Security Council's powers under the Charter or the consent of the defendant State, a minimum standard as to rules of natural justice obtains."*[62]

Resolution 687 clearly refers to Iraq's liability "under international law". Even if one assumes that the Security Council is acting within its authority under Chapter VII, this

> *"imposes a requirement that the compensation process be carried out in accordance with the principles of international law. Foremost, among these are the rules of natural justice and the observance of 'transparency' by the Commission in its work".*[63]

5. The lack of legal authority of the UN Security Council to assume judicial and legislative functions under the UN Charter (action *ultra vires*) (to be briefly mentioned as an important issue in Request to Governing Council, but not to be argued before the Panel)

From a legal perspective, what matters in the context of the present argument, are the existing legal limits on the authority of the Security Council to act under Chapter VII of the United Nations Charter as it stands today. As a starting point, there is no doubt that the Council enjoys wide political discretion in determining under Article 39 of the Charter what constitutes "the existence of any threat to the peace, breach of the peace, or act of aggression" and to adopt specific measures under Chapter VII. While it is recognised that the enforcement powers of the Security Council are based on broad political discretion and it is also accepted that, under Chapter VII, the Council may derogate from existing rights and obligations arising from treaties and general international law. Nevertheless, there are both procedural and substantive

limitations. Members of the United Nations are obliged to follow decisions of the Security Council under Article 25 only if they are rendered in accordance with the Charter. Article 24 (2) of the Charter states that the Council is bound to act only in accordance with the Purposes and Principles of the United Nations.[64]

As noted by Judge Weeramantry in his dissenting opinion in the Lockerbie case pending before the International Court of Justice :

> *"The history of the United Nations Charter thus corroborates the view that a clear limitation on the plenitude of the Security Council's powers is that those powers must be exercised in accordance with the well-established principles of international law. It is true this limitation must be restrictively interpreted and is confined only to the principles and objects which appear in Chapter I of the Charter."*[65]

The Security Council is not a law enforcement agency or a law-making body, but an organ of collective security.[66] There is a fundamental structural difference between the role of the Council in the maintenance and restoration of international peace and security, and its function in the peaceful adjustment or settlement of disputes. In the latter function, the Council is limited by the constraints of "international law and justice". The Council can only make recommendations for the settlement of disputes under Chapter VI of the Charter, it has no power to impose the means of a settlement of a dispute or related type of situation upon a State, or permanently allocate rights or divest it of rights it might enjoy. This is absolutely clear from the drafting history of the Charter and Articles 33,36,37,38,39 and 40 of the UN Charter.[67] The Council also cannot base such imposed settlement on its general powers or "implied powers".

The Security Council is also bound in the measures it adopts by norms of *ius cogens* and by the duty to respect essential human rights and humanitarian values, as embodied in the humanitarian law of armed conflict and by the principle of proportionality.

The argument of Iraq that the Charter does not grant the UN or the Security Council the authority to deal with war reparations or the adjudication of war claims, and that the International Court of Justice, on the other hand, has the authority to consider claims for reparations for the breach of an international obligation, has been recognised as legitimate.[68] It is argued that the Security Council cannot assume the judicial function itself and replace established

methods of dispute settlement resting on the sovereign equality of States by a political-administrative compensation procedure under its control which abolishes due process of law and fundamental procedural rights of the defendant State. It is further argued that the Security Council also cannot act as a legislator and substitute the decentralised international law-making process by changing the law on State responsibility for internationally wrongful acts, compensation for war damage, and diplomatic protection in international claims.[69] Codification and progressive development of the law on State responsibility, for example, takes place in the UN International Law Commission which submits draft articles to the UN General Assembly for consideration which may adopt them and recommend to member States to conclude a law-making treaty on the matter.

In sum, it is submitted that the Council has acted *ultra vires* of its powers under the Charter and general international law and that the Resolutions establishing the reparations regime are legally null and void and not legally binding upon Iraq or any other Member State of the United Nations. The decisions of the UNCC therefore have no basis in law. The question of which legal remedies may be taken in response to this situation is the challenge which the Governing Council and the Security Council have to meet.

II. The Need for Proper Legal Defence of Iraq in the "Higher" Categories of Claims In General

1. The need to revise the Provisional Rules for Claims Procedure to provide for the equality of the Parties, proper defence and to secure usual standards of international arbitration and international dispute settlement at least in the higher categories of claims

The UNCC Rules for Claims Procedure are explicitly "Provisional" and it is submitted that the time has come for the Governing Council to amend them under Article 43 with regard to the lack of standing of Iraq as the Respondent. Article 43 provides that the Governing Council may "adopt further procedures or revise these Rules when circumstances warrant."

As noted in a publication in 1995 by the Deputy Executive Secretary of the UNCC with regard to the "level of participation of the Government of Iraq" in the processing of claims in Categories "D", "E" and "F":

"Only time will tell how extensively commissioners use Article 36 to

ensure Iraq an opportunity to present its views with regard to such cases. It also remains to be seen whether the Governing Council will exercise the options provided for in Article 43 to revise the Provisional Rules, when circumstances warrant, in order to permit Iraq's participation in Category 'D', 'E' and 'F' claims that are less than 'unusually large or complex cases'. It could also be that the 'circumstances' referred to in Article 43 that would trigger the necessity for further revision of the Provisional Rules could come about by the reaction of commissioners to the restrictions implied or imposed by the current text of the Provisional Rules that could prevent a full presentation of the facts in cases in Categories 'D', 'E' and 'F' that involve a great deal of money. The Article 16 'information' and views 'submissions' may be sufficient for the Panels reviewing claims in Categories 'A', 'B' and 'C' to obtain Iraq's views. However, it appears almost certain that a more expansive role will have to be built into the Provisional Rules to permit Iraq to make its position known in appropriate Category 'D', 'E' and 'F' claims."[70]

It may also be noted that the Head of the Legal Service of the UNCC Secretariat similarly takes the view that, because of the volume, complexity and the amount of compensation claims in the higher Categories, especially those filed by corporations and Governments, it must be expected that the proceedings before the respective Panels will tend to adopt features of arbitration.[71]

The need to amend the Provisional Rules for Claims Procedures not only arises from the requirements of due process and from the subjective fundamental procedural rights of Iraq as the Respondent State, which have been argued above. It also arises from the nature of the cases in the "higher" Categories which cannot be legally determined, both with regard to the law and the facts, in an objective sense without proper proceedings with full participation by Iraq and proper legal defence of Iraq. The substantive rules and principles to be applied are only partially laid down in a rudimentary manner in a number of Governing Council decisions which cannot be mechanically and simply applied because they are too vague and the cases are too diverse and complex. In important areas there are no Governing Council guidelines at all. In this type of claims the exact determination and demarcation of the jurisdiction of the Commission and of the applicable law, legal presumptions, standards of proof, etc. in concrete cases can only be developed on the basis of a consistent pattern of case law. As in any legal system, the development of such case law requires adversarial argument from both parties on an equal basis. This can be seen from the following argument, which is only illustrative of the problems and not comprehensive.

The indispensable need of proper legal defence of Iraq becomes apparent when looking into various problem areas which demonstrate the unclear limits of the jurisdiction of the UNCC and the scope of liability of Iraq. These include the jurisdiction of the Commission in "D", "E" and "F" cases. With regard to the new type of claims for environmental damage and depletion of natural resources, the problem of the causal link and directness of damages and losses, the problem of embargo related claims, the problem of "preinvasion debts and obligations", the problem of multiple recovery claims and the problem of determining the applicable law and the merits of claims. These issues will be addressed in the following sections in order to indicate also the difficulties of proceeding in larger and complex claims without proper legal defence.

At least in both Categories "E" and "F", in addition to the claim forms, Claimants must also submit a statement of claim, the details of which amount to a legal brief requiring legal assistance in its preparation. Iraq equally must be accorded the right to submit a statement of defence with legal assistance.

III. The Need for Proper Legal Defence of Iraq in Claims for Environmental Damage and Depletion of Natural Resources in Particular

It must be especially noted that for the first time in international law and practice claims are also admitted in Category "F" with regard to direct environmental damage and the depletion of natural resources, as was already separately provided for in Resolution 687. It is necessary to address this problem below in more detail for three main reasons. First, the pending WBC Claim filed by Kuwait Oil Company for the costs of fighting oil fires belongs to this category and the handling of this Claim by the UNCC will have important consequences for all other Claims filed in the Category "F". Second, the compensation claims that have been introduced in Category "F" are new types of liability claims raising a variety of complex legal and factual issues which have not been addressed and clarified. Third, the following will show that UNCC Panels will be unable to arrive at properly reasoned conclusions in reviewing such cases without proper defence of Iraq.

The law to be applied by the Commission is laid down in Article 31 of the Provisional Rules for Claims Procedure and raises particular problems of interpretation[72]:

> *"In considering the claims, Commissioners will apply Security Council Resolution 687 (1991) and other relevant Security Council Resolutions,*

the criteria established by the Governing Council for particular categories of claims, and any pertinent Decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law"

There are three main points to be made with regard to this provision. The first point is that this provision deviates from the practice of applicable law provisions in international arbitration rules, such as UNCITRAL, ICC and AAA rules, giving a primary role to the choice of the parties. This corresponds to the unilateral nature of the compensation process as a whole. With regard to the broad variety of types of international business claims, it also lacks the necessary flexibility.

The question is whether the term "international law" in Article 31 is restricted in the sense of "public international law" or whether it may have a broader connotation enabling recourse to a variety of other relevant sources. The applicable law clause of the UNCC lacks the necessary flexibility, at least with respect to contract and other commercial claims, for which a reference to public international law alone is insufficient.

The second point is that, as a source of applicable law, Article 31 seems to place Security Council resolutions and decisions of the Governing Council on the same level with each other. It is highly questionable whether this conforms to the internal rules governing the structure of the United Nations.[73]

The third and perhaps most essential point is that international law is degraded to a subsidiary source, at least as far as the decision-making power of the Commissioners vis-à-vis the rules and criteria laid down by the Security Council and the Governing Council are concerned. In effect, this means that the Security Council, a political body, has assumed the power to ultimately decide what the law is.[74]

In 1991, the Governing Council identified such losses or expenses as compensable resulting from :

"(a) Abatement and prevention of environmental damage, including expenses directly relating to fighting oil fires and stemming the flow of oil in coastal and international waters;

(b) Reasonable measures already taken to clean and restore the environment or future measures which can be documented as reasonably necessary to clean and restore the environment;

(c) Reasonable monitoring and assessment of the environmental damage for the purposes of evaluating and abating the harm and restoring the environment;

(d) Reasonable monitoring of public health and performing medical screenings for the purposes of investigation and combating of increased health risks as a result of the environmental damage; and

(e) Depletion of or damage to natural resources."[75]

The claims for depletion of or damage to natural resources were the only specific ones mentioned in Security Council Resolution 687 which has been interpreted as indicating the intention of the Security Council to emphasize these rather unusual categories.[76] Indeed, the respect for the environment has emerged only recently as an international norm, while respecting the natural resources has never before given rise to an international claim.

These issues merit particular attention in view of the largeness and complexity of the claims and the legal problem of to which extent new norms of liability are being introduced which did not exist prior to the Gulf War and may constitute a prohibited retroactive application of the law. The issues of international liability of States for environmental damage in general are far from settled in international law. It is a new and evolving area which is still also occupying the codification work of the International Law Commission (ILC) of the United Nations.[77] Even less clear is the state of international law when it comes to the application of concepts of such liability to the situation of armed conflicts which are governed by the laws of war (*ius in bello*).[78] For reasons of military self-preservation, States have found it much more difficult to agree on restrictions concerning environmental damage resulting from military hostilities than with regard to environmental harm arising from activities in peacetime.[79]

The area is unclear and requires detailed legal and factual analysis and legal argument in order to establish whether and to which extent Iraq may be held liable for specific actions allegedly taken during the period of hostilities in the Gulf War.

At the outset, the following objective observation by Professor Florentino F. Feliciano in an article, focusing on "two measures of warfare which have

been attributed to the Iraqi forces that occupied Kuwait: dumping of oil on the Gulf and the burning of Kuwait's oil wells", should be recalled:

> *"On the side of the coalition, it has been said the Gulf War ('Desert Storm') was 'the most legalistic war' US forces ever fought, and that '[d]ecisions were impacted by legal considerations at every level.'[80] Withal, the lawfulness of various acts or measures taken by coalition forces has been debated by professors of international law in the United States and elsewhere.[81] Thus, questions of international liability have arisen in respect of exercises of force on both sides of the line of war."*[82]

The myth of the "most legalistic war ever fought" in view of the methods of warfare actually adopted in the Gulf War by the Allied Coalition, in contrast to all rhetoric and what the media was made to believe, has been fully destroyed by the extremely well documented recent study of Roger Normand and Chis af Jochnick from the Center for Economic and Social Rights. To cite only some of their results:

> *"The Coalition's war against Iraq constituted one of the most unbalanced applications of military force in history. Employing the latest technology, the United States and its allies decimated the Iraqi armed forces, driving them from Kuwait and southern Iraq after thirty-nine days of aerial bombardment followed by four days of ground war. While this article does not focus on the military aspects of the Gulf War, a few facts and figures relating to the coalitions' decisive military victory are worth noting: the coalition had access to sophisticated satellite and blueprint intelligence of most of Iraq's military and civilian infrastructure, undertook 110,000 sorties in conditions of unchallenged air supremacy, dropped 90,549 tons of ordnance in one of the most firepower-intensive conflicts since World War II, and suffered 240 military casualties, many from "friendly fire", compared with 25,000-50,000 Iraqi military deaths.*
>
> *Many of the Coalitions' claims of military success turned out to have been exaggerated. For example, the size and danger of the Iraqi army, the effectiveness of the Patriot missile, the accuracy of the bombing, and the amount of precision-guided munitions used were overstated. Nonetheless, the Coalition inflicted a devastating military blow on an overmatched adversary. The combination of air supremacy precision-guided munitions, and open terrain enabled the Coalition to bypass the army entrenched in Kuwait and southern Iraq and strike at Iraq's*

modern infrastructure, which was vitally linked to both the army and civilian life support system."

The authors also conclude:

"Coalition forces enjoyed the unprecedented ability to locate and destroy targets of military significance without fear of retaliation. The importance of this dominance, in legal terms, is that the Coalition's obligation to spare Iraqi civilians and civilian property rose accordingly. As a prominent lawyer for the United States Air Force explained, '[t]he belligerent who faces no opposition in his bombing operations has a heavy burden of proof to show that civilian casualties were necessary, unavoidable, and proportionate to the military advantage gained.' Thus, in evaluating the Gulf War, Coalition forces must be held to a higher standard of conduct, given their military superiority."[83]

On the civilian impact of the Allied methods of warfare upon the Iraqi population, the authors further put the following on historical record:

"Although the United States media never truly challenged the Pentagon's version of events in the Gulf War, independent investigations conducted in post-war Iraq flatly contradicted the image of a clean, surgical war with minimal civilian casualties. The investigations revealed that the Coalition's systematic destruction of Iraq's infrastructure, particularly its electric power grid, resulted in catastrophic damage to civilian lives and property. In marked contrast to the Pentagon's claims that it attacked only military targets and "left most of the basic economic infrastructure intact", the first United Nations observer team described a country whose entire industrial base had been deliberately decimated: "most means of modern life support have been destroyed or rendered tenuous. Iraq has, for some time to come, been relegated to a pre-industrial age, but with all the disabilities of post-industrial dependency on an intensive use of energy and technology.

The massive attacks on Iraq's electric power, civilian industry, transportation, telecommunication, and oil sectors paralysed the country and deprived its urbanized population of essential life support systems. In particular, the destruction of electric power impacted the full range of basic services available to Iraqi civilians. Water and sewage purification plants stopped functioning, the public health system was disrupted, irrigation and food production ground to a halt, drinking water became

contaminated with pathogenic faecal coliforms, and epidemic levels of waterborne disease spread throughout Iraq. A survey of 16,000 Iraqi children published in the New England Journal of Medicine concluded that a post-war surge in disease and malnutrition cased child mortality to triple, resulting in 47,000 excess deaths among children under five in the first eight months following the Gulf War. Increased mortality for the overall civilian population was much higher: demographic surveys place the total civilian deaths one year after the war at a minimum of 100,000. The continuation of sanctions has not only exacerbated these problems by preventing effective infrastructure repair, but has also driven up the food price index by 1,500-2,000%, thereby contributing to malnutrition and disease."[84]

It is clear from this study that the Allied forces attacked many other targets, such as the electrical system, civilian traffic routes and factories producing textiles, foodstuffs, cement, household goods, and other civilian products, to achieve economic or political objectives, rather than only attacking military targets to defeat the Army of Iraq.

The complexity of the legal and factual issues, for example, related to the oil spill and burning of Kuwaiti oil wells attributed to Iraq, become clear from the following reflections made by Harry H. Almond in a preliminary legal analysis :

"The oil spill must be judged against the Iraqi intention, which may have been to deter, prevent, or impair landings from the sea by the coalition forces.

But the use of oil for these purposes must be assessed against the reasonableness of such use. The analysis in the total context of the changing patterns of warfare calls for us to consider the participants, their perspectives and strategies, and their common interests in the larger, global framework. The law that they guide into their relations will affect them all equally. Hence there are questions to be asked about the use of oil. Did it lead to indiscriminate damage that was foreseeable and intolerable under the practice of States in war as evidenced in their past practice? Was the use intolerable regardless of the reasons for the use? Because new technologies are invoked, what do past trends suggest regarding the use of new weaponry? Can Iraq legitimately claim that its use was the reasonable use of oil by a beleaguered State claiming that it had a far lesser military capability and therefore should be more

liberally treated under the laws of war, coupled with the further claim that it was defending itself against exigencies that could not otherwise be met? Or would this position run afoul of the equality of belligerents before the law? Assuming that the use was permissible under international law generally, does it violate the ban that forbids disproportionate uses of force to achieve military objectives? What measure of liability and damage is to be applied, and to what extent does it depend upon political factors or, more specifically, upon claims for power? What was the damage caused to others by the oil spill in terms of actual costs, and how do such damage and costs compare to other means that might be adopted for defence (such as extensive bombing of allied ports of departure or landing craft), or is this relevant to Iraqi responsibility and liability? Is Iraq required to justify that its use of oil by way of an oil spill was justified on the basis of military utility, military success (i.e., realization of the purpose of the war), military survival (i.e., survival as a nation-State) or military danger (i.e., the plea of military necessity even for allegedly illegal acts by combat forces when threatened with annihilation)?

Similar questions may be raised with the igniting of the Kuwaiti oil fields: the indiscriminate mass destruction, the far reaching, severe, and long-lasting deleterious impacts upon the innocent victims and neutral States, the weaknesses in the linkage of the oil fires to necessary Iraqi military actions, and the necessity in warfare can each be raised ... "[85]

Moreover, the extreme unclarity of the issues raised by the admission of claims for environmental damage and depletion of natural resources before the UNCC has also specifically been noted by other writers :

"Of particular significance is that for the first time, the Security Council has recognised a claim for damage to the environment caused during armed conflict. 'Environmental damage', expressly distinct from the depletion of natural resources, suggests damage to the environment per se. The terms 'reaffirms' and 'liable under international law' further suggest that this notion is already a rule of customary international law.

But caution is advisable in extrapolating general rules of international law from this Resolution. While the Security Council is empowered to create binding international law, its mandate is limited to the preservation of peace and security. Thus, drawing general conclusions of law from it would likely be inappropriate. In any event, they entail such

major departures from generally accepted rules of international law, the more credible view is that this Resolution must be seen as a product of its unique political context. There are several examples of such departures. One is that liability attaches to Iraq despite it not being a Party to either ENMOD (Environmental Modification Techniques Convention) or Additional Protocol I and in a manner which appears to render inadmissible any defences based on the customary law of war. A general rule of this nature would contradict the findings of the Nuremberg tribunals that a scorched-earth policy is available to a belligerent, despite being in breach of jus ad bellum. Secondly, the Resolution on its face is so far-reaching that it might even support an argument that Iraq is even liable for damage to its own environment. Such a view goes against the traditional freedom granted to belligerents in respect of their own territory. Thirdly, the Resolution may even imply that Iraq is liable for damage to the environment caused by Coalition forces, on the basis that they were responding to Iraq's unlawful invasion of Kuwait. Such unprecedented conclusions suggest that this Resolution should be read narrowly. Its most significant aspect is that Iraq's liability in this instance appears to arise from a finding that its invasion of Kuwait was unlawful, which suggests jus ad bellum, rather than jus in bello, as the determining factor in awarding compensation. Thus, a further reason for limiting this Resolution to its particular circumstances is that it implies that 'lawful' belligerents are free to act with less regard to the environment than 'unlawful' ones. Much of the Resolution's scope will be revealed by the UN Claims Commission established by it, along with other issues, such as standing to claim compensation for environmental damage, jurisdiction over claims for damage to the global commons, and quantification of compensation. All this suggests that while the Resolution's recognition of environmental damage during wartime is significant, all its implications have yet to materialize."[86]

It is clear, however, that liability under the *ius ad bellum* is different from the issue of liability under the *ius in bello*, because both regimes are intentionally made separate in international law, to safeguard the applicability of the laws of war and international humanitarian law, irrespective of the issue whether the war is lawful or not on one side or the other. Thus, Additional Protocol I to the 1949 Geneva Conventions reaffirms

"that the provisions of the Geneva Conventions of 12 August 1949 and of this Protocol must be fully applied to all circumstances to all persons who are protected by those instruments, without any adverse distinction

based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the parties of the conflict... [emphasis added]"[87]

Furthermore, even liability under the *ius in bello* of one side cannot be properly addressed without considering the methods of warfare adopted by the other side because it is the whole picture which has to be taken into account in order to decide on military necessity and its limits in a concrete situation of war. The *ius in bello*, there is no serious dispute, also applies to military action taken by Member States of the United Nations authorised, whether properly or not, to do so by the Security Council.

Finally, it should also be only pointed out that the issue whether under the laws of war crude oil is a "war munitions" (*munition de guerre*) and, as such, subject to seizure and destruction without compensation by a belligerent occupant, is a complex one in the light of State practice and, as shown by the analysis of Evan J. Wallach, it is in no way a clear cut issue in view of the importance of oil in the practice of modern warfare.[88]

This also confirmed by the attacks of the Allied Coalition forces in the Gulf War on the oil sector of Iraq. The publication by Normand and Jochnick notes :

"Much of the bombing campaign followed this pattern of excessive and unnecessary destruction. To deny supplies of oil to the Iraqi Army, it would have been sufficient to destroy just one element of the oil production chain, which consists of extracting, refining, piping, degassing, storage, and distribution. Nonetheless, the Coalition repeatedly attacked each element of production in oil fields, from Rumailah in the south to Kirkuk in the north, well after production and distribution had been halted by initial attacks. It also destroyed water injection systems that maintain pressure on underground reserves for purposes of long-term exploitation and have no value as military targets. Most of the destruction of Iraq's oil industry, which resulted in billions of dollars of damage on the most important sector of Iraq's economy, was unnecessary from a strictly military perspective. As one military analyst has noted, Coalition strategists were aware that Iraq's army had stockpiled enough oil to last well over one month, the Pentagon's estimate of how long the war was expected to last. To pump, refine, and distribute new oil to Iraqi forces, however, would have taken well over one month. As a result, the repeated blow to Iraq's ability to achieve

post-war economic recovery, did not result in any military advantage to the Coalition's war effort."[89]

The above issues require proper legal defence of Iraq for Panels of the Commission to be able to reach reasonable decisions on both the law and the application of the law to the facts of these type of claims. This is also apparent from the pending WBC Claim of KOC concerning the alleged burning of Kuwaiti oil wells by Iraqi forces. None of the above legal and factual issues (and quite a number of others which will be taken up in the Panel proceedings) which are central to the jurisdiction of the UNCC and the legal basis of the claim have been properly raised and addressed.

According to Resolution 687, in contrast to the unqualified and much more general determination of the liability of Iraq in earlier Security Council Resolutions,[90] Iraq shall be liable "under international law for any direct loss, damage - including environmental damage and the depletion of natural resources - or injury to foreign Governments, nationals and corporations as a result of its unlawful invasion and occupation of Kuwait."[91] The reference to the direct link required between an act and the damage resulting therefrom is indeed a reference to international law on State responsibility and liability. But what does "direct" exactly mean under the terms of the Commission and how is it legally related to the further qualification " ...as a result of its unlawful [emphasis added] invasion and occupation of Kuwait"? For example, does the latter cover or exclude specific actions taken by Iraqi forces during the armed conflict which, as such, are, or may be, recognized as lawful under the laws of war, e.g. justified under the principle of military necessity within its limits?[92]

The Governing Council, in its Decisions 1 and 7, attempted to give some more guidance on the precise meaning of the above by deciding that compensation payments are available with respect to any direct loss suffered as a result of :

"(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;

(b) Departure from or inability to leave Iraq or Kuwait (or a decision not to return) during that period;

(c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;

(d) The breakdown of civil order in Kuwait or Iraq during that period; or

(e) Hostage-taking or other illegal detention."[93]

The definition of these five "situations" is intended to make the requirement of the direct causality link more transparent by listing "typical" circumstances under which damage and loss occurred during the Gulf conflict. If one of the aforementioned "situations" exists, it is presumed in all Categories of Claims that the requirement of a direct and actual link is fulfilled.[94] However, it is quite obvious that the standard provided by the Governing Council in this respect remains very vague and general and is far from being clear in its exact scope of application, which in the end can only be determined with regard to individual claims or groups of claims by the Panels of Commissioners on a case-by-case basis.[95] This requires proper legal defence of the Respondent.

It is not within the scope of the present argument to enter into the details of the legal criteria of distinguishing between "direct" and "indirect" damage in the complicated general area of State responsibility in international law, which include the current efforts of the International Law Commission to codify the rules for "State Responsibility for Internationally Wrongful Acts", on the one hand, and the separate project of codifying "International Liability for Injurious Consequences Arising out of Acts not Prohibited by International Law".[96] It is clear, however, that under the general rules of State responsibility and liability the causal connection between the alleged international law violation and the resulting damage must always be provable.[97] There is no doubt that the specific legal issues related to this requirement are of central importance for many aspects of the jurisdiction and decisions of the Commission. They simply cannot be avoided for reasons of legal logic based on political interest considerations.

It is certain that in the higher Categories of Claims such generalised presumptions on causality and attribution will not suffice for Panels to determine their jurisdiction and reach reasonable decisions in large and complex cases. Moreover, the unclarity of the scope of claims specifically excluded from the jurisdiction of the UNCC also underline these difficulties.

Iraq Must Be Granted the Right to Present Counterclaims and to Make Set-offs

The UNCC Rules of Procedure are silent on the issue whether Iraq may respond with counterclaims against individual claims by individuals, governments, international organizations, corporations or other entities. As can be seen, *inter alia*, from the work of the Iran-United States Claims Tribunal, the opportunity to present counterclaims or make set-offs against a particular claim is an inherent right of any defendant State.

The right to submit counterclaims or to make set-offs must also apply to the UNCC procedure. There is no reason whatsoever to deny Iraq this right in claims brought against it by corporations or other Governments. It is argued that in large international transactions between a corporation and a State, for example, the break-down of contractual relations cannot be adjudicated properly on the basis of the claims of one side alone, because it is normal practice that such arrangements contain complex and interrelated rights and obligations of both sides which normally lead to dispute. In such cases it is often impossible to determine the merits of a claim without examining the merits of a counter-claim.

Moreover, in more general terms, the denial of the right of Iraq to claim war damages on its part for any wrongful acts committed by Allied forces during and after the "Operation Desert Storm" cannot be sustained. As can be seen from various independent sources[98], the legality of the methods employed and the extent of damage caused by the Allied Coalition are at variance with the laws of war and international humanitarian law protecting, inter alia, the civilian population, which will not be argued in any detail here.[99]

The Procedure Must Guarantee Transparency and Objectivity

Transparency and objectivity is a pre-condition for the effectiveness of the operation of the UNCC scheme in the higher Categories of Claims. Without proper legal defence of Iraq in the proceedings, Panels will lack the necessary information to resolve the many difficult legal and factual issues of the more complex cases. Without proper legal defence and representation of the Respondent State, decisions of the UNCC would be tantamount to a continuous stream of "default judgments" against the same State, in a huge number of complex and large cases in which the Claimant corporation or Government is invariably adequately represented by legal counsel and experts.

This situation is all the more serious in view of the fact that the Commissioners are not independent arbitrators but can only give recommendations requiring confirmation by the Governing Council, a political body, mirroring in its composition the same political body which has established and is maintaining the whole reparations scheme in the name of the United Nations. The integrity of the Panels is therefore not an adequate substitute for the proper legal defence of Iraq. Moreover, even if the Commissioners were independent arbitrators or judges, in proper forms of international arbitration or adjudication this would never be accepted as a valid reason that proper defence of the Defendant may be dispensed with.

As the Respondent State, Iraq has the right to have at least minimum standards of procedural justice and due process respected, even in novel kinds of hitherto unknown forms of "administrative" claims processing against a State. These minimum standards include the right to be represented by independent legal counsel and experts of its own choice and to obtain financing therefor out of Iraqi funds administered or used by the UNCC.

In this connection, it is further relevant that the costs of the administration of the Fund and of the UNCC Secretariat are also to be borne by Iraq. The costs of the Commission are to be paid out of the Fund, which means, in effect, that it is to be financed solely by Iraq. The Commission started operating on the basis of a loan from a UN working capital fund. So far the costs of the administration have been paid out of the Iraqi funds transferred to an escrow account by States holding Iraqi assets under Security Council Resolution 778 (1992). Under the conditions of Security Council Resolution 986, a part of the revenues from the temporary sale of Iraqi oil are to pay for the costs of the administration of the Compensation Fund.[100] The absurd outcome is that Iraq is financing the whole mechanism of the UNCC, while it is prevented from financing its own defence which must be part of the mechanism.

The proper administration of the Compensation Fund requires that Iraq has legal representation of its own choice before the UNCC not only in the interest of Iraq as the Respondent State, but also because of a legal obligation of the United Nations and its Member States to guarantee the transparency and integrity of claims proceedings conducted against a sovereign Member State under UN auspices. Moreover, the objectivity of the proceedings is important: one essential element of such objectivity, albeit not the only one, is the right of the Defendant to proper legal defence. Especially in such large and complex cases as submitted in Categories "D", "E" and "F", neither justice nor even only a proper "administration" of claims under simplified procedures can be done

without equal opportunities of the parties to have legal representation of their own choice. A reasonable and balanced decision by the Panels in such cases is otherwise either impossible or highly unlikely to be taken.

Moreover, proper legal defence of Iraq is also in the interest of Claimants with justifiable claims against Iraq for the following reason. In view of the unprecedented number and total amount of claims filed with the UNCC, it is not likely that all claims will ever to be satisfied, even if Iraq, its oil resources, and its population were in fact kept under tutelage for many years to come. The decisions of the Governing Council on which Claims should be paid on a priority basis or a system of pro-rata sharing to counter the "first-come-first-served principle" in the allocation of limited funds will not solve the basic problem that Claimants with sound Claims will fail in the end because of the payment of inflated, frivolous, and legally and factually unsubstantiated claims, if there is no proper legal defence.

The argument in the present submission rests upon the peculiar and unprecedented nature of the UNCC compensation scheme: it prevents a sovereign Member State of the United Nations from making use of its own resources to finance legal representation of its choice in the defence of its rights and interests, while the claims against that State can be prepared with whatever support and assistance which the Claimant can enlist with their unrestricted funds and the administration of the scheme itself can spend, at the expense of the defendant State, whatever sums it deems appropriate. In sum, Iraq is not asking for "legal aid" [101] but for the recognition of its right as a sovereign State to have access to its own funds and resources for legal defence.

[1] D.D. Caron, Introductory Note, *International Legal Material* 31 (1992), p. 1009; N.C. Ulmer, The Gulf War Claims Institution, *Journal of International Arbitration* (1993), p. 88; B. Affaki, The United Nations Compensation Commission--A New Era in Claims Settlements?, *Journal of International Arbitration* 10 (1993), pp. 21-57, at p. 45; Ch. S. Gibson, Mass Claims Processing: Techniques for Processing Over 400,000 Claims for Individual Loss at the United Nations Compensation Commission, in: R. B. Lillich (ed.), *supra*, pp. 155-186.

[2] For a detailed description of the methods see the first Report of the Panel of Commissioners in Category "A", UN Doc. S/AC.26/1994/2. On "sampling" see the fourth Report of the Panel of Commissioners in Category "A", UN Doc. S/AC.26/1995/4 and the first Report of the Panel of Commissioners in Category "C", UN Doc. S/AC.26/1994/3. On "regression analysis" see the second Report of this Panel.

[3] See UN Doc. S/AC.26/1995/4, p. 5.

[4] For a comprehensive analysis and criticism of the reparations regime from the viewpoint of international law and practice see B. Graefrath, Iraqi Reparations and the Security Council, *Zeitschrift für auslandisches offentliches Recht und Volkerrecht 55* (1995), pp. 1-68.

[5] See Art. 40 (1) of the *Provisional Rules for Claims Procedure*, *supra*.

[6] See Letter dated 27 May 1991 from the Minister for Foreign Affairs of Iraq Addressed to the President of the Security Council, UN Doc. S/22643 of 28 May 1991 (concerning Security Council Resolution 692 (1991).

[7] For the history of drafting the *Provisional Rulesfor Claims Procedure* see M. F. Raboin, The Provisional Rules for Claims Procedure of the United Nations Compensation Commission: A Practical Approach to Mass Claims Processing, in: R.B. Lillich (ed.), *supra*, pp.119-154.

[8] Secretary-General Report, U.N. Doc. S/22559, *supra*, para. 26.

[9] Art. 16 of the *Provisional Rules for Claims Procedure*, *supra*.

[10] Art. 16 (1).

[11] Art. 16 (3).

[12] Art. 16 (4).

[13] Art. 16 (3) last sentence.

[14] Art. 16 (3) with reference to Art. 32.

[15] Also noted by H. Fox, *The Position of the Defendant State in Claims of War Damage,* Paper presented at the VXIV Biennal IBA Conference 1992, p. 9.

[16] "Unless otherwise provided in these procedures or decided by the Governing Council . . .", Art. 30 of the *Provisional Rules for Claims Procedure*, which also contains the exception that "the secretariat may provide status reports to Governments, international organizations or corporations making claims directly to the Commission in accordance with Article 5, paragraph 3, regarding claims that they have submitted."

[17] Art. 30 (2) of the *Provisional Rules for Claims Procedures, supra.*

[18] Laid down in general terms in Art. 31 of the *Provisional Rules for Claims Procedure, supra.*

[19] See, for example, the Letter dated 12 February 1993 from the Minister for Foreign Affairs addressed to the President of the Security Council, UN Doc. S/25305 of 18 February 1992 protesting against Governing Council Decision 16 relating to the imposition of interest on compensation.

[20] The same article provides that Commissioners may request the Governing Council to provide further guidance on these procedures at any time and that the Governing Council "may adopt further procedures or revise them when circumstances warrant."

[21] Art. 40 (5) of the *Provisional Rules for Claims Procedure, supra.*

[22] This has occurred for the first time in the Egyptian "departure claims" with the Panel chaired by Prof. Karl-Heinz B,ckstiegel and for the second time in the pending WBC Claim. The Egyptian "departure claim" is a consolidated Ciaim filed by Egypt in Category "C" concerning 1,2 million individual Claims of 900,000 Egyptian guest-workers with regard to partial payments on their salaries in US $ which Iraq used to transfer to Egypt and the transfer of which ceased after the occupation of Kuwait. An unpublished interim decision of the Panel reviewing the consolidated Claim has determined which of the individual claims fall under the jurisdiction of the Commission. Egypt and Iraq have been given time-limits within which to submit documents on the amounts of the individual claims and a final decision is expected to be rendered by the end of 1996.

[23] Affaki, *supra*, p. 22.

[24] Christopher P. Hall/Scott J. Newton, International Arbitration Bodies: A Survey, *New York Law Journal*, June 16, 1992, p. 6.

[25] Carlos Alzamora, Reflections on the UN Compensation Commission, *Arbitration International* 9 (1993), p. 349.

[26] *Ibid.*, pp. 353-354.

[27] *supra*, p. 355.

[28] Charles N. Brower, International Law: Credibility Depends on Iraqi Reparations, *Middle East Executive Reports* (May 1992); Brower, The United Nations Sets the Stage for Gulf War Compensation Claims, *Journal of International Arbitration* 8

(1991), pp. 8-11; Brower, United Nations Commission Applies the Lessons of Iran to Iraq, *Financial Times*, 12.9.1991; Brower, Determining and Paying Iraqi Claims Involves Complex Issues, *The Institute for Transnational Arbitration* 6 (1991), pp. 3-4; Brower, The United Nations Compensation Commission and Iraq (Memorandum on the basic machinery and framework for the Iraqi Claims Program); J.R. Crook, The United Nations Compensation Commission: A New Structure to Enforce State Responsibility, *American Journal of International Law* 87 (1993), pp. 144-157. See also the contributions by various authors in R.B. Lillich (ed.), *supra*.

[29] For an Iranian view on the Tribunal experience see, for example, A. Mouri, Aspects of the Iran-United States Claims Tribunal, *Asian Yearbook of International Law* 2 (1994), pp. 61-85; Mouri, Striking a Balance between the Finality of Awards and the Rights to a Fair Judgment: What Is the Contribution of the Iran-U.S. Claims Tribunal?, *The Finnish Yearbook of International Law* 4 (1993), pp. 1-97; Mouri, Treatment of the Rules of the International Law of Money by the Iran-US Claims Tribunal, *Asian Yearbook of International Law* 3 (1993), pp. 71-110; Mouri, The Iran-US Claims Tribunal: Its Contribution to International Law and Practice. Remarks by Allahyar Mouri, in: *Contemporary International Law Issues Opportunities at a Time of Momentous Change*. Proceedings of the ASIL/NVIR Second Joint Conference held in the Hague , The Netherlands, July 22-24, 1993, pp. 19-21.

[30] Arthur Rovine, An Iraq Claims Process: Where and How?, *The American Review of International Arbitration* 1 (1991), p. 415. For other more recent assessments of the work of the Tribunal see, for example, D. Caron, The Nature of the Iran-United States Claims Tribunal and the Evolving Structure of International Law, *American Journal of International Law* 84 (1990), pp. 104-56; Ch. N. Brower, The Iran-United States Claims Tribunal, *Recueil des Cours* 224 (1990-V); R. Khan, *The Iran-United States Claims Tribunal: Controversies, Cases and Contribution* (1990); N. Wühler, Zur Bedeutung des Iran-United States Claims Tribunal für die Rechtsfortbildung, in: K.-H. Böckstiegel (ed.), *Rechtsfortbildung durch Internationale Schiedsgerichtsbarkeit* (1989), pp. 93-124; K.-H. Böckstiegel, Zur Bedeutung des Iran-United States Claims Tribunal für die Entwicklung des internationalen Rechts, in: *Festschrift der Rechtswissenschaftlichen Fakultät zur 600-Jahr-Feier der Universität zu Köln* (1988), pp. 605-31; J.A. Westberg, *International Transactions and Claims Involving Government Parties - Case Law of the Iran-United States Claims Tribunal* (1991); W. Mapp, *The Iran-United Claims Tribunal. The First Ten Years 1981-1991* (1993); G.H. Aldrich, What Constitutes a Compensable Taking: The Decisions of the Iran-United States Claims Tribunal, *American Journal of International Law* 88 (1994), pp. 585-610.

[31] See V.S. Mani, *International Adjudication. Procedural Aspects*. New Delhi: Radiant Publishers (1980), p. 12.

[32] Mani, *ibid.*, p. 14. See also M. Kazazi, *Burden of Proof and Related Issues - A Study on Evidence Before International Tribunals*, p. 153 et seq.

[33] Mani, *ibid.*, p. 25, inter alia, with reference to Carlston.

[34] Mani, *ibid.*, p. 30.

[35] Mani, *ibid.*, p. 30 with reference to authorities such as Carlston and Guggenheim.

[36] See Kazazi, *supra*, with a brief reference to the issues of evidence, including the burden and standard of proof, before the UNCC at p. 10 et seq.

[37] Mani, *ibid.*, p. 33.

[38] See Mani, *ibid.*, p. 48 et seq.

[39] See Stephan Verosta, Denial of Justice, *Encyclopedia of Public International Law* 10 (1987), pp. 96 et seq.; A.O. Adede, A Fresh Look at the Meaning of the Doctrine of Denial of Justice under International Law, *Canadian Yearbook of International Law* (1976) 14, pp. 73-95; G.G. Fitzmaurice, The Meaning of the Term "Denial of Justice", *British Yearbook of International Law* 13 (1932), pp. 93-114; C. Eagleton, Denial of Justice in International Law, *The American Journal of International Law* 22 (1928), pp. 538-559; C. de Visscher, Le deni de justice en droit international, *Recueil des Cours* 52 (1935 II), pp. 366-442.

[40] Le Droit des Gens (1958) Book II, Chapter 18, para. 350, in: J.B. Scott (ed.), *Classics of International Law* (1916) (translation by C.J. Fenwick).

[41] See H. Mosler, General Principles of Law, *Encyclopedia of Public International law*, Volume II (1995), pp. 511-27: general principles in the sense of Art. 38 (1)(c) as a source of international law may refer to general principles of international law as such, or to common principles which may be discerned on the basis of a comparative analysis of national legal systems. See also G. Hanessian, "General Principles of Law" in the Iran US Claims Tribunal, *Columbia Journal of International Law* 27 (1989), p. 309; M.C. Bassiouni, A Functional Approach to "General Principles of International Law", *Michigan Journal of International Law* 11 (1990), 768-818; V.-D. Degan, General Principles of Law (A Source of General International Law), *Finnish Yearbook of International Law* 3 (1992), pp. 1-102.

[42] Noted also in connection with a criticism of the Commission by E.J. Garmise, The Iraqi Claims Process and the Ghost of Versailles, *New York University Law Review* 67 (1992), pp. 840-878, at p. 871 with reference to *Goldberg v. Kelly*, U.S. 254 (1970); *Mathews v. Eldridge*, 424 U.S. 319 (1976) ("All that is necessary is that the procedures be tailored, in light of the decision to be made, to the capacities and circumstances of those who are to be heard, in light of the decision to be made, to insure that they are given a meaningful opportunity to present their case.").

[43] Article 1.

[44] See Hazel Fox/C. Wickremasinghe, British Implementation of UN Sanctions Against Iraq, *International and Comparative Law Quarterly* 41 (1992), pp. 920-938, at pp. 933-934.

[45] Iraq was represented by Landau & Scanlan.

[46] *Financial Times*, 16 July 1992.

[47] Hobson Hudley.

[48] See L.B. Sohn, Peaceful Settlement of Disputes, *Encyclopedia of Public International law*, Instalment 1 (1981), pp. 154-6; L.B. Sohn, The Future of Dispute

Settlement, in: R.St.J. Macdonald/D.M Johnston (eds.), *The Structure and Process of International Law* (1983), pp. 1121-46; I. Diaconu, Peaceful Settlement of Disputes between States: History and Prospects, *ibid.*, pp. 1095-120; R. Higgins, International Law and the Avoidance, Containment and Resolution of Disputes, *Recueil des Cours* (1991-V), p. 230; J.G. Merrills, *International Dispute Settlement*, 2nd ed. (1991), p. 1; E. Lauterpacht, *Aspects of the Administration of International Justice* (1991); Institute of International Public Law and International Relations of Thessaloniki, *Pacific Settlement of Disputes*. Vol. XVIII. Thesaurus Acroasium (1991); K.-H. Böckstiegel, Internationale Streiterledigung vor neuen Herausforderungen, in: *Festschrift f. Rudolf Bernhardt* (1995), pp. 671-86; I. Brownlie, The Peaceful Settlement of International Disputes in Practice, *Pace International Law Review* 7 (1995), pp. 257-79; M. Brus, *Third Party Dispute Settlement in An Interdependent World - Developing A Theoretical Framework*, 1995; P. Malanczuk, "Alternative Dispute Resolution" (ADR) in International Commercial Disputes: Lessons from Public International Law, paper for the XVIIth Annual Meeting of the ICC Institute on International Business Law and Practice, "International Commercial Disputes: New Solutions?", Brussels, 24-25 October 1995 (1996) (in print).

[49] See Chapter I.5. below.

[50] Eyal Benvenisti/Eyal Zamir, Private Claims to Property Rights in the Future Israeli-Palestinian Settlement, *American Journal of International Law* 89 (1995), p. 334.

[51] Article 33 of the UN Charter provides "the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means."

[52] See R.B. Lillich/B.H. Weston, *International Claims: Their Settlement by Lump Sum Agreements* (1975). See also the recent settlements (with regard to property claims) Albania-United States: Agreement on the Settlement of Certain Outstanding Claims and Financial Issues of 10 March 1995, *International Legal Materials* 34 (1995), pp. 595 et seq.; Cambodia-United States: Agreement Concerning the Settlement of Certain Property Claims of 6 October 1994, *ibid.*, p. 600 et seq.; Socialist Republic of Vietnam-United States: Agreement Concerning the Settlement of Certain Property Claims of 28 January 1995, *ibid.*, p. 685 et seq.

[53] See *supra*.

[54] See Bernhard Graefrath, *supra*, p. 4.

[55] See generally H.G. de Jong, Coercion in the Conclusion of Treaties, *Netherlands Yearbook of International Law* 15 (1984), pp. 209-247.

[56] See *supra*.

[57] See Chapter I.5. below.

[58] For the text of the relevant parts of this Resolution see above footnote 28.

[59] *Supra.*

[60] See Identical letters dated 6 April 1991 for the Minister for Foreign Affairs of the Republic of Iraq addressed respectively to the Secretary-General and the President of the Security Council, UN Doc. S/22456 of 6 April 1991 (concerning Security Council Resolution 687 (1991) and Letter dated 27 May 1991 from the Minster for Foreign Affairs of Iraq Addressed to the President of the Security Council, UN Doc. S/22643 of 28 May 1991 (concerning Security Council Resolution 692 (1991).

[61] Apart from the application of the rules on waiver in general international law, an analogy can be also drawn to the principle underlying Article 30 of the UNCITRAL Arbitration Rules.

[62] Fox, *supra*, p. 3.

[63] *Ibid.*

[64] See Graefrath, *supra*, pp. 11 et seq.

[65] *ICJ Reports*, at pp. 65, 17.

[66] See T.D. Gill, *supra*, at p.46.

[67] *Ibid.*, pp. 64 et seq.

[68] Garmise, *supra*, p. 864.

[69] See V. Gowlland-Debbas, Security Council Enforcement Action and Issues of State Responsibility, *International and Comparative Law Quarterly* (1994), pp. 55-98 with further references.

[70] Michael F. Raboin, The Provisional Rules for Claims Procedure of the United Nations Compensation Commission: A Practical Approach to Mass Claims Processing, in: Richard B. Lillich (ed.), *The United Nations Compensation Commission*, Thirteenth Sokol Colloquium (1995), pp. 119-153, at p. 153.

[71] Norbert Wühler, Ansprüche gegen Irak vor der United Nations Compensation Commission, *Betriebs-Berater*, Beilage 5 zu Heft 12 1996, 21.3.1996, pp.23-29, at p. 28.

[72] See Affaki, *supra*, pp. 49 et seq.

[73] See Affaki, *supra*, p. 51.

[74] See, for example: Decision 4: Business Losses of Individuals Eligible for Consideration under the Expedited Procedures (S/AC.26/19911/4); Decision 9: Propositions and Conclusions on Compensation for Business Losses: Types of Damages and Their Valuation (S/AC.26/1992/9); Decision 15: Compensation for Business Losses Resulting from Iraq's Unlawful Invasion and Occupation of Kuwait where the Trade Embargo and Related Measures Were also a Cause (S/AC.26/1992/15); Decision 16: Awards of Interest (S/AC.26/1992/16).

[75] Governing Council Decision 7, UN Doc. S/AC.26/1991/7/Rev.1, para. 35. See below.....

[76] B. Stern, *Les problemes de responsibilite poses par la crise et la guerre du Golfe*, C.E.D.I.N. seminar, 7-8 June 1991, Montchrestien Publ., p. 354..

[77] For a comprehensive treatment see A. Kiss/ D. Shelton (eds.), *International Environmental Law* (1991); P. Neuhold/W. Land/K. Zemanek, *Environmental Protection and International Law* (1991); P. Birnie/A. Boyle (eds.), *International Law and the Environment* (1992). See also V.P. Nanda, Trends in International Environmental Law, *California Wertern International Law Journal* 20 (1990), pp. 187-205; V. Koester, From Stockholm to Brundtland, *Environmental Policy and Law* 20 (1990), pp. 14-9; A.O. Adede, International Environmental Law from Stockholm to Rio - An Overview of Past Lessons and Future Challenges, *Environmental Policy and Law* 22 (1992), pp. 88-105; J. Mayda, Recent Developments in Environmental Law Making, *Environmental Policy and Law* 23 (1993), pp. 204-12; M.A. Fitzmaurice, International Environmental Law as a Special Field, *Netherlands Yearbook of International Law* 25 (1994), pp. 181-226; L. Gündling, Environment, International Protection, *Encyclopedia of Public International Law,* Volume II (1995), pp. 96-107 with Addendum by R. Müller/B. Süss; P. Malanczuk, Sustainable Development: Some Critical Thoughts in the Light of the Rio Conference, in: K. Ginther/E. Denters/P. J.I.M. de Waart, *Sustainable Development and Good Governance* (1995), pp. 23-52.

[78] See A. Roberts/R. Guelff (eds.), *Documents on the Laws of War,* 2nd ed. (1989), Introduction, p. 1; C. Greenwood, The Relationship between *ius ad bellum* and *ius in bello*, *Review of International Studies* (1983), pp. 221-34.

[79] See Harry H. Almond, The Use of the Environment as an Instrument of War, *Yearbook of International Environmental Law* 2 (1991), pp. 455-68, at pp. 459-10.

[80] Reference is made to the staff judge advocate for the US Central Command, Col. R. Ruppert and Gen. Colin Powell, Chairman, Joint Chiefs of Staff.

[81] Reference is made by the author to O. Schachter, United Nations Law in the Gulf Conflict, *American Journal of International Law* 85 (1991), pp. 452 et seq. and to G. Plant, *Environmental Protection and the Law of War: A "Fifth Geneva" Convention on the Protection of the Environment in Time of Armed Conflict* (1992). The latter book contains the proceedings of a conference organised by Greenpeace, the centre for Defence Studies of the University of London and the Centre for Environmental Law and Policy of the London School of Economics, at which, *inter alia*, the issue of "collateral damage" inflicted by coalition forces of Iraq's upon civil electricity and communications system and its transportation system was discussed.

[82] F.P. Feliciano, Marine Pollution and Spoliation of Natural Resources as War Measures: A Note on Some International Law Problems in the Gulf War, in: R. St. J. Macdonald (ed.), *Essays in Honour of Wang Tieya* (1994), pp. 285-310, at p. 285.

[83] Roger Normand/Chris af Jochnick, The Legitimation of Violence: A Critical Analysis of the Gulf War, *Havard International Law Journal* 35 (1994), pp. 387-416, at 390-393 with extensive references.

[84] Ibid., pp. 399-402.

[85] Almond, *supra*, pp. 455-468, at p. 466.

[86] R.G. Tarasofshy, Legal Protection of the Environment during International Armed Conflict, *Netherlands Yearbook of International Law* 24 (1993), pp. 17-79, at pp. 75-76.

[87] Preamble, text in Roberts/Guelff (eds.), supra, at p. 389.

[88] See Evan J. Wallach, The Use of Crude Oil by an Occupying Belligerent State as a *Munition de Guerre*, *International Comparative Law Quarterly* 41 (1992), pp. 287-310.

[89] *Supra*, at pp. 405-406.

[90] See *supra*.

[91] *Supra*.

[92] See *supra*.

[93] Decisions 1 and 7, *supra*.

[94] See Wühler, *supra*, at p. 26.

[95] See Wühler, *ibid.* See on the problem also Wühler, Causation and Directness of Loss as Elements of Compensability before the United Nations Compensation Commission, in Lillich, *supra*, p. 207 et seq.; A.W. Rovine/G. Hanessian, Toward a Foreseeability Approach to Causation Questions at the United Nations Compensation Commission, *ibid.*, p. 235 et seq.

[96] For references to the extensive literature see P. Malanczuk, Haftung, in: K.-H. Böckstiegel (ed.), *Handbuch des Weltraumrechts* (1991), pp 766-772, at pp. 766 et seq.;

[97] Steinkamm, *supra*, p. 299 with reference to the Naulilaa Arbitration (Portugal v. Germany).

[98] See Normand/Jochnick, *supra*, with detailed references.

[99] On the rules of international humanitarian law, see, for example, F. Kalshoven, *Constraints on the Waging of War*, 1987; H. McCoubrey, *International Humanitarian Law*, 1990; A.J.M. Delissen/G.J. Tanja (eds.), *Humanitarian Law of Armed Conflict: Challenges Ahead: Essays in Honour of Frits Kalshoven*, 1991; F. Kalshoven, Prohibitions or Restrictions on the Methods and Means of Warfare (with comments by R. Lagoni and G.J.F.v. Hegelsom), in: I.F. Dekker/H.H.G. Post (eds.), *The Gulf War 1980-1988. The Iran-Iraq War in International Legal Perspective*, 1992, 97 et seq.; L.C. Green, *The Contemporary Law of Armed Conflict*, 1993; H.G. Post (ed.), *International Economic Law and Armed Conflict*, 1994; Y. Dinstein, *War, Aggression and Self-Defence*, 2nd. ed. 1994; D. Fleck (ed.), Handbuch des humanitären Völkerrechts in bewaffneten Konflikten, 1994; M.S. McDougal/F.P. Feliciano, *The International Law of War: Transnational Coercion and World Public Order* (1994); K.J. Partsch, *Humanitarian Law and Armed Conflict, Encyclopedia of Public International law*, Volume II (1995), pp. 933-6.

[100] In December 1992 the Governing Council established the UN Compensation Committee on Administrative Matters. The Committee consists of representatives of the Governing Council and provides guidance on the annual administrative budget and other administrative and financial matters. *Establishment of the UNCC Committee on Administrative Matters*, Decision taken by the Governing Council of the UNCC at its 31st meeting, held in Geneva on 18 December 1992, U.N. Doc. S/AC.26/1992/14 (1992).

[101] See the extensive study of legal aid in domestic legal systems by Cappelletti, Gordley and Johnson, *Toward Equal Justice: A Comparative Study of Legal Aid in Modern Societies* (Milan 1975). See also M. Capellitti and B. Garth (eds.) , *Access to Justice*, Vol. 1, A World Survey, Books 1 and 2 (Alphen an den Rijn/Milan 1978); Tom Kennedy, Paying the Piper: Legal Aid in Proceedings Before the Court of Justice, *Common Market Law Review* 25 (1988), pp. 559-591; Marianne Wilder Young, The Need for Legal Aid Reform: A Comparison of English and American Legal Aid, *Cornell International Law Journal* 24 (1991), pp. 379-405. See further the Judgment of the European Court of Human Rights in Granger v. United Kingdom (Refusal of Legal Aid), *European Human Rights Reports* 12 (1990), pp. 469-484.

Annex II

Chairman's statement

The Governing Council discussed the presentation made by the Government of Iraq on 14 October 1996 to the Governing Council.

The Governing Council agreed that the Government of Iraq continues to be welcome to participate effectively in the work of the United Nations Compensation Commission in a manner consistent with the relevant decisions of the Security Council, the provisional rules for claims procedure (the "rules"), and decisions and procedures agreed to by the Governing Council under article 43 of the rules.

The requests submitted to the Governing Council by the Government of Iraq dealing with the Security Council's establishment of the United Nations Compensation Commission, including its structure and composition, and the use of the United Nations Compensation Fund were matters within the sole competence of the Security Council.

The request of the Government of Iraq with respect to the WBC claim was addressed by the Governing Council due to the expected conclusion of the work of the Panel of Commissioners prior to the next session of the Governing Council. The Governing Council noted that the claim is now under consideration by the Panel in accordance with the rules. This will be considered in accordance with article 40 of the rules when the Governing Council receives the report and recommendations of the Panel of Commissioners.

It was agreed that other issues raised by the Government of Iraq and measures to effectively improve Iraq's participation would be addressed in greater detail at the next session of the Governing Council.

It was agreed that the report of the United Nations Compensation Commission to the Security Council regarding this session of the Commission should include this information, which should also be conveyed to the Government of Iraq by the President of the Governing Council.

Annex III

Report and recommendations made by the Panel of Commissioners concerning the sixth instalment of claims for departure from Iraq or Kuwait (category "A" claims)*

CONTENTS

* Previously circulated under the symbol S/AC.26/1996/3.

Introduction

1. This report contains the recommendations to the Governing Council of the Panel of Commissioners (the "Panel") appointed to review claims for departure from Iraq or Kuwait ("category 'A' claims") pursuant to article 37(e) of the Provisional Rules for Claims Procedure (S/AC.26/1992/10, hereinafter the "Rules"), concerning the sixth and final instalment of claims submitted to the Panel by the Executive Secretary of the United Nations Compensation Commission (the "Commission").1/ Category "A" claims are claims for departure from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991 (the "relevant jurisdictional period").2/ Category "A" claims are among the "most urgent claims" for which the Governing Council decision on "Criteria for Expedited Processing of Urgent Claims" (S/AC.26/1991/1, Decision 1), has set forth "simple and expedited procedures" in order to provide "prompt compensation in full" or "substantial interim relief".

2. The first three reports issued by the Panel made recommendations with respect to 348,645 category "A" claims out of a total of more than 900,000 such claims registered with the Commission. The recommendations for the first three instalments of category "A" claims were mainly made on the basis of the expedited procedure provided by article 37 (a) of the Rules, i.e., verification by matching against information in the secretariat's computerized database.3/ In its fourth and fifth reports, which covered an additional 435,033 claims, the Panel proceeded to the second phase of verification using the expedited procedure provided by article 37(b) of the Rules, i.e., checking individual claims on the basis of sampling.4/

3. Many of the claims contained in the sixth instalment have also been verified on the basis of the sampling methodology, while others have been examined individually and have been recommended for payment, or otherwise, on the basis of the evidence of departure attached to each claim. The legal principles and issues underlying the sampling methodology, the status of this methodology under international law and various national jurisdictions, and the sampling methodology as such are discussed in the fourth report. A description of the methodology used to review claims individually is contained in section II.E, infra.

4. The Panel held a working session with the secretariat of the Commission from 17 to 20 June 1996 to discuss and approve the methodology and procedures used by the secretariat to process the sixth instalment of category "A" claims and to initiate the review of the claims included

therein. The Panel held a further session from 8 to 10 July 1996 to complete the review of claims in the sixth instalment and to finalize this report.

I. COMPOSITION OF THE SIXTH INSTALMENT OF CATEGORY "A" CLAIMS

5. The finalization of the sixth report comprising the remaining category "A" claims has been done keeping in view the suggestion made by the Governing Council that the sixth instalment of category "A" claims should be submitted to the Council for approval at its October 1996 meeting. With this report the Panel will have completed its review of all the category "A" claims that have been filed with the Commission.5/

6. All of the claims in the sixth instalment were verified through either the sampling methodology or individual examination. The majority of the claims in this instalment were reviewed pursuant to the determinations made by the Panel by applying the sampling methodology discussed in the fourth report. Among these are claims that were received at the secretariat subsequent to the 1 January 1995 filing deadline established in Governing Council Decision 23 [S/AC.26/Dec.23 (1994), Decision 23], which could not be included in the fourth or fifth instalments because they were accepted for filing by the Governing Council only after the claims included in those two instalments had already been processed through sampling. Other claims included in the sixth instalment were submitted within the submission deadline but had been kept from further processing due to possible duplication or to their being in an improper format (see section II.A and B, infra). Once these issues had been clarified, these claims were also dealt with through sampling and are now included in this instalment.

7. A small portion of the claims included in this instalment were examined individually, pursuant to the Panel's determinations as to the composition of the second instalment (see section III. A and B of the second report) and by application of the sampling methodology (see note 4). The Panel also reviewed individually the claims submitted by Iraqi dual nationals (see section II.D, infra).

8. Additionally, claims for higher individual or family amounts that were submitted by claimants who have also filed claims in other categories, contrary to the instructions of the Governing Council, are dealt with in this instalment (see section II.C, infra). Finally, this instalment includes claims that, having been approved for payment in previous

instalments, were corrected in accordance with article 41 of the Rules (see section III, infra).

II. THE PROCESSING OF THE SIXTH INSTALMENT

A. Format of claims

9. As explained in section IV.B.1 of the first report, one of the purposes of the preliminary "validation" process to which all the computerized claims in the "A" Claims Database were subjected was to determine whether they had been submitted in the proper format, i.e., whether sufficient information about the claimant's identity had been given in the claim form, whether information about family members had been provided in claims for family amounts, and whether the claims contained the proper codes for, inter alia, the amount claimed, the submitting country and the claimant's nationality. When the computer had detected that any of these technical requirements had not been met by a particular claim, such a claim had previously been separated from the other claims and had not been allowed to move to the subsequent processing stages. Therefore, no such claims had been included in the previous five instalments.

10. In order that these claims could continue to the subsequent phases of the validation process and eventually to a decision on the merits, i.e., whether the claimants departed from Iraq or Kuwait within the relevant jurisdictional period, appropriate steps were taken as are summarized below.

1. Claims with insufficient claimant identity information

11. Eleven claims were detected as having no valid information in any of the fields that would make it possible to identify the claimants (claimant's name, passport number, Kuwait's Civil Identification Number, address, sponsor's name and family members' names). The Panel did not review these claims on the merits and holds them not to be eligible for compensation.

2. Improper family claims

12. In the case of the "improper family claims", i.e., those claims where a family amount of US$5,000 or US$8,000 was claimed but no family member was listed in the corresponding field, the amounts claimed were converted to the higher individual amount of US$4,000.6/

3. Appropriate compensation amount codes

13. In the computerized category "A" claim form, two fields contain information concerning the compensation amount claimed. One is in the form of check-boxes--replicating the boxes in the original paper claim form--in which a claimant could tick one of the four amount options, i.e., US$2,500, US$4,000, US$5,000 or US$8,000. The computerized claim form converts these options into corresponding numerical codes, i.e., 1, 2, 3 or 4. These "claim amount codes" need to correspond to the "real" claim as the computer system calculates the compensation per claim on the basis of these codes and produces the report of compensation awarded per claim that is provided to the Governments and international organizations upon approval of the relevant instalment by the Governing Council.

14. The second field containing information about the amount claimed is the one in which the complete figure of any of the four amount options claimed is displayed on the computer screen in order to provide the data verification analyst with information about the amount claimed. This "total claim amount" field does not replicate any field in the original paper claim form, but rather the figure displayed is generated from the claim amount code entered, e.g., when claim amount code 1 has been entered, the total claim amount of US$2,500 appears on the computer screen.

15. Technically invalid claim amount codes were replaced by the correct codes when information was contained in the claim form that enabled the determination of the appropriate code, such as family members or total claim amount provided. Thus, for each total claim amount of US$2,500, US$4,000, US$5,000 or US$8,000, respectively, the corresponding claim amount code of 1, 2, 3 or 4, was entered to replace the existing technically invalid code.

B. Duplicate claims within the "A" claims category

16. In section IV.B.3 of the first report, the Panel noted that a number of claims in the "A" Claims Database were duplicates. This duplication was mainly due to the inadvertent multiple submission of claims or to claims being loaded more than once into the secretariat's computerized database.

17. In order to prevent multiple recovery resulting from such duplication, the secretariat carried out a three-level validation process aimed at identifying duplicate claims. First, a computer programme compared all claims to each other using the following combinations of

criteria: claimant's nationality, name and year of birth; or claimant's nationality, passport number and year of birth. Claims found to be duplicates were at that stage separated from the other claims as "possible duplicates" and kept from further processing on the merits. Therefore no "possible duplicate" claims were included in the first, second, third, fourth or fifth instalments.

18. Second, the claims were verified to determine whether "possible duplicate" claims were in fact duplicates. To do this, another computer programme compared all "possible duplicate" claims to each other using the following combinations of criteria: claimant's Civil Identification Number issued by Kuwait, nationality and birth year; or claimant's nationality, name, passport number and birth year. Claims in which any of these combinations were found to be identical were determined to be "real duplicates"; one of the claims was then subjected to further processing on the merits and the corresponding duplicate or duplicates were identified as "confirmed duplicates" and removed from further processing.

19. "Possible duplicate" claims that could not be identified as being "real duplicates" during the second stage were then subjected to a third level of validation. This consisted of a manual comparison of printouts of the data contained in the computerized claim forms such as claimant's name, nationality, passport number, date of birth, place of birth, home address or any other available information. Claims found to have the same information were determined to be "real duplicates"; one of the claims was then subjected to further processing on the merits and the corresponding duplicate or duplicates were identified as "confirmed duplicates" and removed from further processing.

20. A total of 35,905 claims from 43 countries and seven international organizations were identified as "confirmed duplicates". The remaining claims were subjected to further processing on the merits after their corresponding "confirmed duplicates" had been removed from further processing and were verified on the basis of the same sampling methodology that was used for the claims in the fourth and fifth instalments.

C. Limitations on claiming in more than one category

21. As explained in sections I.C and IV.C.2 of the first report, the filing of a category "A" claim may limit the claimant's option of filing claims in other categories before the Commission. By filing a category "A" claim for the US$4,000 individual amount or the US$8,000 family amount, a

claimant has agreed not to file claims under any other category. Also, if a claimant intends to file a claim for departure for more than US$2,500, and the loss can be documented, he or she may claim for the full amount of departure losses in a category other than category "A".

22. In Decision 21 the Governing Council established that claimants who have selected a higher amount under category "A" (US$4,000 or US$8,000) and have also filed a claim in category "B", "C" or "D", will be deemed to have selected the corresponding lower amount under category "A", i.e., US$2,500 or US$5,000 (see section IV.D.1 of the fourth report).

23. In an effort to enforce the above rules, the secretariat compared in the Claims Database all category "B" claims with the category "A" claims made for US$4,000 or US$8,000. Where a claimant who filed a category "B" claim was detected by the computer to have also filed a category "A" claim for US$4,000 or US$8,000, these amounts were respectively reduced to US$2,500 and US$5,000 in the category "A" claim, pursuant to Decision 21.

24. In addition, the secretariat is in the process of comparing all category "C" and "D" claims with the category "A" claims made for US$4,000 or US$8,000. Since not all of the category "C" and "D" claims that have been submitted to the Commission have been loaded into the Claims Database yet, this comparison can only be completed once the loading is concluded. Should a claimant who has filed a category "C" or "D" claim be detected to have also filed a category "A" claim for any of the higher amounts, the reduction in the amount of the claim that is mandated by Decision 21, and any consequential corrections, will be carried out by the secretariat at the time that the comparison has been completed.7/

25. Also, a comparison in the Claims Database of all of the category "C" claims containing a "C1" departure claim against all of the category "A" claims is being performed. If, as a result of this comparison, a claimant who has filed a "C1" departure claim is detected to have also filed a category "A" claim, the corresponding deduction will be made from the amount claimed in category "C".8/ A similar comparison will be made between all category "D" claims containing a "D1" departure claim and all of the category "A" claims.

26. In several cases, the comparison procedures described in paragraph 23, supra, affected category "A" claims that had already been approved for payment in previous instalments. This made it necessary to correct the corresponding awards (see section III, infra).

D. Claims filed on behalf of Iraqi nationals

27. Governing Council Decision 1 established that "[c]laims will not be considered on behalf of Iraqi nationals who do not have bona fide nationality of any other State" (S/AC.26/1991/1, Decision 1, paragraph 17). As a result, unless Iraqi nationals have a second nationality they are not eligible to claim compensation before the Commission. This also means that, to be entitled to claim compensation, the second nationality must be possessed in good faith.

28. Neither the Rules nor other Governing Council decisions define the term "bona fide nationality". Therefore, the Panel had to establish the criteria to be met in order for an Iraqi dual national to be considered a bona fide holder of a second nationality.

29. In adopting a method to deal with this issue, the Panel was mindful of two considerations: (1) that the claims in connection with which this issue arose were "urgent claims" for the compensation of which "expedited procedures" had been prescribed by the Governing Council (Decision 1); and (2) that the issue to be determined was whether the second nationality was acquired bona fide in the context of eligibility to be able to claim compensation before the Commission. Neither consideration involved the more complex issue of the effectiveness of nationality. The Panel, therefore, aimed for a method of evaluating the bona fide nationality of these claimants that could be applied without having to resort to lengthy procedures that are incompatible with an expedited approach.9/

30. The logic of the method adopted by the Panel is based on the object of the determination that is to be made, namely, whether an Iraqi dual national had acquired his or her second nationality mainly or solely for the purpose of becoming eligible to claim compensation before the Commission. Applying this logic, it seemed reasonable to hold that an Iraqi dual national would not be considered to have applied for or acquired a second nationality in bad faith if he or she had applied for the second nationality before the eligibility criteria for claims had been established by the Governing Council in Decision 1 on 2 August 1991 ("the relevant date"). Thus, if an Iraqi dual national had applied for or acquired a second nationality before the relevant date, he or she was considered to be the bona fide holder of the second nationality.

31. This would not have precluded the Panel from holding that where an Iraqi dual national had acquired the second nationality after the relevant

date, the second nationality was acquired bona fide, if the particular facts and circumstances of the case justified such a conclusion. In fact, however, the records show that no Iraqi dual national who had submitted a claim had applied for or acquired a second nationality after the relevant date. The Panel, therefore, holds that all Iraqi dual nationals who filed claims with the Commission were holders in good faith of their second nationality.

32. Given the limited number of claims filed by Iraqi dual nationals, the Panel decided that determination on the merits, i.e., whether the claimants departed from Iraq or Kuwait within the relevant jurisdictional period, should be based on an individual review and assessment of the original paper claim forms.

33. In compliance with Decision 1, the Panel did not consider the claims filed on behalf of four Iraqi nationals who do not have the nationality of another country.

E. Methodology adopted for the individual review of claims

34. Article 37 of the Rules authorized the use of further verification, as circumstances warrant, for those claims that could not be verified through matching or sampling. Pursuant to this provision, and on the basis of the results of the review of the claims on a sample basis (see paragraphs 82 and 83 of the fourth report), the Panel determined that certain claims were to be subjected to individual review. These claims included:

(a) claims that were registered in the system as having a date of departure outside the relevant jurisdictional period;

(b) claims that were registered as having no evidence attached; and

(c) claims that were registered as having types of evidence that were not, or were poorly, represented in the sample of the claims filed by the respective Governments and international organizations.

35. In total, 31 Governments and one international organization submitted claims that fell into one or more of these categories.

1. Identification of the claims

36. The claims that fell into one of the above categories were first identified in the category "A" Claims Database. Lists of these claims were

then produced and sent to the respective Governments and international organizations with cover letters requesting that the original paper claim forms, together with their attachments, be forwarded to the secretariat.

2. Assessment of the claims

(a) Determinations on the evidentiary value of documentation attached to claims

37. The general determinations that the Panel made on the probative value of the evidence in the context of the sampling review were also applied to the individual review of the claims. In determining the probative value of the different types of evidence attached to the claim forms the Panel applied the legal criterion set out in Decision 1 and the Rules, i.e., proof of departure from Iraq or Kuwait during the period of 2 August 1990 and 2 March 1991, as well as the general determinations made regarding the evidentiary value of the Arrival/Departure Records (see section IV.D.3 of the first report).

(b) Review and assessment of the claims

38. The individual review of the claims involved the manual examination by the secretariat of every claim form together with the evidence attached in order to determine whether the claimant departed from Iraq or Kuwait within the relevant jurisdictional period. The same evidentiary items that were recognized as establishing proof of departure during the sampling review of the claims were also recognized for the individual review (see section E.2 of the fourth report).

(i) General determinations

39. After reviewing samples of the claims processed by the secretariat, the Panel made a number of general determinations. Unlike the sampling exercise, where three possible assessment categories were adopted (i.e., "conclusive", "possible" and "insufficient"), only two assessment categories were adopted for the individual review of claims: "conclusive" and "insufficient".

40. Claims were assessed as "conclusive" where:

(a) the claimant submitted an item of evidence that by itself proved departure from Iraq or Kuwait within the relevant jurisdictional period;

(b) the claimant submitted a combination of items of evidence which proved departure from Iraq or Kuwait within the relevant jurisdictional period;

(c) the claimant submitted an attestation from his or her Government or employer confirming that he or she was in Iraq or Kuwait and left during the relevant jurisdictional period;

(d) the claimant submitted a statement describing his or her departure from Iraq or Kuwait within the relevant jurisdictional period and the circumstances of the departure fell into a pattern that had been identified amongst other claimants that were assessed as "conclusive".

41. Claims were assessed as "insufficient", and thereby held not to be eligible for compensation, where:

(a) the claimant did not attach any evidence to his or her claim form;

(b) the claimant attached evidence that manifestly disproved that he or she left Iraq or Kuwait within the relevant jurisdictional period;

(c) the claimant attached evidence that was considered to have no probative value to establish his or her presence in, and departure from, Iraq or Kuwait within the relevant jurisdictional period.

(ii) Specific determinations

42. In reviewing the claims submitted by each Government and international organization which were not covered by the above general determinations, the Panel decided that such claims were to be assessed as "conclusive" if the following evidentiary items were attached to the claim form:

(a) an item proving presence in Iraq or Kuwait within the relevant jurisdictional period combined with:

(i) a personal statement asserting departure; or

(ii) a certification of entry into the claimant's home country issued by the immigration authorities; or

(iii) a departure date within the relevant jurisdictional period stated on the claim form;

(b) a personal statement asserting departure from Iraq or Kuwait within the relevant jurisdictional period combined with:

(i) a departure date within the relevant jurisdictional period stated on the claim form; or

(ii) a declaration by a Government official confirming the facts described by the claimant in his or her personal statement; or

(iii) a written confirmation by Government authorities of the loss of the claimant's personal documents.

43. In addition to the above specific determinations, in a number of cases claims were assessed to be "conclusive" where, having regard to the fact that a departure date within the relevant jurisdictional period was stated on the claim form and other facts and circumstances, weight was given to such evidentiary items as:

(a) an attestation issued by the claimant's employer confirming that the claimant was employed in Iraq or Kuwait during a period covering the relevant jurisdictional period; or

(b) a renewable work visa issued by the Iraqi or Kuwaiti authorities before the relevant jurisdictional period; or

(c) an entry stamp into the claimant's home country within the relevant jurisdictional period; or

(d) an immigration document granting the claimant leave to enter a third country; or

(e) the name of the claimant's sponsor or employer if that name was similar to that of other claimants that were assessed as "conclusive".

44. In reviewing the claims and coming to its conclusions as to whether the claims should be assessed as "conclusive" or "insufficient", the Panel took into consideration other relevant information such as the departure reports prepared by the secretariat describing the socio-economic background and evacuation routes of the foreign worker communities in Iraq and Kuwait for the countries that together submitted the majority of category "A" claims, the Manual of Arrival/Departure Records that were used during the matching exercise, and the summary reports describing the results of the review of the sample of each country or international organization. Finally, the Panel kept in view the specific determinations made by it during the sampling of the claims.

III. CORRECTIONS OF DECISIONS

45. The secretariat has drawn the attention of the Panel to the fact that the compensation amounts approved in previous instalments for payment to a number of claimants from several countries needed to be amended. In some cases the need for amendments was brought to the attention of the secretariat by the submitting Governments in accordance with article 41 of the Rules.

46. In other cases, the secretariat, while performing the necessary searches for duplicate claims within category "A" and between categories "A" and "B", identified claims that needed to be amended. As a result of the process described in section II.B, supra, some duplicate claims were found to have been approved in more than one instalment. Also, the comparison described in section II.C, supra, showed that payment of compensation had already been approved for some of the category "A" claimants who had claimed for higher amounts and had also filed a category "B" claim.

47. In light of the above, the Panel recommends that the revised compensation amounts as listed in the following tables be approved for payment:

FIRST INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Bosnia and Herzegovina	408,000.00	404,000.00
France	997,500.00	992,500.00
India	24,736,000.00	24,728,500.00
Iran	672,000.00	590,500.00
Pakistan	12,226,000.00	12,221,000.00

SECOND INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Bangladesh	51,523,000.00	51,519,000.00
Czech and Slovak Federal Republic	55,000.00	58,000.00
India	50,158,500.00	50,127,500.00
Iran	52,977,500.00	50,266,000.00
Jordan	95,988,500.00	96,437,000.00
Kuwait	87,259,500.00	87,523,500.00
Pakistan	19,835,500.00	19,819,000.00
Philippines	5,779,500.00	5,767,500.00
Sri Lanka	77,284,000.00	77,278,500.00
United States	263,500.00	261,000.00
UNDP (Jerusalem)	52,500.00	42,500.00

THIRD INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Egypt	174,295,500.00	174,259,000.00

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Federal Republic of Yugoslavia (Serbia & Montenegro)	1,016,000.00	1,012,000.00
India	16,173,500.00	16,139,000.00
Iran	68,089,000.00	67,718,000.00
Jordan	93,155,000.00	93,314,000.00
Kuwait	104,650,500.00	104,627,000.00
Philippines	6,039,500.00	5,515,500.00
Sri Lanka	52,929,500.00	52,457,000.00
United States	168,500.00	165,500.00

FOURTH INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Bangladesh	52,767,500.00	52,759,500.00
Bosnia & Herzegovina	3,553,000.00	3,541,000.00
Egypt	207,373,000.00	207,354,000.00
Federal Republic of Yugoslavia (Serbia & Montenegro)	3,761,000.00	3,773,000.00
India	145,209,500.00	144,894,500.00
Iran	4,270,000.00	3,485,000.00
Jordan	17,708,500.00	17,642,500.00
Kuwait	41,002,500.00	40,990,500.00
Lebanon	3,916,500.00	3,911,500.00
Pakistan	22,829,000.00	22,808,000.00
Philippines	30,684,500.00	30,591,000.00
Sri Lanka	71,994,500.00	71,978,500.00
Sudan	39,814,500.00	39,817,500.00
Syria	26,360,000.00	26,352,000.00
Turkey	6,306,000.00	6,302,000.00
United Kingdom	1,379,500.00	1,380,000.00
United States	836,000.00	812,500.00
Yemen	25,572,500.00	25,565,500.00

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
UNDP (United Arab Emirates)	2,500.00	8,000.00

FIFTH INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Bangladesh	52,372,500.00	52,351,000.00
Bosnia & Herzegovina	3,532,000.00	3,528,000.00
Canada	407,000.00	386,500.00
China	5,716,000.00	5,712,000.00
Egypt	217,074,000.00	217,009,000.00
Federal Republic of Yugoslavia (Serbia & Montenegro)	3,818,500.00	3,794,500.00
India	145,908,500.00	145,473,000.00
Iran	4,502,000.00	3,753,000.00
Jordan	17,416,000.00	17,281,500.00
Kuwait	39,897,500.00	39,883,500.00
Lebanon	3,923,000.00	3,908,000.00
Pakistan	23,213,500.00	23,178,000.00
Sudan	38,661,000.00	38,662,000.00
Syria	26,823,500.00	26,801,000.00
United Kingdom	1,316,500.00	1,308,500.00
United States	838,500.00	833,500.00
Yemen	29,195,000.00	29,181,000.00
UNHCR (Canada)	63,000.00	59,000.00

48. The Panel recommends that any reduction in the amount claimed under category "A", pursuant to Decision 21, that may result from having identified a claimant who has submitted a category "A" claim for a higher compensation amount and a category "C" and/or "D" claim should be carried out by the secretariat when the comparison between the claims in these categories is complete (see paragraph 24, supra). Necessary corrections in

compensation amounts payable should be made at that time. All Governments and international organizations concerned will be notified in due course.

IV. RECOMMENDED COMPENSATION FOR THE SIXTH INSTALMENT OF CATEGORY "A" CLAIMS

49. Pursuant to article 37(e) of the Rules, the Panel hereby presents its recommendations on the claims comprising the sixth instalment of category "A" claims.

50. Having considered the results of the verification of claims accomplished through sampling and individual review and having further considered all relevant circumstances and materials available with the Commission, the Panel recommends for payment of compensation 80,456 claims submitted by 59 Governments and by seven international organizations. The total recommended awards of compensation for the sixth instalment amounts to US$319,730,500.

51. The following summary table lists on a country-by-country basis the number of claims for which payment is recommended and the total recommended amount of compensation, as well as the number of claims which were held by the Panel not to be eligible for compensation:

RECOMMENDED COMPENSATION AMOUNTS

Country	Number of Claims Not Recommended for Payment	Number of Claims Recommended for Payment	Amount of Compensation Recommended (US$)
Algeria	3	-	-
Australia	2	14	64,500.00
Austria	-	15	69,500.00
Bahrain	14	7	28,500.00
Bangladesh	353	16,947	66,178,000.00
Bosnia and Herzegovina	-	501	2,048,000.00
Brazil	7	147	616,500.00
Bulgaria	-	2	13,000.00
Canada	-	11	51,000.00
China	-	102	408,000.00
Croatia	-	1	4,000.00

Country	Number of Claims Not Recommended for Payment	Number of Claims Recommended for Payment	Amount of Compensation Recommended (US$)
Czech and Slovak Federal Republic	-	3	13,000.00
Egypt	40	6,837	18,745,500.00
Ethiopia	-	24	90,000.00
Federal Republic of Yugoslavia (Serbia and Montenegro)	-	215	880,000.00
France	2	6	27,000.00
Germany	3	1	4,000.00
Greece	1	-	-
Hungary	-	2	12,000.00
India	446	4,439	17,441,500.00
Iran	-	1,068	5,838,000.00
Ireland	4	7	22,000.00
Italy	-	11	35,500.00
Japan	1	13	67,500.00
Jordan	12,902	4,257	18,736,500.00
Kenya	6	-	-
Korea, Republic of	-	17	61,000.00
Kuwait	-	2,689	17,170,000.00
Lebanon	-	164	410,000.00
Malta	2	-	-
Mauritius	1	1	4,000.00
Morocco	16	606	2,468,500.00
Nepal	-	10	40,000.00
Netherlands	-	1	8,000.00
New Zealand	-	1	4,000.00
Norway	1	-	-
Pakistan	1	12,047	46,786,000.00

Country	Number of Claims Not Recommended for Payment	Number of Claims Recommended for Payment	Amount of Compensation Recommended (US$)
Philippines	17	15,353	61,056,000.00
Poland	2	502	2,038,000.00
Romania	-	21	55,000.00
Russian Federation	48	598	3,380,000.00
Senegal	-	1	4,000.00
Slovenia	-	2	6,500.00
Somalia	3	3	15,500.00
Spain	3	1	4,000.00
Sri Lanka	4,724	9,242	36,889,500.00
Sudan	-	134	512,000.00
Sweden	3	-	-
Switzerland	2	-	-
Syria	72	1,457	5,218,500.00
Thailand	2	567	2,248,500.00
The former Yugoslav Republic of Macedonia	-	3	12,000.00
Tunisia	130	499	1,867,000.00
Turkey	-	348	1,300,500.00
Ukraine	7	44	180,000.00
United Kingdom	4	102	348,500.00
United States	-	9	30,000.00
Vietnam	-	871	3,484,000.00
Yemen	13	394	1,823,500.00
UNDP (Algeria)	-	5	24,000.00
UNDP (Jerusalem)	-	9	37,000.00
UNDP (Washington)	5	1	4,000.00
UNDP (Yemen)	-	114	807,000.00
UNHCR (Bulgaria)	55	7	30,000.00
UNHCR (Canada)	3	-	-
UNHCR (Geneva)	1	3	10,500.00
Total	18,899	80,456	319,730,500.00

52. A table containing the breakdown of the amounts to be paid to each individual claimant and a list of the individual claimants held by the Panel not to be eligible for compensation will be provided to each respective Government and international organization.

53. On the basis of the considerations formulated in section IV.C.3. of the first report, the Panel reiterates its recommendation that interest should be paid on the awarded amounts in category "A" claims in accordance with the Governing Council Decision on "Awards of Interest" (S/AC.26/1992/16, Decision 16). The Panel reiterates its opinion that the phrase "the date the loss occurred", referred to in Decision 16, should be interpreted to be a single date for all category "A" claims and that the date of the invasion, 2 August 1990, should serve as that date.

54. The sixth report marks the completion of the review of category "A" claims. The mandate of the Panel required it to apply "simple and expedited procedures" to deal with claims that were regarded as among "the most urgent claims." The overwhelming majority of these nearly one million claims were submitted by workers who had to leave Kuwait or Iraq between 2 August 1990 and 2 March 1991 following Iraq's invasion of Kuwait. The prompt payment of compensation to these claimants, as well as the provision of interim relief, has thus been considered to be a matter of the utmost urgency. In discharging its responsibilities, the Panel has endeavoured to maintain a just balance between the claimants' interest in an expeditious determination and the need to ensure the proper verification of the claims. In order to accomplish this, the Panel applied objective criteria using innovative and practical techniques and methods which enabled the Panel to carry out expeditious verification of claims in a manner consonant with the requirements of fairness and justice.

55. The Panel renews its exhortations in its earlier reports (see paragraph 93 of the fourth report and paragraph 11 of the fifth report) that resources should be found to effect prompt payment of compensation approved by the Governing Council so as to provide meaningful relief as expeditiously as possible in order to give credibility to the compensation programme established by the United Nations Security Council. The Panel urges that due priority be accorded as regards full payment of US$4,000 or US$8,000, pursuant to the terms of Decision 17 [S/AC.26/Dec.17 (1994)], to category "A" claimants who, in accordance with the Governing Council's directives, did not file claims in any other category.10/

Geneva, 10 July 1996

(Signed) Kamal Hossain
Chairman

(Signed) Matti Pellonpää
Commissioner

(Signed) Rafael Rivas-Posada
Commissioner

/...

Notes

1/ The recommendations concerning the first instalment of claims are contained in 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 report"). General information regarding the establishment of the United Nations Compensation Commission in the aftermath of the Gulf crisis as well as the composition of the Panel are contained in the introduction to the first report. The recommendations concerning the second instalment of claims are contained in the "Report and Recommendations Made by the Panel of Commissioners Concerning the Second Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)" (S/AC.26/1995/2, the "second report"). The recommendations concerning the third instalment of claims are contained in the "Report and Recommendations Made by the Panel of Commissioners Concerning the Third Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)" (S/AC.26/1995/3, the "third report"). The recommendations concerning the fourth instalment of claims are contained in 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, the "fourth report"). The recommendations concerning the fifth instalment of claims are contained in the "Report and Recommendations made by the Panel of Commissioners Concerning the Fifth Instalment of Claims for Departure from Iraq or Kuwait (Category 'A' Claims)" (S/AC.26/1995/5, the "fifth report").

2/ For a more detailed description of the nature of category "A" claims, the Claim Form "A", and the amounts that can be claimed under this category, see section I of the first report.

3/ For a detailed description of the matching methodology see section IV.D. of the first report.

4/ For a detailed description of the sampling methodology see section IV.E. of the fourth report.

5/ The Panel notes that while the sixth report concludes the review of all the category "A" claims filed with the Commission it may be necessary to report subsequent corrections and amendments that may arise in the future, pursuant to article 41 of the Rules. The Panel also notes that the total number of category "A" claims reviewed by the Panel in instalments one through six is less than the total number of category "A" claims reported in the Executive Secretary's reports to the Governing Council pursuant to article 16 of the Rules. These differences are as a result of a combination of factors (e.g., consolidated claims withdrawn then resubmitted, in total or in part; claims that, for technical reasons, were not originally reflected in the database; and duplicate claims).

6/ This amount may still be changed to the lower individual amount of US$2,500, pursuant to the Governing Council's decision on "Multi-Category Claims" [S/AC.26/Dec.21 (1994), Decision 21], if the check across claims categories determines that a category "A" claimant filing for the higher individual or family amount has also filed a claim in categories "B", "C" or "D". This cross-category check will be carried out against category "C" and "D" claims as they are loaded into the computerized database (see para. 24, of this report).

7/ Since subsequent payments beyond the initial US$2,500 to be paid to successful claimants pursuant to the Governing Council's decision on "Priority of payment and payment mechanism" [S/AC.26/Dec.17 (1994), Decision 17] are not expected to be made before the loading of all of the category "C" and "D" claims into the Claims Database is completed, the implementation of these reductions in award amounts will not conflict with the Commission's projected payment schedule.

8/ If the amount claimed under category "A" is US$2,500 or US$4,000, the amount to be deducted from the total amount to be recommended for the category "C" claim is US$2,500. If the amount claimed under category "A" is US$5,000 or US$8,000, the amount to be deducted from the total amount to be recommended in the category "C" claim is US$5,000.

9/ E.g., inter alia, those procedures relating to the "dominant and effective nationality" criterion established by the Iran-United States Claims Tribunal in case No. A-18 (Iran-United States Claims Tribunal Reports, vol. 5, 1984, pp. 251-266); the "real and effective nationality" criterion developed by the International Court of Justice in the Nottebohm case (I.C.J. Reports, 1955, pp. 4-27); and the "effective nationality" criterion used in the Canevaro arbitration (R.I.A.A., vol. 11, 1961, pp. 397-410). All of these precedents rely on the evaluation of the particular circumstances, both legal and factual, of each individual claimant.

10/ See para. 15 of the third report in which the Panel noted that, at its sixteenth session, the Governing Council had "decided to keep under advisement, and at an appropriate time consider, whether the Commission's procedures for making payments to successful claimants should be implemented as proposed by the Commissioners, i.e, that all successful claimants who had submitted category "A" claims for higher amounts but had not submitted claims in any other category, receive full payment of those amounts, pursuant to the terms of Decision 17, before any additional amounts beyond the initial US$2,500 are paid to the category "A" claimants who submitted claims for such higher amounts but had also filed claims in other categories. In considering this matter, the Governing Council would take into account the views of the secretariat regarding this proposal's feasibility and implications".

Annex IV

Decision 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*

The Governing Council,

Having received, in accordance with article 37 of the Provisional Rules for Claims Procedure, the sixth report of the Panel of Commissioners appointed to review individual claims for departure from Iraq or Kuwait (category "A" claims), covering 135,275 individual claims,

1. Approves the recommendations made by the Panel of Commissioners, and, accordingly,

2. Decides, pursuant to article 40 of the Rules and subject to paragraph 5 below, to approve the amounts of the recommended awards concerning the 80,456 claims covered in the report. The aggregate amounts per country or international organization, as listed in paragraph 51 of the report, are as follows:

* Previously circulated under the symbol S/AC.26/Dec.38 (1996).

Country	Number of Claims Recommended for Payment	Amount of Compensation Recommended (US$)
Algeria	-	-
Australia	14	64,500.00
Austria	15	69,500.00
Bahrain	7	28,500.00
Bangladesh	16,947	66,178,000.00
Bosnia and Herzegovina	501	2,048,000.00
Brazil	147	616,500.00
Bulgaria	2	13,000.00
Canada	11	51,000.00
China	102	408,000.00
Croatia	1	4,000.00
Czech and Slovak Federal Republic	3	13,000.00
Egypt	6,837	18,745,500.00
Ethiopia	24	90,000.00
Federal Republic of Yugoslavia (Serbia & Montenegro)	215	880,000.00
France	6	27,000.00
Germany	1	4,000.00
Greece	-	-
Hungary	2	12,000.00
India	4,439	17,441,500.00
Iran	1,068	5,838,000.00
Ireland	7	22,000.00
Italy	11	35,500.00
Japan	13	67,500.00
Jordan	4,257	18,736,500.00
Kenya	-	-

Country	Number of Claims Recommended for Payment	Amount of Compensation Recommended (US$)
Korea, Republic of	17	61,000.00
Kuwait	2,689	17,170,000.00
Lebanon	164	410,000.00
Malta	-	-
Mauritius	1	4,000.00
Morocco	606	2,468,500.00
Nepal	10	40,000.00
Netherlands	1	8,000.00
New Zealand	1	4,000.00
Norway	-	-
Pakistan	12,047	46,786,000.00
Philippines	15,353	61,056,000.00
Poland	502	2,038,000.00
Romania	21	55,000.00
Russian Federation	598	3,380,000.00
Senegal	1	4,000.00
Slovenia	2	6,500.00
Somalia	3	15,500.00
Spain	1	4,000.00
Sri Lanka	9,242	36,889,500.00
Sudan	134	512,000.00
Sweden	-	-
Switzerland	-	-
Syria	1,457	5,218,500.00
Thailand	567	2,248,500.00
The former Yugoslav Republic of Macedonia	3	12,000.00
Tunisia	499	1,867,000.00
Turkey	348	1,300,500.00
Ukraine	44	180,000.00
United Kingdom	102	348,500.00
United States	9	30,000.00

Country	Number of Claims Recommended for Payment	Amount of Compensation Recommended (US$)
Vietnam	871	3,484,000.00
Yemen	394	1,823,500.00
UNDP (Algeria)	5	24,000.00
UNDP (Jerusalem)	9	37,000.00
UNDP (Washington)	1	4,000.00
UNDP (Yemen)	114	807,000.00
UNHCR (Bulgaria)	7	30,000.00
UNHCR (Canada)	-	-
UNHCR (Geneva)	3	10,500.00
Total	80,456	319,730,500.00

3. Decides, pursuant to article 41 of the Rules, to approve the amounts of the corrected awards for instalments one to five. The aggregate amounts of the corrected awards per country or international organization by claim instalment, as listed in paragraph 47 of the report, are as follows:

FIRST INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Bosnia and Herzegovina	408,000.00	404,000.00
France	997,500.00	992,500.00
India	24,736,000.00	24,728,500.00
Iran	672,000.00	590,500.00
Pakistan	12,226,000.00	12,221,000.00

SECOND INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Bangladesh	51,523,000.00	51,519,000.00

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Czech and Slovak Federal Republic	55,000.00	58,000.00
India	50,158,500.00	50,127,500.00
Iran	52,977,500.00	50,266,000.00
Jordan	95,988,500.00	96,437,000.00
Kuwait	87,259,500.00	87,523,500.00
Pakistan	19,835,500.00	19,819,000.00
Philippines	5,779,500.00	5,767,500.00
Sri Lanka	77,284,000.00	77,278,500.00
United States	263,500.00	261,000.00
UNDP (Jerusalem)	52,500.00	42,500.00

THIRD INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Egypt	174,295,500.00	174,259,000.00
Federal Republic of Yugoslavia (Serbia and Montenegro)	1,016,000.00	1,012,000.00
India	16,173,500.00	16,139,000.00
Iran	68,089,000.00	67,718,000.00
Jordan	93,155,000.00	93,314,000.00
Kuwait	104,650,500.00	104,627,000.00
Philippines	6,039,500.00	5,515,500.00
Sri Lanka	52,929,500.00	52,457,000.00
United States	168,500.00	165,500.00

FOURTH INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Bangladesh	52,767,500.00	52,759,500.00
Bosnia & Herzegovina	3,553,000.00	3,541,000.00

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Egypt	207,373,000.00	207,354,000.00
Federal Republic of Yugoslavia (Serbia & Montenegro)	3,761,000.00	3,773,000.00
India	145,209,500.00	144,894,500.00
Iran	4,270,000.00	3,485,000.00
Jordan	17,708,500.00	17,642,500.00
Kuwait	41,002,500.00	40,990,500.00
Lebanon	3,916,500.00	3,911,500.00
Pakistan	22,829,000.00	22,808,000.00
Philippines	30,684,500.00	30,591,000.00
Sri Lanka	71,994,500.00	71,978,500.00
Sudan	39,814,500.00	39,817,500.00
Syria	26,360,000.00	26,352,000.00
Turkey	6,306,000.00	6,302,000.00
United Kingdom	1,379,500.00	1,380,000.00
United States	836,000.00	812,500.00
Yemen	25,572,500.00	25,565,500.00
UNDP (United Arab Emirates)	2,500.00	8,000.00

FIFTH INSTALMENT CORRECTIONS

Country	Previous Recommended Award (US$)	Corrected Recommended Award (US$)
Bangladesh	52,372,500.00	52,351,000.00
Bosnia & Herzegovina	3,532,000.00	3,528,000.00
Canada	407,000.00	386,500.00
China	5,716,000.00	5,712,000.00
Egypt	217,074,000.00	217,009,000.00
Federal Republic of Yugoslavia (Serbia & Montenegro)	3,818,500.00	3,794,500.00
India	145,908,500.00	145,473,000.00
Iran	4,502,000.00	3,753,000.00
Jordan	17,416,000.00	17,281,500.00

Kuwait	39,897,500.00	39,883,500.00
Lebanon	3,923,000.00	3,908,000.00
Pakistan	23,213,500.00	23,178,000.00
Sudan	38,661,000.00	38,662,000.00
Syria	26,823,500.00	26,801,000.00
United Kingdom	1,316,500.00	1,308,500.00
United States	838,500.00	833,500.00
Yemen	29,195,000.00	29,181,000.00
UNHCR (Canada)	63,000.00	59,000.00

4. Reaffirms that when funds become available payments shall be made in accordance with Decision 17 [S/AC.26/Dec.17 (1994)],

5. Notes that where claimants, awarded the higher amounts available under Category "A", are found also to have filed claims in other categories, their awards will be adjusted in accordance with the provisions of Decision 21 [S/AC.26/Dec.21 1994)],

6. Recalls that, when payments are made in accordance with Decision 17 and pursuant to the terms of Decision 18 [S/AC.26/Dec.18 (1994)], Governments and appropriate authorities concerned shall distribute amounts received in respect of approved awards within six months of receiving payment, and shall, not later than three months after the expiration of this time limit, provide information on such distribution,

7. Decides that no compensation be awarded concerning the 18,899 claims referred to in paragraph 51 of the report; that no compensation be awarded for the 35,905 duplicate claims referred to in paragraph 20 of the report; that no compensation be awarded for 11 claims referred to in paragraph 11 of the report as having insufficient claimant indentity information; and that no compensation be awarded for the four claims, filed on behalf of Iraqi nationals, referred to paragraph 33 of the report, who did not possess bona fide nationality of another country.

8. Requests the Executive Secretary to provide copies of the report to the Secretary-General and copies of the report as well as the tables containing the breakdown of the amounts to be paid to each individual claimant to each respective Government and international organization.

Annex V

Implementation of decision 18 of the Governing Council*

1. Paragraph 4 of Decision 18 of the Governing Council of the United Nations Compensation Commission (UNCC), which is contained in document S/AC.26/Dec.18 (1994), states the following:

"Not later than three months after the expiration of the time limit for the distribution of each payment received from the Compensation Commission, Governments shall provide information on the amounts of payments distributed. Such reports shall refer to the category of claims and the instalment payment received from the Compensation Commission and shall also include information on the reasons for non-payment to claimants because claimants could not be located or for other reasons, as well as the explanations required on fees deducted under paragraph 1."

SECOND INSTALMENT

2. In its decision contained in document S/AC.26/Dec.26 (1994) and S/AC.26/Dec.27 (1995) the Governing Council approved awards for the Second Instalment of Category "B" claims totaling US$8,220,000 for 2571 claimants in 33 countries. In addition, US$32,500 for seven claimants whose claims were filed through four international organization's offices were also approved.

3. In its decision of 12 October 1995 contained in document S/AC.26/Dec.32 (1995) the Governing Council decided that these awards should be paid.

4. Thirty-four of the 37 countries/international organizations for which payment of awards was approved have received the appropriate transfer of funds. The Democratic Republic of Somalia, the Kingdom of Morocco and UNDP Jerusalem have not yet received payment. The Kingdom of Morocco has not provided the necessary banking details for the secretariat to effect the transfer of funds. UNDP Jerusalem provided the necessary banking details on 7 October 1996 and the secretariat is in the process of transferring the

---

* Previously circulated under the symbol S/AC.26/1996/R.20.

payment. Of the 34 countries/international organizations that have received the transferred funds, 25 have received the funds more than nine months ago. Twenty of these countries/international organizations have provided reports on the distribution of funds. The secretariat's requests for reports from the following five countries remain outstanding: Australia, Germany, Ireland, Sri Lanka and Thailand. The other five countries/international organizations for which the nine months time-limit has not yet expired are: Russia, Syria, Tunisia, UNDP Kuwait and UNDP Washington. The Government of Germany reported a delay in the payments process because the German Bundesbank was not able to confirm receipt of the interbank transfer, which is currently being traced by the UN Treasury, UNOG and Chase Manhattan Bank in New York. In addition, reports have already been received from four other countries for which the nine month's time-limit has not yet expired.

Below is a summary of the 24 reports received by the secretariat for the Second Instalment of category "B" claims.

Algeria

One claimant from Algeria was awarded US$10,000 and was paid Swiss Francs 11,440 in December 1995 representing the full equivalent of the US$10,000 awarded. The exchange rate used by the Algerian Government was Sfr1.144 to US$1.00. The UN operational exchange rate for December 1995 was Sfr1.16 to US$1.00.

Bangladesh

Sixty-eight claimants from Bangladesh were awarded a total of US$287,500. Twenty-three claimants received payments in Bangladesh Taka over the period of January through April 1996. The exchange rate used by the Government of Bangladesh was BT40.61 to US$1.00. The average UN operational rate of exchange during this period was BT40.7 to US$1.00. The Government of Bangladesh is continuing to search for the remaining claimants.

Belgium

Four Claimants from Belgium were awarded a total of US$10,000. Each claimant received Belgium Francs 74,449 representing US$2,500 at the prevailing rate of exchange.

Bulgaria

The Government of Bulgaria has reported that the two claimants from Bulgaria who were awarded a total of US$5,000 have been paid.

Canada

Eight claimants from Canada were awarded a total of US$20,000. Each claimant received US$2,462.50. A fee of 1.5 per cent ($37.50) was deducted by the Canadian Government for processing costs.

Egypt

Two hundred and ninety-seven claimants from Egypt were awarded a total of US$1,185,000. One Hundred and seventy-six claimants received payments in Egyptian pounds over the period of January through May 1996. The weighted average exchange rate used by the Government of Egypt was EP3.39 to US$1.00. The average UN operational rate of exchange during this period was EP3.37 to US$1.00. A fee of 1.5 per cent was deducted by the Egyptian Government for processing costs. The Government of Egypt is continuing to search for the remaining claimants.

France

Twenty-two claimants from France were awarded a total of US$65,000. Fifteen claimants received payments in French Francs in December 1995 from "le Fonds de Garantie des Actes de Terrorisme". A report provided by the French Government explains that the payments to the fifteen claimants amounts to FF272,275.00 and that this amount will be deducted from the Category "F" claims submitted by the Government. An amount of FF45,575 will be used to recover payments to be made to the remaining seven claimants.

India

One hundred and sixty-seven claimants from India were awarded a total of US$642,500. Ninety-five claimants received payments in Indian Rupees or in US Dollars over the period of January through June 1996. In this regard, the Government of India has reported earlier that resident Indian claimants would be paid in Indian Rupees and non-resident Indian claimants in US Dollars or any other currency of their choice. For claimants paid in Rupees, the weighted average rate of exchange used by the Government of India was IRs34.23 to US$1.00. The average UN operational rate of exchange during this period was IRs35.00 to US1.00. Although the Indian Government had advised that it would deduct 1.5 per cent service charge from awards issued to successful claimants in Categories "A", "B" and "C", there is no indication that any fee deduction was made from the Category "B" awards paid. The Government of India has requested an extension of the time-limit for distribution of payments until the end of 1996 to trace claimants who have changed addresses and also for the deceased claimants whose legal heirs are establishing their legal rights.

Iran

One claimant from Iran was awarded US$10,000. The Government of Iran has reported that it is continuing to search for the claimant.

Israel

Ninety-three claimants from Israel were awarded a total of US$307,500. All claimants received the full amounts awarded. No fee has been deducted from the payments. The Government of Israel has been requested to submit an additional report on the currency and amount distributed in that currency.

Italy

Thirteen claimants from Italy were awarded a total of US$32,500. All claimants received payments in Italian lira on November 1995. The exchange rate on November 1995 used by the Italian Government was Itl.1,594.672 to US$1.00. The UN average operational rate of exchange for end of the year 1995 was Itl.1,605.00 to US1.00.

Jordan

Ninety-eight claimants from Jordan were awarded a total of US$435,000. All claimants received payments in Jordanian Dinars in November and December 1995. The exchange rate used by the Jordanian Government was JD0.708 to US$1.00. The average UN operational rate of exchange during this period was JD0.7105 to US$1.00. No processing fee was deducted from the payments.

Kuwait

One thousand three hundred and forty six claimants from Kuwait were awarded a total of US$3,587,500. All claimants have received payments in Kuwaiti Dinars. The exchange rate used by the Government of Kuwait was KD0.29911 to US$1.00. The average UN operational rate of exchange for the period from November 1995 to January 1996 was KD0.296 to US$1.00. No processing fee was deducted from the payments.

Lebanon

Eighteen claimants from Lebanon were awarded a total of US$100,000. All claimants received payments in US Dollars. No processing fee was deducted from the payments.

Pakistan

Thirty-one claimants from Pakistan were awarded a total of US$162,500. All claimants received payments in Pakistani Rupees except one claimant who was paid in US Dollars. In this regard, the Government of Pakistan has reported earlier that claimants residing abroad will be paid in US Dollars. All claimants were paid over the period of December 1995 through March 1996. The average exchange rate used by the Government of Pakistan was PRs34.21 to US$1.00. The UN average operational rate of exchange during this period was PRs34.10 to US$1.00. No processing fee was deducted from the payments.

Philippines

Forty-five claimants from the Philippines were awarded a total of US$155,000. Forty-two claimants received payments in US Dollars. Although the Philippines Government had advised that the Philippine National Bank would deduct from the proceeds of the sum payable to the claimants an operating expense of P50 in addition to documentary stamp tax of P0.30 per P200, there was no indication that any operating charge was deducted from the payments made to the Category "B" claims. The report provided by the Government of the

Philippines explained that relentless efforts were being made to locate the three claimants who had not yet received payments.

Republic of Korea

One claimant from Korea was awarded US$5,000. The report provided by the Government of Korea explains that the claimant died in August 1995. Her heirs (claimant's daughter-in-law and four grand children) received the payment amounting to US$4,963.26 plus interest. A bank charge of US$36.74 was deducted from the amount awarded by the Korea Exchange Bank (New York Branch).

Sudan

Sixty-six claimants from Sudan were awarded a total of US$265,000. Twenty-one claimants have received their payments. Additional information on the currency and amounts distributed has been requested from the Government of Sudan, which is continuing to search for the remaining unpaid claimant.

Sweden

One claimant from Sweden was awarded US$2,500 and received payment in Swedish Kroner in the month of April 1996. The exchange rate used by the Government of Sweden was Sek6.47 to US$1.00. The UN operational rate of exchange for this month April 1996 was Sek6.7 to US$1.00.

Ukraine

One claimant from Ukraine was awarded US$5,000. The Government of Ukraine requested that payment be effected through the United Nations (UNDP) Office in Kiev. The UNDP office in Kiev has paid the full amount awarded to the claimant in US Dollars. No processing fee was deducted from the payment.

United Kingdom

Ninety-seven claimants from the United Kingdom were awarded a total of US$275,000. All claimants received payments in UK Pounds over the period of November 1995 through February 1996. The exchange rate used by the Government of the United Kingdom was £1.00 to US$1.56. The average UN operational rate of exchange during this period was £1.00 to US$1.53. No processing fee was deducted from the payments.

United States

Thirty-eight claimants from the United States were awarded a total of US$100,000. All claimants have received their payments. A processing fee of 1.5 per cent (total amount US$1,500) was deducted from these payments.

Yemen

Fifty six claimants from Yemen were awarded a total of US$355,000 for the second and third instalments. The Government of Yemen has reported that

fifty one claimants from both these instalments were paid the amount of US$344,750. A fee of 1.5 percent (total $5,250) was deducted for processing costs. The Government of Yemen has reported that it is continuing to search for two claimants. The secretariat has requested the Government to also clarify and report on the number of claimants by instalments since its report does not cover all the 56 claimants for whom awards have been approved.

UNRWA Vienna

Three claimants from UNRWA Vienna were awarded a total of US$15,000. All claimants received payments in US Dollars. No processing fee was deducted from the payments.

THIRD INSTALMENT

5. In its decision contained in document S/AC.26/Dec.34 (1995) the Governing Council approved awards for the Third Instalment of Category "B" claims totaling to US$2,437,500.00 for 714 claimants in 18 countries. In addition, US$12,500 for five claimants whose claims were filed through three international organizations' offices were also approved.

6. In its decision of 13 December 1995 contained in document S/AC.26/Dec.32 (1995) the Governing Council decided that these awards should be paid.

7. Twenty-one countries/international organizations for which payment of awards was approved have received the appropriate transfer of funds. Of the 21 countries/international organizations that have received the transferred funds, 14 have received the funds more than nine months ago. Ten of these countries/international organizations have provided reports on the distribution of funds. The secretariat's requests for reports from the following four countries remains outstanding: Australia, Bangladesh, Sri Lanka and Sudan. The other four countries/international organizations for which the nine months time-limit has not yet expired are: Ethiopia, Syria, UNHCR Canada and Tunisia. In addition, reports have been received from three other countries for which the nine months time-limit has not yet expired.

Below is a summary of the 13 reports received by the secretariat.

Bulgaria

The Government of Bulgaria has reported that the one claimant from Bulgaria who was awarded US$2,500 has been paid.

Canada

Three claimants from Canada were awarded a total of US$15,000. All claimants have received their payments. A fee of 1.5 per cent (total $225) was deducted by the Canadian Government for processing costs.

Egypt

Thirty-three claimants from Egypt were awarded a total of US$195,000. Eight claimants received payments in Egyptian Pounds over the period of January through May 1996. The weighted average exchange rate used by the Government of Egypt was EP3.39 to US$1.00. The average UN operational rate of exchange during this period was EP3.37 to US1.00. A fee of 1.5 per cent was deducted from the payments by the Egyptian Government for processing costs. The Government of Egypt is continuing to search for the remaining claimants.

India

Sixteen claimants from India were awarded a total of US$57,500. Nine claimants received payments in US Dollars. In this regard, the Government of India has reported earlier that resident Indian claimants would be paid in Indian Rupees and non-resident Indian claimants in US Dollars or any other currency. Although the Indian Government had advised that it would deduct 1.5 per cent service charge from awards issued to successful claimants in Categories "A", "B", and "C", there is no indication that any fee deduction was made from the Category "B" awards paid. The Government of India has requested an extension of the time-limit for the distribution of payments until the end of 1996 to trace claimants who have changed addresses and also to permit legal heirs of deceased claimants to establishi their legal rights.

Israel

Two claimants from Israel were awarded a total of US$5,000. All claimants have received payments. No fee has been deducted from the payments. The Government of Israel has been requested to submit an additional report on the currency and amount distributed in that currency.

Jordan

One hundred and one claimants from Jordan were awarded a total of US$605,000. All claimants received payments in Jordanian Dinars in January 1996. The rate of exchange used by the Jordanian Government was JD0.708 to US$1.00. The UN operational rate of exchange for this month was JD0.708 to US1.00. No processing fee was deducted from the payments.

Kuwait

Four hundred and eighty five claimants from Kuwait were awarded a total of US$1,240,000. All claimants have received their payments in Kuwaiti Dinars. The exchange rate used by the Government of Kuwait was KD0.29910 to US$1.00. The average UN operational rate of exchange for the period from December 1995 to February 1996 was KD0.296 to US$1.00. No processing fee was deducted from the payments.

Lebanon

One claimant from Lebanon was awarded US$2,500. The claimant has received payment in US Dollars. No processing fee was deducted from the payment.

Pakistan

Eight claimants from Pakistan were awarded a total of US$55,000. All claimants have received payments in Pakistani Rupees. The exchange rate used by the Government of Pakistan was PRs.34.21 to US$1.00. No processing fee was deducted from the payments.

United Kingdom

Seven claimants from United Kingdom were awarded a total of US$20,000. All claimants received payments in UK Pounds in January 1996. The exchange rate used by the Government of United Kingdom was £1.00 to US$1.56. The UN operational rate of exchange for January 1996 was £1.00 to US$1.54. No processing fee was deducted from the payments.

Yemen

Fifty six claimants from Yemen were awarded a total of US$355,000 for the second and third instalments. The Government of Yemen has reported that fifty one claimants from both these instalments were paid the amount of US$344,750. A fee of 1.5 percent (total $5,250) was deducted for processing costs. The Government of Yemen has reported that it is continuing to search for two claimants. The secretariat has requested the Government to also clarify and report on the number of claimants by instalments since its report does not cover all the 56 claimants for whom awards have been approved.

UNHCR Bulgaria

One claimant from UNHCR Bulgaria was awarded US$2,500. The claimant has received payment in US Dollars. No processing fee was deducted from the payment.

UNRWA Vienna

Three claimants from UNRWA Vienna were awarded a total of US$7,500. All claimants have received payments in US Dollars. No processing fee was deducted from the payments.
