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INTEROFFICE MEMORANDUM MEMORANDUM INTERIEUR

INTERNAL AUDIT DIVISION I
OFFICE OF INTERNAL OVERSIGHT SERVICES

TO: Mr. Rolf Knutsson, Executive Secretary
A: United Nations Compensation Commission

DATE: 13 December 2005

REFERENCE: AUD-7-7:7 (⁰⁰³⁰⁶ /05)

FROM: Patricia Azarias, Director
DE: Internal Audit Division I, OIOS

P. Azarias

SUBJECT: OIOS Audit Number AF/2005/820/03 – Audit of Palestinian late 'D'
OBJET: claims Installment 20

1. I am pleased to present herewith our report on the audit of the above subject, which was conducted during August and September 2005.
2. We note from your response to the draft report that UNCC has generally accepted the recommendations. Based on the response, we have closed recommendations 13, 14, 16 and 20 in the OIOS recommendations database. In order to close out the remaining recommendations, we request that you provide us with the additional information as discussed in the text of the report and a time schedule for their implementation. Please note that OIOS will report on the progress made to implement its recommendations, particularly those designated as critical (i.e. recommendations 1, 2, 4, and 5) in its annual report to the General Assembly and semi-annual report to the Secretary-General.
3. IAD is assessing the overall quality of its audit process and kindly requests that you consult with your managers who dealt directly with the auditors and complete the attached client satisfaction survey form.
4. I take this opportunity to thank the management and staff of UNCC for the assistance and cooperation provided to the auditors in connection with this assignment.

Copy to: UN Board of Auditors
Programme Officer, OIOS
D. Knutsen

Office of Internal Oversight Services

Internal Audit Division I



UNCC Installment 20 Palestinian late 'D' claims

Audit no: AF/2005/820/03
Report date: 13 December 2005
Audit team: Cheryl Clarke, Auditor-in-Charge

EXECUTIVE SUMMARY
Audit of Installment 20 Palestinian late 'D' claims

OIOS conducted an audit during August and September 2005 of Installment 20 representing the Palestinian late 'D' claims. The 'D' claims are individual claims filed over \$100,000. These were the final claims processed under the Palestinian late claims programme. A total of 404 claims totaling \$836,915,789.40 were received, that passed the Reasons Review test and so were eligible for the Palestinian late claims programme. Of this amount 296 claims totaling \$25,876,100.16 representing 3% received awards. A total of 108 totaling \$811,039,689.24 were unsuccessful in receiving awards. The Installment 20 report was presented to the GC by report dated July 8, 2005.

OIOS reviewed the methodology used to review participant's eligibility to the late claims programme, as well as the 'D' claims methodology used to award payments. The 'D' claim methodology was the methodology used during the regular claims programme. A new Reasons Review panel was however formed to assess the eligibility of the late claims programme and a Reasons Review manual was developed.

In OIOS' opinion, the objective of determining the eligibility of the Palestinian ability to file under the late claims program was achieved. However, there was a discrepancy in the Reasons Review manual, as it stated that one of its criteria was that only stateless Palestinians could participate in the Palestinian program. However, UNCC accepted Palestinian with Jordanian nationality and passports. OIOS is also concerned with the number of 'C' claims that have been linked to 'D' claims, are over the 'C' claims limit of \$100,000 and prove to be questionable, but were still awarded amounts, as they were processed using the less stringent 'C' claims methodology.

The claims submitted were an area of concern to UNCC, as the claims proved to be highly overstated and had irregularities in the evidences submitted to support the claims. The UNCC D2 Panel however, showed acceptable review of these claims, so as to determine the reasonableness of the evidence submitted and amounts claimed as losses.

LIST OF ABBREVIATIONS USED IN THE REPORT

United Nations Compensation Commission	UNCC
Governing Council	GC
Kuwaiti Dinar	KWD
Legal Services Branch	LSB
Verification and Valuation Support Branch	VVSB
Office of Internal Oversight Services	OIOS
Security Council	SC
Palestinian Refugee Research Net	PRRN
United Nations Relief and Works Agency	UNRWA
Information System Section	ISS

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I. INTRODUCTION

1. The United Nations Compensation Commission (UNCC) is a subsidiary organization of the United Nations Security Council and was established in 1991 to process claims and pay compensation for losses resulting from Iraq's invasion and occupation of Kuwait. The Security Council (SC) established Iraq's legal responsibility for these losses on 3 April 1991 in its Resolution 687. The resolution stated that as a result of Iraq's unlawful invasion and occupation of Kuwait, Iraq 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. Compensation for these losses is payable to successful claimants from a special fund. The fund receives a percentage of the proceeds from the sales of Iraqi oil.

2. Late claim submission were accepted by the Governing Council (GC) from:

- Palestinians
- Governments of Iran
- Governments of Pakistan
- Governments of Philippines
- Governments of Sri Lanka
- Governments of Kuwait

The details for these late claims submission are shown in Table 1.

3. At its forty-second session on 11-13 December 2001, the GC established the "late-claims program" for Palestinians who can demonstrate that they did not have a full and effective opportunity to file claims with the UNCC during the Commission's filing period for individual claims from 1 January 1992 to 1 January 1996 (the "regular filing period"). The GC adopted the recommendation of the Working Group of the Council, by considering the request of the Permanent Observer Mission of Palestine to the United Nations Office at Geneva, concerning the filing of a number of Palestinian 'late claims'. They considered the Information Note dated 28 November 2001 prepared by the Secretariat, the memorandum dated 15 November 2001 submitted by the Palestinian Authority, and the statement delivered on behalf of the Palestinian Authority at the opening session on 11 December 2001. At its forty-fourth session on 18 June 2002, the GC extended the deadline for the Commission's receipt of Palestinian "late claims" from 1 July to 30 September 2002. A total of 46,160 claims were filed by the Palestinian Authority under the late-claims program, 43,806 claims in category "C" and 2,354 claims in category "D".

4. At its fifty-first session on 7-9 March 2004, the GC accepted requests for permission to submit late-claims from the Governments of Iran, Pakistan, Philippines and Sri Lanka. The GC permitted the filing of these late-claims based on certain criteria established by the GC. The four Governments filed a total of 3,450 categories "A" claims and 672 categories "C" claims as part of this late-claims program.

5. At the forty-seventh session of the GC of the Commission held in March 2003, the Government of Kuwait requested the GC's authorization to file "late claims" on behalf of "Bedoun", a community that has lived in Kuwait for many years and whose members have frequently served in the police and the armed forces of Kuwait over several generations. Most members of this community had not been granted nationality either by Kuwait or any other country. The Panel noted that no Government or authority accepted responsibility for filing claims on behalf of "Bedoun" during the regular filing period. In consequence, "Bedoun" were therefore unable to claim full compensation, available to other claimants.

Table 1: Statistical summary of late claims filed in each claim category

Submitting entity	Claim type	No. of claims rec.	Compensation claimed (USD)	No. of claims recomm for payment	Compensation recommended for payment (USD)	No. of claims not recomm. for payment	Compensation not recommended for payment (USD)	%Age of compens recomm. for payment
Palestinian Authority	D	404	836,915,789.40	296	25,876,100.16	108	811,039,689.24	3%
Palestinian Authority	C	43,571	1,326,281,019.85	7,797	122,785,215.76	36,333	1,203,495,804.09	9%
Pakistan	C	462	101,925,010.04	427	11,533,718.04	35	90,391,292.00	11%
Philippines	C	65	279,338.94	46	151,191.96	19	128,146.98	54%
Sri Lanka	C	145	448,418.54	139	232,217.03	6	216,201.51	52%
Iran	A	2,513	20,060,000.00	2,483	19,756,000.00	30	304,000.00	98%
Pakistan	A	429	1,274,000.00	403	1,178,500.00	26	95,500.00	93%
Philippines	A	240	950,500.00	199	793,500.00	41	157,000.00	83%
Sri Lanka	A	268	1,070,500.00	249	993,000.00	19	77,500.00	93%
Kuwait	Bedoun	31,868	79,670,000.00	31,715	79,287,500.00	153	382,500.00	100%
Kuwait	D	1	640,138.41	1	620,114.43	-	20,023.98	97%
Kuwait (Iranian nationals)	D	1	310,458.48	1	506,931.96	-	-196,473.48	163%
Saudi Arabia	D	8	3,066,860.34	8	3,330,141.70	-	-263,281.36	109%
Total Late Claims		79,975	2,372,892,034.00	43,764	267,044,131.04	36,770	2,105,847,902.96	11%

6. Category "D" claims are individual claims for damages above \$100,000 each. The Commission received approximately 10,500 category "D" claims from 50 Governments and 8 offices of 3 international organizations, claiming a total of approximately \$10 billion in compensation. "D" claims can be categorized as follows:

- D1 - Mental pain and Anguish
- D2 - Personal Injury
- D3 - Loss and Death
- D4 - Property and Motor Vehicle loss
- D5 - Loss of Bank account, Investment and Security

- D6 - Loss of Income, salary and support
- D7 - Loss of Real property
- D8/D9 - Loss of business income
- D10 - Loss of support given to others

7. The Secretariat appointed two panels of commissions to review category 'D' claims. The fourteenth report of the "D2" Panel of Commissioners was submitted to the GC dated May 12, 2005 and reviewed at session June 30, 2005. This report contained the Report and Recommendations made by the "D2" Panel of commissioners concerning Palestinian individual claims for damages above \$100,000.

8. The comments made by the management of UNCC on the draft audit report have been included in the report as appropriate and are shown in *italics*.

II. AUDIT OBJECTIVES

9. The major objectives of the audit were to:

- (i) Determine if the UNCC has the legal authority to award claims outside of the regular claims period;
- (ii) Assess the methodology of the approval process in the qualification of a claim under the late claim program;
- (iii) Assess the consistency with the UNCC application of the methodology between
 - Regular claims
 - The Palestinian late claims; and
- (iv) Evaluate the process used to adjudicate the Palestinian late claims

III. AUDIT SCOPE AND METHODOLOGY

10. OIOS concentrated on key processes used to adjudicate the Palestinian late 'D' claims. This included methodologies guided by prescribed policies and procedures approved by the GC. The audit covered the claims filed by the Palestinians under the late claim programme, the awards recommended under the Panel D2 Commissioners for the Palestinian late claim and the awards approved by the GC based on these recommendations.

11. A risk based audit approach was used, which highlighted the risk associated with the processing of the Installment 20 late claims. A sample selection was done using the random sample technique where 13 claims were selected for review.

IV. OVERALL ASSESSMENT

12. The audit of the 'D' claims, 20th installment for the Palestinian late claims, showed an over all acceptable application of the UNCC's 'D' claims methodology. This was even more so required, as the Palestinian late claims, as indicated in the Panel's report, showed a high level of overstatement and irregularities in the documents presented by the claimant as evidence to support the claims. The 'D' panel, therefore showed acceptable review of evidence provided, verification of documents by confirmation with third parties such as Accounting Firms, Insurance Companies, suppliers, Government Agencies, and by interviews with the claimants when a technical mission to Kuwait and Jordan was undertaken.

13. While the decision to grant the Palestinian the opportunity to file under the late claim program was approved in the GC session the OIOS was concerned that the decision was not properly documented and made public as is customarily done. There is also a discrepancy in the Reasons Review manual, as it stated as one of its criteria that only stateless Palestinians can participate in the Palestinian program, but however accepted Palestinian with Jordanian nationality and passports. OIOS is also concerned with the number of 'C' claims that have been linked to 'D' claims, are over the 'C' claims limit of \$100,000 and prove to be questionable, but were still awarded amounts, as they were processed using the less stringent 'C' claims methodology.

V. AUDIT FINDINGS AND RECOMMENDATIONS

A. Authority of the UNCC to grant late claims filing period to the Palestinian's

14. Security Council Resolution 687 laid out the authority for the Security Council to form the GC of the UNCC and to administer the fund. The GC therefore, established datelines for claims administration and at its 42nd session reviewed and authorized the approval of the acceptance of Palestinian late claims to 1 July 2002. At its 44th session the GC extended this late claims deadline to September 30, 2002. This decision was evident in the minutes of the GC's meeting.

15. The decision to extend a late claim filing period to the Palestinians was however not recorded in the published decisions of the 42nd session of the GC as is generally done. The wider public may therefore not be aware of the decision taken to grant Palestinian the option of filing late claims.

Recommendation 1

The UNCC should request the Governing Council to include the decision to grant Palestinian late claims filing at the 42nd Governing Council session in its list of recorded decisions, in order to ensure transparency of the UNCC operations and based on the undertaking by the GC to make other decisions of the GC public. (AF2005/820/03/01)

16. *The UNCC agreed with recommendation 1 and will have the recommendation brought to the attention of the GC. The Secretariat stated “the decision to document the approval of the establishment of a Palestinian “late claims” programme by way of the adoption of a conclusion of the Working Group rather than a numbered decision (which would have been posted on the UNCC website) was taken by the GC itself. The factors that informed the GC’s decision were the fact that the proposed programme affected only one submitting entity, the Palestinian Authority, and the GC’s concern not to give false encouragement to other submitting entities seeking to file “late claims”, given that the basis for the GC’s approval of a programme for Palestinians was their unique circumstances”.*

17. *The Secretariat further stated “the GC’s approval of a Palestinian “late claims” programme was conveyed to the Palestinian Authority immediately following the forty-second session, which was held in December 2001. Similarly, the Council’s approval of the Palestinian Authority’s request to extend the filing deadline from 1 July 2002 to 30 September 2002 was communicated to the Palestinian Authority directly following the forty-fourth session held in June 2002. The secretariat understands that the Palestinian Authority through its offices worldwide disseminated information regarding the existence of the Palestinian “late claims” programme and the filing deadline. The fact that some 46,000 claims were filed when the Palestinian Authority originally estimated that 5,000 – 6,000 claims would be filed (see the UNCC’s Summary of Activities Report, 22 August 2002) suggests that the programme was well publicized. Indeed, the secretariat is unaware of complaints by Palestinians that they did not know about the “late claims” programme within the filing period”.*

18. *The Secretariat also added “insofar as the wider public is concerned, information regarding the GC’s approval of a late-claims programme for Palestinians became available when the “Report and recommendations by the panel of Commissioners concerning the first installment of Palestinian ‘late claims’ for damages up to USD 100,000” (S/AC.26/2003/26) (“the first installment report”) was posted on the UNCC website following its approval by the Governing Council in December 2003. Information concerning the Governing Council’s approval*

of the programme is also contained in each of the subsequent panel reports relating to the Palestinian "late claims", all of which are posted on the UNCC website".

19. The OIOS will close this recommendation when it has been documented that UNCC has submitted it to the GC.

B. Review of the Late Claims test methodology

20. The Secretariat, based on the Palestinian Panel's criteria prepared a manual outlining the Reasons Review of Palestinians late claim criteria. In part one of the manual (paragraph 5 and 6), it states the criteria for the eligibility for the Palestinian late claims program are as follows:

- "That only stateless Palestinians can participate in this program. Two things follow from this starting premise. First, individuals who were nationals of a state during the regular filing period are not eligible to participate in this program and second, claimants must demonstrate their Palestinian-ness by showing links to Palestine.
- All claimants must demonstrate that they did not have a full and effective opportunity to file claims during the regular filing period. They must show that they tried to file during the regular filing period and could not, because of the claimant's status as a stateless Palestinian."

21. This criteria implies that the Panels intent was that for individuals to qualify, they must be:

- a. A stateless Palestinian of no other nationality; and
- b. Demonstrate they were not able to file during the regular program.

The Panel then went on to give extensive guidelines as to the eligibility of persons living or who relocated to different countries, including Jordanian passport holders. It states that persons who have passports issued by other states (other than Jordan) should be marked as unsatisfactory and so would not qualify under the UNCC's late claim program.

22. UNRWA defines a stateless Palestinian as persons whose normal place of residence was Palestine between June 1946 and May 1948, who lost both their homes and means of livelihood as a result of the 1948 Arab – Israeli conflict. The definition also covers descendants of persons who became such refugees in 1948. These refugees mainly moved to Jordan, Lebanon, Syria, the West bank and the Gaza Strip.

23. The Palestinian Refugee ResearchNet (PRRN) claims that the refugee situation varies widely from country to country. This is also evident and illustrated in the review methodology. The PRRN states that the

- West Bank and Gaza refugees are stateless
- Jordan refugees are most times full citizens of Jordan

- Syria refugees are non-citizen but provided with full access to employment and social services and are considered stateless.

24. OIOS examined a sample of twenty percent of the claims that passed the Reasons Review methodology. Sixty two percent of the claims investigated, represented claimants who also hold Jordanian nationality and were holders of Jordanian passports. A number of the claimants were in fact born in Kuwait, but were of Palestinian parentage. According to the primary criteria established by the panel, these claimants would have failed the 1st criteria in being a stateless Palestinian as they had a Jordanian nationality or in some cases both a Jordanian and Palestinian nationality. This was regardless of the fact that they did not have a full and effective opportunity to file during the regular filing period as they were turned away. The review methodology is therefore in conflict with these claims.

Recommendation 2

The UNCC should amend the Reasons Review manual by modifying the 1st criteria, as to persons with other nationality not being eligible to qualify under the program, as the statelessness of a Jordanian / Palestinian will always be subject to extensive debate and question. If the Panel of reviewers intended to allow Jordanian/ Palestinian nationals to file a claim because of the unique circumstances of not being allowed to file such a claim through either the Kuwaiti authority or the Jordanian authority during the regular filing period, then the UNCC should amend the manual. However if the Panel intended not allow persons with a nationality to qualify under this program, as stated in the current Reasons Review document, then the UNCC should disallow the claimants who in fact had Jordanian or any other nationality during the regular filing period from participating in the late claims program. (AF2005/820/03/02)

25. *The Secretariat has accepted recommendation 2 and the will add language to link the reference to the Panel's starting premise with the Panel's determinations concerning the significance of the holding of Jordanian passports. The Secretariat stated "While the reasons review manual is no longer in use for claims processing, since the processing of Palestinian "late claims" is complete, the revised reasons review manual will be archived and retained indefinitely as a "category 1" record, i.e. a record with historical and/or precedential value. The Secretariat also responded that "the Palestinian Panel decided, after extensive research and deliberation, that claimants holding Jordanian passports were not thereby automatically barred from participating in the programme, because the Panel found that holding a Jordanian passport did not necessarily connote Jordanian nationality (see paragraphs 30-34, 52-57 and 68-69 of the first installment report and paragraphs 10-17 of the "Report and recommendations by the panel*

of Commissioners concerning the second installment of Palestinian 'late claims' for damages up to USD 100,000" (S/AC.26/2004/3)

26. OIOS will close recommendation 2 after the Secretariat has provided OIOS with an updated Reasons Review Palestinian late claims methodology manual to reflect the procedures actually conducted by the Panel.

C. Review of 'D' Claims methodology

27. In general, the 'D' claims methodology was well documented and it was evident that the processes and circumstances arising with the 'D' claims were well analyzed and thought through. Documents were generally in place except for the instances noted below:

- a. The original files containing the different methodology documents stated under the relevant claims heading that "This section is currently in preparation and will be inserted by the D2 team when available". This was seen for D1, D2, D3, D5 and D8 and D9 claim methodologies. On request these were made available to OIOS for review.
- b. The methodology made reference to incomplete processing to be completed or made available elsewhere. This was the case with the following
 - D3 claims in paragraph 18 referred to part 1 of the 1st installment for a detailed review of the methodology
 - D8/9 claims paragraph 6.4 where business claims that are the subject of competing E4 claims will not be evaluated using this review and UNCC arrangements for dealing with such cases remains to be finalized.
 - D8/9 claims methodology paragraph 9.10 and steps 4 and 5 refers to a maximum credit score to be given to the claimant for existence and ownership, but no score guide line is given

Recommendation 3

The UNCC should compile a comprehensive manual that contains all the information that relates to that claim type, including all the different methodologies. This will allow for ease of referencing and for good archiving. Similarly where scores are given these are to be indicated in the methodology for ease of reference.
(AF2005/820/03/03)

28. *The UNCC agreed with recommendation 3 and stated " it is currently archiving records relating to the category "D" methodologies, OIOS' comments are timely and will be incorporated into the ongoing archiving work of the "D" Team within the Legal Services Branch ("LSB"). With respect to the particular points raised, the secretariat agrees with OIOS'*

recommendation that for ease of reference all documents relating to the category "D" methodologies for the various loss types should be archived in a manner that allows an outside reviewer to easily locate all key documents and information relating to the category "D" methodologies. Under the archiving policy approved by the Governing Council, all methodological documents are to be archived together and classified as "category 1" documents".

29. *The secretariat further states " the panel reports and recommendations referenced in the methodological documents (such as those referred to by OIOS in regard to D3 losses) are accessible to the public, since panel reports and recommendations are posted on the UNCC website immediately following their approval by the Governing Council. The secretariat intends to include hard copies of panel reports and recommendations in its archived materials".*

30. *The Secretariat also stated the following with respect to the OIOS recommendations.*

- *"With respect to OIOS' comments regarding paragraph 6.4 of the consultants' report regarding the D8/D9 methodology, the secretariat notes that the statement "arrangements for dealing with [E4 overlapping] claims remains to be finalized" was accurate in 2000, the date the expert consultants completed the report. At that time the Governing Council was still considering the treatment of "overlapping" claims. While the secretariat cannot edit that report, the secretariat will add information to the methodology binders making clear that documents relating to "overlapping" claims have been archived by the "E4" team as part of the category "E4" records".*

- *"With respect to the maximum evidence scores under the D8/D9 methodology, these guidelines are available and are archived in the category "D" LSB binders regarding the D8/D9 methodology".*

31. *The Secretariat also stated in sum that, as part of the archiving of records relating to the processing of category "D" claims, which is presently underway, one set of methodological materials will be retained that covers all of the category "D" loss types. These materials will encompass both the legal and valuation methodologies, including documentation regarding the evidence scores.*

32. *In order to close recommendation 3 OIOS request that the Secretariat provides the dates of finalising and implementing this recommendation.*

D. Processing of 'C' Claims filed, over the claims limit of \$100,000 using 'C' Claims methodology

33. OIOS is concerned with the number of 'C' claims that the D2 team have highlighted, that are linked to 'D' claims, that are questionable claims, but have been awarded amounts higher than legitimate 'D' claims. A decision was taken by the UNCC, as a result of the large number of claims received, to mass process 'C' claims. The 'C' methodology did not require the claimants to provide sufficient evidence to justify the claims made, as against the 'D' claims methodology where each claim was reviewed by the team and evidence was required to substantiate losses. There were also instances where 'C' claims over the 'C' claim's limit of \$100,000 were processed as a 'C' claim using the 'C' claims methodology and so received awards, that, if they were processed as a 'D' claim using the 'D' methodology, would not qualify for an award. These are listed in Section F of the report under 'D' Claims Processing.

Recommendation 4 and 5

The UNCC should:

- i. Recategorise the 'C' claims submitted that are over the 'C' claims limit and so use the 'D' claims methodology, where a higher degree of evidence is required to substantiate the claims. (AF2005/820/03/04)
- ii. Where questionable C claims have been awarded prior to a 'D' claim ruling, UNCC should review the 'C' claims ruling for correctness. (AF2005/820/03/05)

34. *In response to recommendation 4 and 5 the Secretariat did not accept these recommendations and commented as follows:*

- i. *"The "D2" Panel of Commissioners, appointed by the Governing Council in 1999, did not have the authority to alter the category "C" methodology previously developed by the category "C" Panel. This methodology, which was approved by the Governing Council in conjunction with its adoption of the seven reports and recommendations of the category "C" Panel of Commissioners, was applied to approximately 1.7 million category "C" claims between 1994 and 2004. The category "C" claims reviewed under this methodology have been paid in full.*
- ii. *The nexus between the work of the "D2" Panel and the work of the category "C" Panel related only to a duplication review of multiple claims filed by the same claimant in different*

categories (with any necessary deductions made to what would otherwise be the award in category "D") and to competing claims for the same business where one claim was filed in category "C" and the other was filed in category "D". The "D2" Panel conducted these "C/D" reviews since most of the category "C" claims were processed before category "D" claims.

iii. OIOS has raised general concerns regarding the level of evidence provided in relation to category "C" claims, noting that the evidentiary requirements for category "D" claims were more stringent. While it is true that category "C" and category "D" claims are subject to different review procedures and evidentiary requirements, this is a result of the differences in the nature of the claims.

iv. Governing Council decision 1 (S/AC.26/1991/1) set forth the criteria for the expedited processing of category "C" claims, which were categorized as among the "most urgent" humanitarian claims. The Governing Council directed the category "C" Panel "to adopt expedited procedures to process them, such as checking individual claims on a sample basis, with further verification only if circumstances warranted." These "simple and expedited procedures" were to be applied in order to provide "prompt compensation in full" or "substantial interim relief".

v. To deal with the approximately 1.7 million category "C" claims in an efficient, fair and impartial manner, the category "C" Panel employed a variety of internationally recognized techniques for processing claims, including computerized matching of claims and verification of information, sampling, statistical modeling, and individual review of some loss elements, where necessary. More than 1,500 of the 15,131 C8 business loss claims resolved in the seventh installment of category "C" claims were individually reviewed by the Panel during the sampling project.

vi. In accordance with article 35 of the UNCC's Provisional Rules for Claims Procedure ("the Rules"), adopted by the Governing Council in decision 10 (S/AC.26/1992/10), a 120-day period was allotted for the review of an installment of category "C" claims. In light of the Council's direction to adopt expedited processing procedures and the relatively short review period, the category "C" Panel determined that it would avoid, except where absolutely necessary, the practice of seeking additional information from the claimants or the submitting entities.

vii. In contrast, category "D" claims were subject to individual review. In decision 7 (S/AC.26/1991/7/Rev.1), the Governing Council determined that because of the "substantial amounts" claimed in categories "D", "E" and "F", these claims "must be supported by documentary or other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". This higher evidentiary standard is reiterated in article 35 of

the Rules. Category "D" claims underwent a higher level of scrutiny, as there was no cap placed on potential awards and asserted claimed amounts ranged from relatively modest amounts to over USD 1 billion.

viii. In order to determine whether a category "D" claim was supported by evidence sufficient to prove the fact and amount of the loss, extensive claim development was undertaken for the benefit of the Panels in accordance with article 34 of the Rules, including written requests to claimants, Governments and third parties for information relevant to the verification and valuation of the loss. As these procedures required additional time, the "D" Panels were given a longer review period for each installment of claims, ranging from 180 days to 12 months, depending on the complexity of the losses asserted.

ix. OIOS questions the fact that some category "C" claims asserted losses in excess of USD 100,000 but were nonetheless processed in category "C". The category "C" Panel addressed this issue in its sixth and seventh installment reports (S/AC.26/1998/6 and S/AC.26/1999/11) in which the Panel noted that there were approximately 6,000 claims with this fact pattern. The category "C" Panel determined that these claims should be processed as category "C" claims, noting that Governing Council decision 1 "does not specify that the mere fact of claiming for an amount in excess of US\$100,000 is a jurisdictional bar to compensation if such a claim is presented in category 'C'" (see paragraph 71 of the seventh installment report). Any resulting award was, however, capped at a maximum of USD 100,000. This practice respected the claimant's intention to file a category "C" claim while recognizing that Iraq's liability in regard to a category "C" claim could not exceed USD 100,000.

x. OIOS states that certain category "C" claimants received more under the category "C" methodology than they would have received under the category "D" methodology and that other category "C" claims would not have received awards had they been processed under the category "D" methodology. It is difficult to speculate what a category "C" claim might have been awarded if reviewed in category "D", since category "C" claims did not undergo claim development. Therefore the type, quality and quantity of evidence category "C" claimants might have provided in response to an article 34 notification is unknown.

35. Recommendation 4 and 5 will be closed after a review is conducted of the 'C' claims. The OIOS has noted the Secretariats response but maintains that using the 'C' methodology to process claims over the C claims limit has given the claimants a distinct advantage, over using the 'D' Methodology to process these claims and so may result in higher awards being granted.

E. Computer application efficiency

36. In a limited review of the production software application, the OIOS assessed its use to process the 'D' methodology, and found it to be acceptable except in the following area. In

reviewing the valuation of the business loss methodology (D8/9) claims, OIOS found that there was no record on the system for the calculations performed in the valuation section. This data was not saved to the system. We are aware that this step was performed, as a hard copy is available on the relevant claimants file. Subsequent to our highlighting this problem, the system's personnel investigated the problem and it was discovered that a bug is present in the read only application that was given for audits use. This read only access however, will be used for archiving purposes.

Recommendation 6

UNCC's Information System Section (ISS) should determine why the read only system does not retain information and have it corrected if this access is to be maintained as a form of UNCC's permanent record. (AF2005/820/03/06)

37. *UNCC accepted recommendation 6 and stated, " In response to a request by the OIOS field auditor for access to the "VVSBS" electronic valuation applications, the ISS informed the LSB that these VVSBS applications were not available in a "read only" version. Accordingly, ISS undertook to create a "read-only" version of the VVSBS applications that would allow the user to view all data but would not allow the user to alter data. The OIOS field auditor was provided with this "read-only" version of the applications and in using the applications noticed that certain data could not be viewed. ISS determined that there was a "display only" bug in the "read-only" version that did not impact on the integrity or storage of the VVSBS valuation data in the database. ISS has now done further work on the "read-only" application to ensure that the "read-only" application displays all the valuation data contained in the original "production" version of the VVSBS valuation applications. Further tests will be conducted to confirm that there are no remaining bugs in the "read-only" applications".*

38. OIOS will close recommendation 6 on completion of the cleaning of the 'read only software'.

F. Review of 'D' Claims Processing

A. Claim # 3011231

39. The claimant claimed a total of \$137,287.20 for his business losses (D8/9) and motor vehicle (D4) losses. He also claimed on C claim #1813961, amounts totaling \$100,709.34 and was awarded \$44,231.88 for this C8/9 loss (business income) from \$87,006.92 claimed on this loss type. Both his C and D claims were on the same business. On assessment of his D8/9 claim, he was awarded \$23,665.79 therefore an overpayment of \$20,566.07, when compared to his 'C' claims award received, as he was already awarded \$44,231.88 for the same 'C' claim loss. This overpayment is below the UNCC materiality level for recovery, however:

- a. His D4 award was granted despite overpayment on his C claim and so he was awarded the \$1,038 for his D4 claim for motor vehicle and zero for his D8/9 business loss claim.
- b. As his 'C' claim was over \$100,000 this claim should have been considered as a 'D' claim and so would have been subject to a stricter rule of evidence requirement. However, because he claimed as a 'C' claimant he was successful in receiving amounts on a claim that he was suspected of supplying fictitious evidence for. His business partner also claimed one-third share of business income losses on a 'C' claim and was awarded \$48,712.80 from a claim of \$51,503.11. He was also successful, as he also claimed as a 'C' claimant and was also not required to provide the necessary evidence.

Recommendations 7 and 8

The UNCC should:

- i. Re-categorize the claimant 'C' claim as a 'D' claim in order to meet the 'D' claims methodology rules and so he would not have been entitled to the amount received on his 'C' award for his C8/9 losses. (AF2005/820/03/07)
- ii. In using the materiality level as a basis for non-recovery of overpayment on the 'C' award, take the amount awarded on all his other loss type into consideration and so the amount awarded for 'D4' MV should also be deducted making the total 'D' award nil. (AF2005/820/03/08)

40. *In response to recommendation 7 the Secretariat responded, "This claimant advanced his category "C" claimed amount in Kuwaiti dinars, claiming the amount of KWD 29,105, an amount that he believed was roughly equivalent to USD 100,000. Under UNCC exchange rates, the claimed amount was calculated at USD 100,709.34.*

41. *The Secretariat further explained "as explained above, the UNCC did not convert a category "C" claim into a category "D" claim if the amount claimed exceeded USD 100,000. Claimants were permitted the choice of filing in category "C", which had a lower evidentiary standard, used standardized mass processing techniques to resolve claims, but had a cap on the amount that could be awarded, or filing in category "D", which had a higher evidentiary standard, individual claim review, but no cap on the amount that could be awarded".*

42. *In response to recommendation 8 the Secretariat stated that the following decisions were taken on this claim:*

- *"The claimant filed a category "C" claim for C1 departure losses, C4 personal property losses and C8 business losses and was awarded USD 54,733.75 for all losses,*

including USD 44,231.88 for his business losses. The category "C" claim was resolved by the Palestinian Panel, using the category "C" methodology as applied to the Palestinian "late claims".

- "The "D2" Panel subsequently reviewed the same claimant's category "D" claim. The category "D" claim was for a D4 motor vehicle with a claimed amount of USD 5,190.31 and D8/D9 business losses with a claimed amount of USD 132,096.89".
- "In considering the category "D" claim, the "D2" Panel reviewed the category "C" claim to determine if there was any duplication of losses. As the claimant had not claimed for a motor vehicle in category "C", and as the claimant satisfied the category "D" legal test for ownership, loss and causation, the motor vehicle claimed in category "D" was valued under the category "D" methodology and an award of USD 1,038 was recommended. The secretariat notes that the claimant would have been awarded the same amount had the loss been claimed in category "C".
- "A review of the claim files showed that the business losses claimed in categories "C" and "D" related to the same business. While it was possible for claimants to claim certain business losses in category "C" and other business losses in category "D" (in which case there would be no duplication between the losses claimed), in this case the "D2" Panel was not satisfied that the business losses claimed in each category were distinct. The Panel therefore recommended that the category "C" award for business losses be deducted from any category "D" award for business losses. As the evidence provided by the claimant was insufficient to warrant a greater award under the category "D" methodology than the amount of the category "C" award, no award was recommended in category "D" for business losses".

43. The Secretariat also added "that OIOS reasons that since the category "C" award for business losses was greater than the proposed category "D" award prior to the deduction, the claimant must have been overpaid for his losses in category "C" and that the category "D" Panel should not have recommended payment of an award in relation to the claimant's unrelated motor vehicle losses. However, such reasoning disregards the fact that the Governing Council established different claims categories with different features and methodologies. As the losses claimed were properly valued under both the category "C" and category "D" methodologies, there is no basis for altering either award".

44. To close this recommendation 7 and 8 the OIOS maintains that despite the different methodology used, the UNCC should review all awards to be received and received by any claimant, using the different methodologies and should deduct any over awards made, despite the category that the award falls under. In this instance, additional information was requested by the 'D' panel to support the 'D' claim, which is also the same loss filed under the category 'C'. As a

result the evidence submitted could not justify an award for even the amounts already paid under 'C' thus an over payment and the need for a recovery of amounts over paid. This recommendation will be closed when the recovery is made.

B. 'D' Claim # 3011330

i. Competing 'C' claim #1404310

45. The claimant operated two schools one of which had a competing 'C' claim #1404310 on its business losses. The 'D' claimant had leased the business license from the 'C' claimant. As part of the 'D' claimants evidence he submitted to UNCC, a letter from the competing 'C' claimant declaring that he will not and has not filed a claim on the Institute. However, LSB found that this was not the case, as he did file a 'C' claim for \$52,387 for business property losses on the institute for furniture and equipments. He was awarded the full amount claimed, as there is no requirement to provide evidence to justify a 'C' claims loss. In fact, no translation to English of this 'C' claim was done by the UNCC until after the issue arose with the overlap, when a rough translation of the document was done.

46. The 'D' claimant #3011330 also filed a business loss of \$146,985 for equipment and furniture. It is assumed that this claim is for the same equipment as in the 'C' claim. He was awarded \$18,372.17. In calculating the 'D' claimant's valuation for this loss, a deduction was made to his total D8/D9 loss for the Institute of \$34,763.27, as income from other source. This deduction was based on adjusting the claimants total for the Institute award to 1/3 based on his portion of ownership. The total award before the deduction was \$52,144.90. However, the overlap was claimed for losses only on the tangible property section of the 'C' claim. Based on the total assessment of the losses of \$146,885 and valuation on the Institute, the loss to be awarded for furniture and equipment would be \$18,372.18. However the 'C' claimant was awarded \$52,387 for this loss, an amount over and above the value of the loss award. Based on the 'D' valuation his award would be \$12,248.12 hence; there was an overpayment of \$40,138.88. This amount is over the materiality level.

ii. Informing the claimant of the portion of award received

47. In LSB's interview with the claimant, he indicated that he would share the proceeds from the claim, giving two-thirds to the 'C' claimant. There is however no indication on the file that UNCC has informed the claimant, that the award he is now receiving is his one-third portion only, as he did not claim or receive authorization from the other partner to claim for his two-third portion. Therefore, there would be no need for the claimant to split his present award of \$17,381.63 that he is receiving for the Institute. We are aware that comments are attached to the awards sheet that is being sent to the Government, however our review indicated, there was insufficient information given to the government, to inform the claimant as to the two-third deductions made on his award on the Institute's business loss.

iii. Issuing false statement to UNCC

48. UNCC has not taken action against the 'C' claimant for issuing a false document to UNCC, where he claimed that he did not file a claim against the UNCC for the Institute or in his claim to inform the UNCC that he is not the hundred percent owner and operator of the business, as he had leased it to the 'D' claimant.

iv. Evidence on file difficult to locate

49. The evidence on this claim file was very difficult to locate, in particularly the references to attachment by claimant. These were in general not properly labeled for ease of reference and therefore difficult to locate.

Recommendation 9, 10, 11 and 12

The UNCC should:

i. Reduce this award to \$0 as based on the 'D' methodology the same loss cannot be awarded twice and so the award in this case for the 'D' claimant should be \$0 until a recovery is made. The UNCC should recover the over payment in this award of \$40,138.88 from the 'C' claimant and from this amount pay the 'D' claimant his one-third portion of \$6,124.06 for this loss type. (AF2005/820/03/09)

ii. Show that they have indicated to the claimant that he will receive only 1/3 of his claim. This should be done at the earliest date. (AF2005/820/03/10)

iii. Ensure that action is taken against the 'C' claimant for issuing to UNCC a document that he knew was not truthful. (AF2005/820/03/11)

iv. Ensure that all evidence provided to justify the claim, is properly labeled and filed for ease of future reference. (AF2005/820/03/12)

50. *In response to recommendation 9 the Secretariat responded that "OIOS calculated the amount that it considers to be an overpayment to the category "C" claimant by extrapolating from the actual award amount paid to the category "D" claimant. This cross-category valuation is contrary to UNCC practice and undermines the rationale of having two separate claims categories for individual losses. Moreover, if the category "C" claim were to be held to the standard of category "D", the claim would need to be processed pursuant to category "D" procedures. Namely, the claimant would need to be given the opportunity to claim for all of his*

losses (with no cap on his award) and the claimant would be requested to provide evidence in support of his losses pursuant to article 34 of the Rules”

51. *In addition the Secretariat stated that they did the following:*

- *As each claimant appeared to be claiming based on a 100 per cent ownership interest, written notifications were sent to each, requesting information and evidence regarding the ownership of the business as of the date of Iraq’s invasion of Kuwait. The secretariat interviewed both competing claimants during the course of a technical mission in Kuwait in December 2004. Both acknowledged a joint interest in the business, with the Kuwaiti category “C” claimant holding a two-thirds interest and the Palestinian category “D” claimant holding a one-third interest. Based on these admissions, the “D2” Panel recommended limiting the category “D” claimant’s award to one-third of the demonstrated losses of the business as assessed under the category “D” methodology.*
- *The Kuwaiti category “C” claim was for the business’ tangible property losses only and received an award of USD 52,387 for this loss. In his personal statement, the Kuwaiti claimant indicated that he would file a claim for his remaining business losses in category “D” but he did not do so”.*

52. *The Secretariat further stated “any attempt to determine whether the claimant was overpaid within the paradigm of the category “C” methodology is hypothetical as such an exercise imposes a degree of individualized tailoring to the analysis of the claim that would not have occurred pursuant to category “C” procedures. The category “C” business loss was awarded based on mass claims processing techniques, employing statistical modeling. The compensation formula applied was intended to arrive at a lump sum award reflecting all business loss elements such as loss of stock, loss of tangible property and loss of profits. This calculation did not depend on claim details in the personal statement such as whether the claim was for stock or profits or the percentage ownership of the claimant. Even if the category “C” claimant had stated in his personal statement that he owned two-thirds of the business, he would have been awarded the same amount, provided his claimed amount was the same”.*

53. *The secretariat notes that a comparison between the category “C” and the category “D” claimed amounts for business losses shows that the amount claimed in the category “C” claim is substantially less than two-thirds of the losses of the business as described by the category “D” claimant. The “D2” Panel took factors such as these into account in making its determination that the award to the category “C” claimant under the category “C” methodology was not materially incorrect. To close recommendation 9, the UNCC should provide OIOS with the information to justify that the ‘C’ claimant would receive the same award, even if he had stated in his personal statement that he owned only two-third of the business.*

54. *The UNCC agreed with recommendation 10 and responded that “ the UNCC has written to the Executive Director of the Palestinian Compensation Commission to inform the claimant that the award with respect to one of the two schools reflects the claimant’s one-third interest only. While detailed information regarding the breakdown of an award is generally only provided upon the claimant’s request, the secretariat agrees that the special circumstances of this claim were sufficient to warrant this exception.*

55. *The UNCC accepted recommendation 11 and states that “a note verbal was sent to the Government of Kuwait in November 2004 informing Kuwait of the competing claims issue and specifically referencing and attaching the declaration from the Kuwaiti claimant in which he falsely stated that he did not file a UNCC claim for compensation in relation to the contested business. In addition, the secretariat stands ready to forward a copy of OIOS’ report to the Kuwaiti Government as soon as the report is finalized”.*

56. *The Secretariat also responded that “as the secretariat noted in its responses to OIOS’ audits of part three of the nineteenth installment of category “D” claims and the tenth installment of “E1” claims, it is not within the Commission’s mandate to attempt to penalize or censure claimants outside of the verification and valuation of their claims. The UNCC is not empowered to impose costs or sanctions against claimant and that:*

- *The investigation of possible fraud and the imposition of penalties are more properly matters for the domestic criminal and/or civil legal systems of submitting countries. Since claims are filed with the Commission by submitting Governments, only they are in a position to consider whether and what action may be appropriate.*
- *The secretariat also notes that a constituent element of fraud, whether in civil or criminal law, is intent. The Commission is not best placed to conduct the investigations that would be necessary to establish such intent, nor is proof of intent essential to the application of article 35(3) of the Rules and the verification and valuation of claims. Moreover, it would be inappropriate for Iraq to pay for any such investigations conducted by the Commission”.*

57. *In response to recommendation 12 the Secretariat responded that it confirms that the claim file has been reviewed to ensure that all documents listed in the docket sheet for this claim are present in the claim file. The responsibility for the presentation and labeling of evidence provided by claimants rests on the claimants. While all evidence submitted by the claimants is kept in the claim files, the secretariat does not have the resources to systematically organize and label the evidence proffered by claimants.*

58. *To close recommendation 10, 11 and 12, OIOS requests the Secretariat to forward the letter that has been written to the claimant indicating his percentage of the business award received and the letter written to the Government of Kuwait, outlining the incident regarding this*

duplicate claim and the claimant claiming he did not file a claim with the UNCC. Please also forward any response received from the Government.

C. Claim #3011421

ii. LSB Production database is not updated with the client's information

59. The LSB department disallowed the clients 'D5' claim for bank security losses. OIOS however, could not locate on the LSB database, an explanation for this, as no information was recorded on the LSB database as it was left blank. However, an explanation was available on the summary page on the clients file. If the UNCC intends to maintain a soft copy of the client's records, it is important that all relevant information pertaining to a decision made, is recorded on the system to support the bases of such decisions.

ii. Incorrect information on the VVSB worksheet

60. We note that the VVSB awarded this claimant \$0 for his loss of profit award. On the data worksheet however, an amount of \$17,500 was added as compensation from other sources. No explanation was available on the system or files to explain this other source adjustment, however VVSB notes on the claimants file stated that LSB made a general minimum award for loss of profit. This would therefore imply that an award of \$17,500 was given for loss of income and not from other source as implied from the LSB worksheet.

Recommendation 13 and 14

The UNCC should:

i. Update the client's file (Claim no. 3011421) immediately (AF2005/820/03/13)

ii. Correct the VVSB system to reflect the correct awards given to the claimant in each category type. (AF2005/820/03/14)

61. *The UNCC did not agree with recommendation 13 and commented that they believe the electronic and paper records are complete and that a review of the file shows:*

i. "That the D5 bank accounts and securities loss described above was reviewed as a D8/D9 business loss, as the amounts related to currency losses of the claimant's business. This conclusion is reflected in the database and in the information provided to submitting entities upon the Governing Council's approval of the report that contains the claim".

ii. "The claimant did not complete the D5 page of the claim form; he completed the D8/D9 pages. However, in completing the summary page of the claim form he entered an amount of KWD 200,000 under the entry "Bank Accounts/Securities". When this claim

form information was data entered, the entry on the summary page prompted the system to activate the D5 page of the electronic claim form”.

iii. *“The LSB electronic worksheet indicates on its summary page that the claim was for D8/D9 losses only and that no D5 loss had been claimed. The claimed amounts in the database for D5 show the amended amount claimed and the review amount for the D5 page as USD 0 since the loss was reviewed as a D8/D9 business loss. The claimed amounts in the database for the D8/D9 losses show the correct amended amount claimed and the review amount for these currency losses”.*

62. *In response to recommendation 14 the Secretariat response were that while the net result of these entries was to generate an award of USD 17,500, that OIOS has correctly attributed to loss of profits, OIOS questions why the data has been maintained in this manner. While the secretariat acknowledges that such a recording device is not ideal, the results generated are correct and the basis for the award is recorded in the files. As the category “D” work programme is finished, it is unlikely that secretariat resources can be allocated to alter the electronic specifications of the database. The reasons are as follows:*

- *“As noted on page 7 of the LSB review document for the asserted business losses, the “D2” Panel determined that the claimant should receive an award of USD 17,500 for loss of profits. As an internal practice, VVSB would reflect awards recommended by the “D2” Panel under the column “Compensation from other sources”, though this field was not originally intended for this purpose. VVSB did this as an electronic “work around” to generate the correct award for the claim while not overriding the prior provisional valuation proposed by VVSB.*

- *In cases where the Panel’s recommended award differed from the VVSB proposed award, VVSB manually inserted the Panel’s recommended award under the heading “Compensation from other sources” and included a note in its files providing an explanation for this practice”.*

63. *In view of UNCC’s response, OIOS will close recommendation 13 and 14. However, while dissatisfied with the manner in which the issue in recommendation 14 was treated on the electronic worksheet, the OIOS is satisfied that proper written documentation is now in place to support the treatment of this minimum award given for loss of profit and so will close this recommendation.*

D. Claim # 3011727

i. Conflicting and incorrect amounts recorded as amounts claimed

64. *OIOS found that there were discrepancies in the LSB system in that the data summary claim screen under the ‘D’ claims maintenance had incorrect additions for the summary of the claims. This showed original claim on system as KWD1,370,923.97. However when actually*

summed, total is KWD 1,684,013.47, a difference of KWD313,089.52. The claimants 'D' claim file had a total claim amount of KWD2,138,611.52. However duplications of amounts on the claim form totaled KWD772,686.74 which when deducted gives a total claim of KWD1,365,924.78. This is the amount indicated on the VVSB work sheet.

Recommendation 15

The UNCC should correct all worksheets to reflect the correct client information. We are aware, that as far as amounts pertaining to a claim is concerned, the VVSB worksheets are what are relied on, however, conflicting amounts recorded on the system can lead to a degree of confusion when assessing the claim awards. For future reference, these amounts are to be corrected so as to ensure that the correct amounts claimed, is recorded on the system. This is to be done before the close of all claims processing.
(AF2005/820/03/15)

65. *Regarding recommendation 15 the Secretariat stated that "the claimant made a number of mistakes in completing his claim form including incorrectly totaling certain losses and repeating the same loss on more than one claim page. To address this problem, the secretariat reviewed the claim form with reference to the attached personal statement and documents and corrected the claimed amount information under the database column for the amended claimed amount. The amended claimed amount is the amount reflected in the Panel report".*

66. *The secretariat also notes that the VVSB valuation worksheet is linked to the Panel report data with respect to the final recommended award amount only. This claim was presented to the "D2" Panel and has a recommended award of USD 136,782.39. This amount consistently appears on the VVSB valuation worksheet, the LSB D status page and the report provided to the submitting entities. The secretariat is satisfied that despite the claimant's errors in calculating the losses on his claim form, the correct amounts were reviewed and the resulting award is correct.*

67. *The secretariat added that "Latest Review US\$" amounts appearing on the VVSB valuation worksheet for two losses (i.e., D8/D9 and D (Other)) do not correspond with the "review" amounts for these losses on the LSB documents. Although as noted above, the VVSB figures in regard to amounts claimed are not relied upon for reporting purposes, the secretariat has placed a note on the file regarding this discrepancy".*

68. The OIOS is satisfied that the correct amounts were reviewed and resulting award correct but is still dissatisfied with the entries made on the LSB database. Recommendation 15 will be closed when the LSB worksheets are corrected and the note is placed on the claimants file regarding the discrepancy.

E. Claim # 3012031

Requirement for three-year prior accounting information

69. Based on the methodology developed to evaluate business loss awards, the claimant is required to provide as evidence, 3 years prior period accounting information. This claimant's business was not started until July 1, 1990 and therefore based on the methodology was penalised for not being able to provide accounting information for the 3 years requested. He was therefore given an evidence score of 30%, and only awarded \$41,730 as against \$139,100.04 claimed.

Recommendation 16

UNCC should provide an alternative so as to ensure the claimant received a fair award. While we do not think at this stage of the completion of claims processing to change the methodology used, we think that the basis of the methodology is to ensure fairness in awards given. In this case where the claimant is unable to provide the information, as his business was not in operation for the required time, UNCC should provide the claimant with an alternative method to justify his claim. (AF2005/820/03/16)

70. *The UNCC disagreed with recommendation 16 and stated that "the loss of profits methodology considers evidence of the past profitability of a business to determine what profits losses, if any, were caused by the interruption of business activities resulting from Iraq's invasion and occupation of Kuwait on 2 August 1990. The "D2" Panel, working with expert consultants, determined that the best evidence claimants could provide to show a history of profitability was annual results for the three year period prior to Iraq's invasion of Kuwait. Claimants who provided this information received a high evidence score, reflecting the level of reliability of the evidence provided and that:*

- *Under this methodology, a claimant who started a business in 1990 was not able to achieve the top evidence score because of the greater uncertainty as to the profitability of the business. In the case raised by OIOS, the claimant started his business in July 1990 and therefore had only one month of financial results to support his projected profit losses.*

- *While it is possible that a business that is profitable in its first month may prove profitable in the months that follow, it may also be the case that the first month's profits overstate the future profitability of the business.*

- *Given the higher level of uncertainty about the performance of a new business, the "D2" Panel determined that the claimant's own projections of the profit loss of the new business would*

be discounted to reflect the lack of a proven track record of profitability. The lower evidence score accorded in these circumstances reduced the recommended award for this loss type”.

71. *The Secretariat also stated that “this “penalty on new businesses related to loss of profits only. With respect to other business losses, a claimant with a new business could have received the top evidence score, as the type of evidence provided to prove these losses did not rely on historic performance. For example, a new business could prove a loss of stock or tangible property claim with evidence such as purchase and sales invoices and could receive the top evidence score if complete information were provided”.*

72. Based on UNCC’s response, OIOS will close recommendation 16.

F. Claim # 3012102

Late Review Reasonableness test

73. The LSB team interviewed the claimant in December 2004 and questioned his attempt to file a claim during the regular filing period (reasons review for late filing). From the interview it was evident that the claimant may not have attempted to file a claim during the regular filing period. The claimant seemed to know the reasons for the review and answered accordingly. While he was awarded nil on his category ‘D’ claims, he was awarded an amount of \$38,431.10 for his category ‘C’ claims.

Recommendation 17

The UNCC should assess if the claimant attempted to file a claim during the regular filing program, as if he did not attempt to file, he would not be eligible for filing in the Palestinian late claims and so would not also be eligible for an award including his ‘C’ claim award. (AF2005/820/03/17)

74. *In response to recommendation 17 the Secretariat disagreed and stated, “As an initial matter, the “D2” Panel did not make reasons review determinations. This threshold eligibility assessment was performed by the Palestinian Panel, which transferred those category “D” claims determined to be eligible for inclusion in the programme to the “D2” Panel for review on the merits”.*

75. *The Secretariat also stated that “ they accept that a note to the file should be made to correct the inaccuracies contained in footnote 11 of the interview notes and will do so. They also acknowledge that the LSB interview notes taken by the interviewing lawyer during an interview with the claimant in December 2004 indicate that the claimant stated at one point in the interview that he did not attempt to file a claim in 1993. The notes also indicate that, during the same interview, the claimant stated that he did attempt to file a claim in 1994 but was refused*

due to his residency in Kuwait. Although footnote 11 to the interview transcript states that this was the first time that the claimant described an attempt to file a claim in 1994, the secretariat notes that the footnote is not factually accurate, as this information was provided previously by the claimant in response to a reasons review notification sent by the Palestinian team. Also during the assessment of this claimant's eligibility, the claimant's passport stamps indicating his presence in Jordan from 13 May 1994 to 6 June 1994 and the claimant's statement that the "Labor power in Jordan refused my claim as I had residency in Kuwait" were taken into consideration in deeming that the claimant had demonstrated an attempt to file a claim during the regular claims programme. The claimant did not provide any information in his interview that unequivocally contradicted this evidence".

76. Recommendation 17 will be closed when the notes to correct the inaccuracies are made to the claimant's files.

G. Claim # 3012997, #3012170, #3012240

Competing 'C' claim processed but over the 'C' claim limit of \$100,000.00

77. There was a competing 'C' claim #1552333 where the claimant claimed a business loss under C8 category, for his Company. The claimant was awarded the full amount claimed of \$15,000. In addition, he claimed for other losses and was awarded a total of \$100,000, the maximum amount for this category. This included a loss of income (C6) of \$60,000 and motor vehicle loss (C4) for \$5,000, all for which he was awarded the full amounts. However, there are discrepancies between amounts claimed, amounts awarded and amounts recorded on the file as follows:

- i. Claimants total claim was \$119,500 but this claim was processed under 'C' category where a less stringent evidence criterion is used.
- ii. These file documents were not translated, left loose in the file jacket and there was no evidence and support on file except passport information and an employer letter-stating salary KWD880 per month. (i.e. US\$36,500 per year).
- iii. In recording the salary to the worksheet an amount of KWD3,150 was used in error instead of US\$3,150 or KWD880, hence the total amount of US\$60,000 was awarded in conformity with the 'C' claim methodology.

78. If this claim, which is in the 'D' claims range was processed in the 'D' claim category this claim would have however failed his business loss (C8/9) for lack of supporting evidence and C6 would have awarded a maximum of US\$36,500.

Recommendation 18 and 19

The UNCC should:

- i. Re-classify the 'C' as a 'D' claim and the 'D' claim methodology to be applied. (AF2005/820/03/18)
- ii. Determine the basis of the loss of income award (C6). This is to be reviewed, using the correct amounts declared as income. (AF2005/820/03/19)

79. *The UNCC disagreed with recommendation 18 and stated "that UNCC claim no. 1552333 does not compete with the three category "D" claims referenced above, UNCC claim nos. 3012997, 3012170 and 3012240. The category "C" claim was reviewed to determine whether it competed with the losses asserted in the category "D" claims as the names of the claimed businesses were similar. As a result of claim development, it was discovered that the category "C" claimant's business losses related to a different business. This is described more fully on page 4 of the LSB template for UNCC claim no. 3012997, the only one of the three category "D" claims which proceeded to valuation (the three category "D" claims were filed by the same claimant for the same losses; two of the claims were marked as duplicates and awarded USD 0)".*

80. *The secretariat further states, " it disagrees with OIOS' conclusion that this category "C" claim should have been processed as a category "D" claim. As noted above, the UNCC did not convert a category "C" claim into a category "D" claim if the amount claimed exceeded USD 100,000. In this case, the valuation proposal under the category "C" methodology was USD 105,858, however, the award was capped at USD 100,000".*

81. *In addition the Secretariat states, " this category "C" claim was included in the seventh report of the category "C" Panel and the claimant's award was paid in 1999. While the "D2" Panel had no jurisdiction over the processing of a category "C" claim, particularly a claim that was not related to a category "D" claim under its review, the secretariat has reviewed the category "C" claim in order to respond to OIOS' comments and found the following:*

- *With respect to OIOS' comments regarding the amounts claimed, the secretariat notes that this claimant did not correctly add up all his losses, which explains the apparent discrepancy between the total amount appearing on the CS (summary page) of the claim form and the individual amounts appearing on each of the loss pages. The secretariat has reviewed the individual claimed amounts on the loss pages against the amounts appearing on the database and has determined that they have been properly recorded. OIOS may have noted that the claimant filed a C7 real property loss on his claim form that did not appear on the database. Under the category "C" methodology, non-Kuwaiti claimants as a general*

rule were not able to claim for this loss (since they were unable to hold title to real property in Kuwait).

- With respect to OIOS' final comment that if this category "C" claim were processed under the category "D" methodology the only compensable loss would have been the C6 salary loss, the secretariat notes that this conclusion is speculative. It is true that if the claim were reviewed "as is" certain losses would fail the category "D" legal review. However, it is difficult to say what further evidence or information the claimant might have provided had an article 34 notification been sent to him. As stated earlier, category "C" claims did not undergo claim development while category "D" claims did.*

82. *The UNCC agreed with recommendation 19 and states that the " Secretariat accepts OIOS' comments regarding the calculation of the claimant's salary; the secretariat agrees that an error was made when the monthly salary amount was entered in Kuwaiti dinars rather than US dollars. This computational error resulted in an overpayment to the category "C" claimant of USD 32,091.52. This matter will be brought to the attention of the article 41 unit within the secretariat for proposed correction in accordance with the Rules".*

83. Recommendation 19 will be closed after the outcome of the Article 41 submission for correction of the salary award is received. Recommendation 18 will be closed after the correction to the salary claim, as the reduction would revise the total claim to \$91,591.52, which is within the 'C' claim limit.

H. Claim # 3012801

84. The claimant claimed a number of losses totaling \$155,990,800 under the 'D' claim. He was held a prisoner in an Iraqi prison during the invasion and was not released until October 1997. One of his claims is for D2 compensation for loss earnings from injury. The claimant was allegedly earning, at the time of his capture, KWD350 per month i.e. KWD4,200 per year. The calculations according to the methodology are satisfactory, however, the methodology has conflicting methods of achieving the calculations. This is based on the calculation of future income in the D2 methodology

85. The methodology in place requires the calculations to be based on future income of the claimant, discounted to present value based on a discount rate factor of five percent over his remaining employable life factor. However, in calculating the award, the future income was deemed to be the present salary of the claimant. No consideration was taken of the fact that the future income of this individual would be increasing rather than remain constant, which is evident from his employment history. Prior to 1989 he was earning KWD287 per month, June 1989 KWD300 per month June 1990 KWD350 per month. The claimant had also just left school and was doing well and so had the possibility of a bright future for employment.

Recommendation 20

The UNCC should review the calculations used in the D2 methodology and alternatively consider interpretation of future income, so including a factor to estimate the income of the individual over his remaining employable life. This would be used as against the constant earnings of the claimant, calculated to the present value based on the number of years he is deemed to have left to retirement. This can be done in consultation with an actuary. (AF2005/820/03/20)

86. UNCC did not agree with recommendation 20 and responded that "they retained an international actuarial firm, Watson Wyatt Ltd., to assist the "D" Panel of Commissioners in the development of the methodology for the determination of the amount of pecuniary loss in respect of claims for loss of income suffered by claimants who have been injured and claims for loss of financial support suffered by dependants of individuals who have died as a result of the Iraqi invasion and occupation of Kuwait. The report, dated August 1997, was prepared by Dr. G. Tamburi, an actuarial consultant at Watson Wyatt Ltd and provided to the Panel. In his report he advised that any award should be assessed with reference to "directly relevant facts and circumstances" and "reasonable assumptions". In setting out the "reasonable assumptions" to be made, he addressed the issue of a claimant's potential increase in income stating that the future earnings of a victim – should he have survived – might not have been "static" in view of the fact that annual nominal earnings of an individual generally rise: (i) with age, seniority and experience.... Making assumptions on the first set of factors would, however, be speculative and lead into fairly arbitrary decisions."

87. The Secretariat also added that in the "Report and recommendations made by the panel of Commissioners concerning part one of the first installment of individual claims for damages above \$100,000 (category 'D' claims)" (S/AC.26/1998/1) at paragraphs 209-212, the "D" Panel of Commissioners referred to the assistance of the actuarial firm and held that the actuarial principle that "compensation should be paid on the basis of the deceased's earnings at the time of death" should be applied to D3 (death) cases where the deceased was earning an income prior to 2 August 1990. Consistent with the approach taken with respect to D3 (death) claims, the "D" Panel, in developing the methodology for D2 (personal injury) claims, stated in the "Report and recommendations made by the Panel of Commissioners concerning part one of the second installment of individual claims for damages above US\$100,000 (category 'D' claims)" (S/AC.26/1998/11) at paragraphs 67 and 68 that "in accordance with the recommendation made by the experts, in cases where the claimant is totally disabled, he or she should submit evidence of employment and salary received prior to suffering the injury" and that "the same discount rate and life expectancy tables as those adopted by the Panel for use in determining compensation for loss of support for D3 (death) claims should be applied in the case of D2 claims".

88. *The Secretariat concluded that the "D" Panel, when developing the methodology for D2 (personal injury) and D3 (death) claims, considered the possibility of taking into account an individual's prospective increase in income over his remaining employable life. However, the "D" Panel agreed with Dr. Tamburi that ultimately it was too speculative to do so.*

89. The OIOS will close recommendation 20 based on the Secretariat's response, the Actuary recommendation and the completion of the claims processing. The OIOS has agreed that the future salary, while not impossible to ascertain may be speculative.

VI. ACKNOWLEDGEMENT

90. We wish to express our appreciation to the Management and staff of UNCC for the assistance and cooperation extended to the auditors during this assignment.

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