


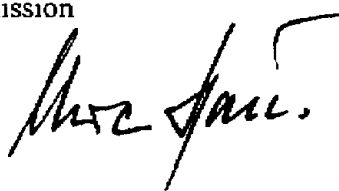


OFFICE OF INTERNAL OVERSIGHT SERVICES
INTERNAL AUDIT DIVISION

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22 April 2003

To: Mr. Rolf G. Knutsson, Executive Secretary
United Nations Compensation Commission

From:  Esther Stern, Director
Internal Audit Division
Office of Internal Oversight Services 

Subject: **OIOS Audit Assignment No. AF2002/27/1 - Processing of Category F1
Claims**

1. I am pleased to present herein our final report on OIOS' review of F1 claims processing at the United Nations Compensation Commission (UNCC). The results of the audit were initially communicated to UNCC through Audit Observations (Nos. 463/02, 464/02, 465/02 dated 01 May 2002 and No.473/02 dated 03 May 2002). Management's response, received on 04 June 2002, has been incorporated as appropriate in the report and is identified by the use of italics.

Audit objectives and scope

2. The report covers claims from the Report and Recommendations made by the Panel of Commissioners concerning the Fifth¹ and the Sixth² instalment of F1 claims. We reviewed if there were adequate controls to ensure compliance with Security Council resolutions and decisions of the UNCC Governing Council. We also examined the claims valuation and verification process, compliance with prescribed rules and procedures, methodologies developed and their application in processing claims, and the supporting evidence submitted by the claimants. We also discussed our observations with UNCC officials involved in processing F1 claims.

Overall Assessment

3. Overall, OIOS concluded that the claims it reviewed were generally in compliance with the UNCC Governing Council's decisions. OIOS noted, however, that there were deficiencies in the valuation and verification of the claims, which included incorrect and inappropriate valuations, failure to provide for residual value, overlapping claims, and a lack of adequate evidence. As the amounts involved were quite significant, OIOS recommended that UNCC review the claims and ensure that the claimants had not been overcompensated. UNCC did not

1 S/AC.26/2001/15

2 S/AC.26/2002/6

agree with OIOS' findings and recommendations, and advised that the processing of these claims had not been deficient. OIOS however, does not agree with UNCC's response, and, considering the substantial amounts involved, is reiterating its recommendations.

Audit findings and recommendations

A. Review of the Government of Israel's Claim no. 5000062

4. The Government of Israel sought compensation totalling \$1.06 billion for: (i) property damages caused by the Scud missile attacks launched by Iraq; (ii) Israel's military response to Iraq's invasion and occupation of Kuwait; and (iii) implementing precautionary and protective measures in Israel during the period of Iraq's invasion and occupation of Kuwait. The claimant acknowledged that it received a grant of \$650 million from the USA. The Governing Council approved³ a total net award of \$74.6 million. Our review of the claim revealed the following issues.

Financial assistance received from other sources not confirmed

5. Governing Council Decision 13 provides that if a claimant in category F has received compensation elsewhere for the same loss, the amount already received will be deducted from the compensation to be paid to that claimant for the same loss. OIOS observed that the Middle East Journal reported that:

- "German Chancellor Helmut Kohl announced plans to give Israel \$170 million in emergency humanitarian aid for victims of Iraqi Scud missile attacks" (dated 23 January 1991).
- "Germany began to deliver \$670 million in military aid to Israel, including gas antidotes and gas masks" (date 31 January 1991).

6. As UNCC did not consider whether Israel actually received this aid in processing the claim, OIOS recommended in Audit Observation 464/02 dated 01 May 2002 that UNCC ensure that there is no duplication in payment for the aid actually received.

7. *The UNCC Secretariat responded that the Government of Germany sought compensation for humanitarian emergency assistance provided to other refugees. However, in contrast, they made no claim for any humanitarian assistance provided to the Government of Israel. It can therefore be inferred that, in the absence of a claim from Germany and the absence of a disclosure by Israel, in fact, Germany did not provide humanitarian emergency assistance to Israel.*

8. *UNCC further stated that pursuant to article 35(i) of the Provisional Rules for Claims Procedures, the FI Panel of Commissioners (Panel) was the sole entity authorized to conduct fact finding for the claims of Germany and Israel. If OIOS were to insist that UNCC conduct further inquiries in the claim, the UNCC Secretariat would have to bring the matter to the attention of the Governing Council and request guidance.*

³ S/AC.26/Dec.131 (2001)

9. The UNCC Secretariat is relying on "negative assurance" that in the absence of a claim from Germany and disclosure by Israel, Germany did not provide humanitarian emergency assistance to Israel. This "negative assurance" is inherently weak evidence, and is generally applied to immaterial items only. Hence, considering the substantial amount involved, seeking "positive assurance" would have been the preferred option for UNCC to pursue.

Costs not within the missile launch period

10. The claimant requested reimbursement of \$103 million for payments made to individuals for damage to their property caused by Scud missiles launched by Iraq. The Panel found that an amount of \$69.8 million was compensable.

11. Israel had submitted a 532-page computer printout in Hebrew of approximately 15,300 individuals as supporting documentation for the claims. Translation of the computer printout showed that column no. 4 refers to the "incident date". As the Scud missiles were launched between 18 January and 25 February 1991, all dates in the column should be within this period. However, OIOS observed that in 57 per cent of the payments it test-checked, the date recorded was either before or after the period of the missile attack, and hence cannot be asserted as the basis of losses incurred as a direct result of Iraq's invasion of Kuwait. Since there was no evidence that this deficiency was factored into the computation, OIOS recommended in AO 464/02 that adjustments be made for these inadmissible payments.

12. *The UNCC Secretariat responded that the "Incident Date" shown in the translation refers to the "invoice date" and that sample-translated files were shown to OIOS. Further, though not reflected in the minutes of the Panel's August 2000 meeting, members of the FI Claims Unit recall that this issue was discussed and the Panel felt that the 20 percent proposed downward adjustment was sufficient to take into account any risk of overstatement.*

13. However, in OIOS' view, UNCC's reply that the "Incident Date" actually referred to the "Invoice Date" is not reasonable because:

- The 20 percent adjustment was recommended for any "leakages" to account for unjustifiably high measurement of loss including fraud;
- With the total number of claims exceeding 15,000, UNCC's sample size of two claims is not sufficient to confirm the Secretariat's assertion that the "Incident Date" refers to the "Invoice Date"; and
- Our test check revealed that two invoices totalling \$1.6million were prepared for payment on 18 January 1991, the date when the first missile was launched on Israel. Given the detailed procedures prescribed for approval of payments, it is unlikely that the necessary documentation could be prepared, the claim filed, the required procedures completed and the two invoices for \$1.6 million prepared on the same day of the first missile attack.

14. Since the computer printout included unexplained invoices prior to 18 January 1991, it is more likely that these two invoices dated 18 January 1991 refer to a claim for an incident, which took place prior to 18 January 1991 and hence unrelated to the missile attack. Therefore, there is

no assurance that the compensation awarded on the basis of the computer printout was for losses incurred directly as a result of Scud missile attack only.

Reimbursement of equipment procured one year after the emergency period

15. Israel claimed \$325 million for Civil Defence operations (distribution of gas masks, etc.) to protect its population from non-conventional weapons. The claim included bellows for hoods purchased in 1992 valued at \$6.67 million. The Panel found that of the \$6.67 million claimed, \$3.4 million was compensable. The claimant explained that:

“Part of the active anti biological and chemical warfare (BC) protection equipment was purchased without bellows (the air pump component in active BC equipment). Accordingly, bellows were procured separately.”

16. However, OIOS did not find any evidence that bellows had been issued from existing stocks. If the equipment was used without the bellows during the period of the Scud missile attacks and procured more than a year after the Gulf crisis (in 1992), there is no basis for assuming that the loss was a direct result of Iraq’s invasion. Hence, in OIOS’ view, the loss should not have been compensated.

17. *UNCC responded that the FI Panel determined that the need to procure replacement bellows for equipment used during the period of Scud missile attack was a direct loss resulting from Iraq’s invasion and occupation of Kuwait. The Panel concluded that the date of actual procurement was therefore irrelevant.*

Reimbursement of expenses incurred for publications/training, information centres and computerised systems

18. The Panel found that the following expenditures (in US dollars) should be reimbursed to the claimant:

Description	1990	1991	1992	1993	1994	1995
Publication & training	\$460,597	\$454,545	\$148,789	\$(40,146)	\$25,349	\$(7,913)
Information centre	161,767	91,125	153,473	99,253	147,349	55,127
Computerised systems	110,942	378,716	236,763	93,725	518,291	211,520
Total	\$733,306	\$924,386	\$539,025	\$152,832	\$690,989	\$258,734

19. Publication and information expenditures incurred from August 1990 to March 1991 in order to create public awareness should be reimbursed. However, expenditures incurred after the crisis period do not appear to be losses resulting directly from Iraq’s invasion. Hence, the \$1million reimbursed (60 percent of costs of 1992 to 1995) is not compensable.

20. *UNCC explained that the FI Panel was aware of the claimant’s method of calculating its claims for civil defence costs, i.e. spreading such incremental costs over a five-year period, as well as the issue of whether increased costs incurred after 1991 represented direct losses*

resulting from Iraq's invasion and occupation of Kuwait... In light of the evidence provided by the claimant and the recommendations of the external expert consultants, the F1 Panel concluded that an award of compensation was appropriate in respect of these costs, with an adjustment of 40 per cent to be applied for each of the years after 1991.

21. In OIOS' view, UNCC's reply does not explain what expenditures were incurred for Publication and Training and the Information Center after March 1991, that were direct losses resulting from Iraq's invasion. OIOS also noted that during the distribution of protective kits in 1990 and 1991, written records were kept, which were later computerized. Since the written records were available – establishing computerized systems after 1991 could not be attributed to the Gulf war. Therefore, compensation for the expenditures incurred from 1992 through 1995 was not justified and the adjustment should have been 100 percent instead of 40 percent.

Failure to provide for residual value of protective equipment resulting in overcompensation

22. The claimant procured protective kits, fire extinguishing equipment, rescue equipment, and other items exceeding \$200 million in value. Much of this equipment has a useful life of several years. As they were only used for a few months during the Gulf crisis – adjustments should have been made for the residual value of these items. OIOS observed that failure to provide for the residual value of this equipment resulted in overcompensation to the claimant.

23. *The UNCC Secretariat responded that the F1 Panel did not make an adjustment for residual value because, though some equipment may have some civilian use, the vast majority of such equipment has no residual value once the period of threat has passed. A similar approach was utilized by the F2 Panel in its review of the claims of the Government of Saudi Arabia for gas masks and other protective equipment.*

24. OIOS does not agree with UNCC's reply because the comparison between the claims made by Israel and Saudi Arabia is not appropriate, as they did not face similar 'military threat perceptions'. While gas masks may not be required in Saudi Arabia after the Gulf crisis, they were required in Israel. For this reason, Israel replaced the gas mask filters and batteries used during the crisis between 1992 and 1995.

25. It should also be noted that at least one other panel (F3) has made provisions to deduct an amount for the residual value where the equipment had a useful life after the Gulf crisis. Failure to provide for the residual value of the protective equipment, which was only used for a few months, has resulted in overcompensation to the claimant.

26. OIOS is therefore reiterating its previous recommendations as follows:

Recommendation nos. 1 to 3

UNCC should:

- (i) Reconsider the compensation paid to the Government of Israel for expenditures incurred on bellows for gas masks in 1992, one year after the Gulf crisis since there was no basis for assuming that there was a loss resulting directly from Iraq's invasion of Kuwait (AF2003/27/1/001);

(ii) Reconsider the level of compensation paid to the Government of Israel for expenditures on publications and training, information centres, and computerized systems after the crisis period, and which did not result directly from Iraq's invasion (AF2003/27/1/002); and

(iii) Adjust the residual value of the protective equipment procured by the Government of Israel (AF2003/27/1/003).

B. Review of the Government of Egypt's claim no. 5000185

27. The Ministry of Transport, of the Government of Egypt submitted a claim for \$186 million, which it subsequently reduced to EGP 17.1 million and \$2.86 million. The Governing Council approved⁴ compensation of \$9.36 million.

28. The following costs, which were asserted to have been incurred by Egypt in Jordan included,:

Claim	Amount claimed	Compensation awarded
Land transportation inside Jordan (buses)	EGP 3,828,488	EGP 3,828,488
Dried meals provided to evacuees at the transit camp in Jordan	EGP 1,002,213	EGP 1,002,213
Total	EGP 4,830,701	EGP 4,830,701

Duplicate payments for overlapping claims

29. OIOS noted that Jordan was awarded⁵ \$69.8 million as compensation for the emergency relief provided to evacuees. This compensation included inland transport and food costs for the evacuees who exited through Jordan. Hence, the compensation of EGP 4.83 million paid to Egypt represented a double compensation for the costs already reimbursed to Jordan.

30. *In response UNCC stated that taking into account the inherent uncertainty regarding the number of Egyptian evacuees transiting Jordan during the relevant period, together with the nature of the approach adopted by the F2 Panel in relying on ranges of figures to estimate the costs incurred by the Government of Jordan for its emergency humanitarian relief effort, it would not seem possible to establish conclusively whether the amounts awarded by the Commission to the Government of Jordan and Egypt are duplicative or not. However, it appears in any event that the amounts awarded to both the Governments of Egypt and Jordan would probably cover only a fraction of the total costs associated with the transport and food supplies provided to the Egyptian evacuees.*

31. OIOS does not agree with UNCC's reply, and wishes to point out that:

- The F2 Panel determined the range of evacuees, from reliable sources such as UN documents, WHO, etc. Egypt however, did not submit evidence for the asserted number

4 S/AC.26/Dec.151 (2002)

5 S/AC.26/Dec.83 (1999) dated 10 December 1999

of evacuees. UNCC also has not referred to any evidence showing that the number of evacuees claimed by Egypt is a more accurate estimate than that of the F2 Panel.

- The F2 Panel calculated the total cost of the global relief effort and deducted donations and costs borne by other agencies/governments to arrive at the net cost that Jordan would have incurred in providing relief. The F2 Panel could not deduct the costs claimed by Egypt, as the claim had not been processed when it finalised its recommendation.

32. Since Egypt has been compensated for the costs incurred, the net amount compensable to Jordan should be adjusted appropriately, unless UNCC can identify specific reasons for deviating from the methodology adopted by the F2 Panel and approved by the Governing Council.

33. OIOS is therefore reiterating its previous recommendation as follows:

Recommendation 4

UNCC should reconsider whether compensation of EGP 4,830,701 awarded to Egypt for land transport and food costs for evacuation has resulted in double compensation as Jordan had already been compensated for these costs; and take appropriate action to recover this double compensation (AF2003/27/1/004).

C. Review of the Government of Iran's Claim no. 5000120

34. The Ministry of the Interior, Government of Iran claimed compensation of \$2.7 billion for costs incurred to provide humanitarian assistance to three waves of refugees that fled to Iran. The Panel observed that costs incurred in providing assistance to the first and second wave of refugees only are compensable. The evidence did not, however, support the full amount claimed. Accordingly, the Panel recommended and the Governing Council awarded⁶ \$7.87 million.

Primary evidence supporting the amount of loss not submitted

35. The claimant submitted evidence supporting the estimated number of refugees. However, it did not provide evidence showing that it incurred costs for such assistance. Iran clarified that it was unable to submit primary evidence as funds were disbursed from general budgets allocated to different ministries and government agencies, hence, segregating documents evidencing expenditure for refugees would be a formidable, if not, an impossible task.

36. The UNCC Secretariat noted that the Claimant should have been able to provide the evidence, and the Panel requested Iran to submit additional evidence. As Iran submitted no new relevant evidence, the UNCC secretariat proposed to the Panel "that the claims for reimbursement of assistance provided to the first and second wave of refugees are not compensable". The Panel however, determined that part of the claim was compensable and recommended \$7.87 million to the Claimant.

⁶ S/AC.26/Dec.151(2002) dated 13 March 2002

No assurance that Iran incurred the costs claimed

37. As Iran failed to submit any primary evidence concerning its expenditures, there was no assurance that it had incurred the costs claimed. The Governing Council had previously emphasized the evidentiary requirement for Governments and international organizations in paragraph 37 of Decision 7, namely that:

Since these [category "F"] claims will involve substantial amounts, they must be supported by documentary and other appropriate evidence.

38. We observed that while the claimant had submitted evidence demonstrating the circumstances of the loss, it had not provided sufficient evidence to support the amount of the loss.

39. *UNCC responded: "...the Panel was of the view that the claimant had provided assistance to the refugees and had incurred costs in doing so. There was secondary evidence of that in the acknowledgements of the United Nations High Commissioner for Refugees, the Chairman for the International Committee of the Red Crescent, the Foreign Minister of the Philippines, the League of Red Cross/ Red Crescent Societies and the United States General Accounting Office, that Iran had provided significant relief and humanitarian assistance and incurred substantial costs in doing so. The Panel considered that the seven day average stay asserted by the claimant was reasonable, given the flow of refugees from the border to camp facilities and on to departure points. The Panel also considered that the USD 15 per day asserted by the claimant was a minimum amount that would have been expended to cover the costs of food, accommodation, hygiene services, clothing, medical assistance and transportation. The Panel therefore recommended an award of USD 7,875,000 for payment of relief to others in respect of the first and the second wave of refugees.*

40. *In making its recommendation, the Panel was mindful of its obligations to assess the evidence under article 35(1) of the Provisional Rules for the Claim Procedure and its responsibility to apply the evidentiary standard set out in article 35(3) thereof. The Panel, in the exercise of its discretion, was of the view that the evidence was sufficient to satisfy the evidentiary standard to the extent of the compensation recommended.*

41. OIOS acknowledges that the Panel has discretion to determine if the evidence is adequate and that the evaluation of evidence involves some exercise of judgment. However, UNCC's response does not take into consideration the following facts:

- International agencies had anticipated the second wave of refugees and accordingly planned and mobilised resources for meeting this influx in Iran. Hence, Iran's claim for compensation should be considered only if it provided primary evidence.
- While Iran claimed to have incurred expenditures of \$38 million for the first and second waves of refugees, it failed to provide any evidence of this expenditure. The claimant's justification that it was a very formidable task to provide the evidence was not reasonable considering that Jordan, for example, which was overwhelmed by the influx of refugees, had submitted evidence for certain elements of its claim.

- Both the UNCC Secretariat and the independent consultant appointed to evaluate the claim proposed that no award be recommended since they found that the evidence submitted was poor and did not meet normal loss adjustment criteria. This indicates that the evidence did not meet Article 35 (3) of the Provisional Rules for Claim Procedures.

- The Panel initially concluded that the evidence was inadequate and requested Iran to submit additional evidence.

42. In view of the foregoing there is no assurance that the claimant had not been overcompensated.

43. OIOS therefore reiterates its previous recommendation as follows:

Recommendation 5

UNCC should reconsider the compensation awarded for Claim 5000120 since the documentation provided by the Claimant was not sufficient to comply with Article 35 (3) of the Provisional Rules of Claim Procedure established by the Governing Council (AF2003/27/1/005).

D. Review of the Government of Iran's claim no. 5000088

44. The Ministry of Defence, Government of Iran (the claimant) asserted that Iraqi forces caused the release of oil into the Persian Gulf and hence, an Iranian Navy-owned desalination plant on Kharg Island had to be shut down. The claimant sought compensation for costs of IRR⁷606,200,000 paid to a private company to supply 21,000 tons of potable water to people residing on the Island. UNCC awarded IRR568,312,500 (\$420,972)⁸ as compensation. OIOS' review found deficiencies in UNCC's valuation of the loss, resulting in overcompensation of approximately IRR295,522,500 (\$265,000) as discussed below:

Water requirements not assessed correctly

45. The Panel recommended that the costs incurred to supply potable water to approximately 9,000 civilians were compensable. UNCC estimated the proportionate compensable loss for 9,000 civilians to be IRR 568,312,500⁹ of the IRR606,200,000 claimed.

46. OIOS observed that UNCC's assumption that 21,000 tons of water was needed based on a population of 9,600 was not substantiated by the evidence available. The claimant estimated that the daily requirement of water would be 1,500 tons, based on 75 litres per person per day for a population of 20,000 people. Accordingly, it estimated the requirement of 21,000 tons of water to meet the needs of 20,000 persons for a 14-day period. Thus, the total cost reimbursable to the claimant should be IRR272,790,000¹⁰ instead of IRR568,312,500 resulting in over compensation of IRR295,522,500.

7 Iranian Rials

8 S/AC.26/Dec.151(2002) dated 13 March 2002

9 606200000*9000/9600

10 606200000*9000/20000