



Security Council

Distr.
GENERAL

S/AC.26/1991/3
23 October 1991

Original: ENGLISH

THE UNITED NATIONS
COMPENSATION COMMISSION

Decision taken by the Governing Council of the
United Nations Compensation Commission during
its second session, at the 15th meeting, held
on 18 October 1991

Personal Injury and Mental Pain and Anguish

The Council has adopted the following formulations on serious personal injury and on mental pain and anguish, for the purpose of application of the Criteria adopted on 2 August 1991, for expedited processing of urgent claims. These formulations draw heavily upon the excellent work of the Commission secretariat in preparing studies on these matters.

The Council shared certain common understandings with respect to the interpretation and application of these formulations.

First, all references to detention and hiding are understood to mean detention and hiding within Iraq or Kuwait.

Second, the terms "detention" and "detained" are to be interpreted in a restrictive manner with respect to these criteria. Specifically, they are used in this context to mean the holding of persons by force in a particular location by Iraqi authorities.

Third, the phrase "manifestly well-founded fear" is likewise to be interpreted in a restrictive manner with respect to these criteria. Specifically, this phrase is used in this context to mean a fear based upon clear indications that Iraqi authorities were seeking to kill or detain the individual in question or some group of which he or she was a member.

Fourth, the Council has taken no action at this time on the question of possible ceilings or fixed amounts for compensation for mental pain and anguish.

The Council requests the Commission secretariat to prepare a study on these matters on an urgent basis, so that the Council may take a decision at its next meeting in November. The Council also notes that its reference to recovery of pecuniary losses resulting from mental pain and anguish is simply an application of the general principle that there will be recovery for pecuniary losses falling within the Criteria; as such, there is no intention to provide duplicative recovery for pecuniary losses.

Serious personal injury

1. "Serious personal injury" means:

- (a) Dismemberment;
- (b) Permanent or temporary significant disfigurement, such as substantial change in one's outward appearance;
- (c) Permanent or temporary significant loss of use or limitation of use of a body organ, member, function or system;
- (d) Any injury which, if left untreated, is unlikely to result in the full recovery of the injured body area, or is likely to prolong such full recovery.

2. For purposes of recovery before the Compensation Commission, "serious personal injury" also includes instances of physical or mental injury arising from sexual assault, torture, aggravated physical assault, hostage-taking or illegal detention for more than three days or being forced to hide for more than three days on account of a manifestly well-founded fear for one's life or of being taken hostage or illegally detained.

3. "Serious personal injury" does not include the following: bruises, simple strains and sprains, minor burns, cuts and wounds; or other irritations not requiring a course of medical treatment.

Mental pain and anguish

Compensation will be provided for pecuniary losses (including losses of income and medical expenses) resulting from mental pain and anguish. In addition, compensation will be provided for non-pecuniary injuries resulting from such mental pain and anguish as follows:

- (a) A spouse, child or parent of the individual suffered death;
- (b) The individual suffered serious personal injury involving dismemberment, permanent or temporary significant disfigurement, or permanent or temporary significant loss of use or limitation of use of a body organ, member, function or system;
- (c) The individual suffered a sexual assault or aggravated assault or torture;

(d) The individual witnessed the intentional infliction of events described in subparagraphs (a), (b) or (c) on his or her spouse, child or parent;

(e) The individual was taken hostage or illegally detained for more than three days, or for a shorter period in circumstances indicating an imminent threat to his or her life;

(f) On account of a manifestly well-founded fear for one's life or of being taken hostage or illegally detained, the individual was forced to hide for more than three days; or

(g) The individual was deprived of all economic resources, such as to threaten seriously his or her survival and that of his or her spouse, children or parents, in cases where assistance from his or her Government or other sources has not been provided.
