

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
UNITED STATES DEPARTMENT OF JUSTICE  
WASHINGTON, DC 20579

In the Matter of the Claim of

5 U.S.C. §552(b)(6)

Against the Great Socialist People's  
Libyan Arab Jamahiriya

Claim No. LIB-II-002

Decision No. LIB-II-002

Counsel for Claimant:

Stuart H. Newberger, Esq.  
Crowell & Moring LLP

Oral hearing held on July 22, 2011.

FINAL DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based on the hostage-taking or unlawful detention of<sup>5 U.S.C. §552(b)(6)</sup> by armed hijackers on Pan Am Flight 73 at Karachi International Airport in Karachi, Pakistan, on September 5, 1986.

By Proposed Decision entered November 18, 2009, the Commission set forth a proposed standard, under Category A of the January Referral Letter, for claims by U.S. nationals who were held hostage or unlawfully detained in violation of international law, and determined that, in the instant claim, the claimant met this standard. The Commission further held that \$500,000 was an appropriate amount of compensation for all passengers on Pan Am Flight 73 who satisfied the requisite standard for

compensability under Category A. Accordingly, the Commission held that claimant was entitled to an award in this amount.

By letter dated December 3, 2009, the claimant, through counsel, objected to the Commission's Proposed Decision with respect only to the amount of the award, and requested an oral hearing. The oral hearing was initially scheduled for February 18, 2010, but was postponed at claimant's request. On February 12, 2010, claimant filed "Claimants' Notice of Objection and Request for Oral Hearing Before the Commission" ("Objection Brief"). On June 30, 2011, claimant filed "Claimants' Supplemental Brief on Objections to Proposed Decisions on the Fixed Amount of Category A Awards" ("Supplemental Objection Brief"). The hearing on the objection was conducted on July 22, 2011.

In the Objection Brief and Supplemental Objection Brief, claimant supported his objection to the Commission's award of \$500,000 by arguing that the Commission should have adopted the State Department's recommendation of \$1 million as compensation for claims that meet the applicable standard under Category A. In part, claimant contended that the nature and severity of the Pan Am 73 hijacking, and particularly claimant's own personal experiences and those of the other passengers, warranted the higher \$1 million level of compensation. In addition, claimant argued that the international law cases cited in the Commission's Proposed Decision are inapposite, and therefore provide an inadequate basis to support its proposed award of \$500,000 for Category A claims. Claimant also argued that the Department of State's unique knowledge of the underlying litigation, including how Category A claims fit into the overall structure of the settlement, informed its recommendation, and therefore the

Commission should have deferred to the State Department and accepted its recommended level of compensation. Finally, claimant argued that the language of the January Referral Letter itself provided a sufficient basis for adopting the \$1 million recommendation, insofar as it set the recommendation for Category A in light of the amount recommended for physical injury claims, and encompassed "all damages" for claimants who met the requisite standard.

## DISCUSSION

### *I. Facts and Circumstances of the Pan Am 73 Hijacking*

In its Proposed Decisions concerning claims of hostage-taking and unlawful detention, this Commission has held that, for purposes of determining the appropriate level of compensation for claimants meeting the standard for Category A, it would take into consideration both the duration and the severity of the incident. Accordingly, the Commission took note of the extreme hardship and terror experienced by claimant and the other passengers during the sixteen hours they were held hostage by the hijackers, and based its award, in part, on the severity of the incident as expressed in the sworn statements and background papers provided in support of the claims.

During the oral hearing, claimant's counsel presented the live testimony of several Pan Am 73 hostages, including the claimant, to supplement the affidavits that had been previously provided. The witnesses described in great detail the extreme physical discomfort, emotional distress, and fear of impending death that they suffered throughout the sixteen-hour ordeal. For example, claimant, who was traveling with his wife and two young daughters, was concerned that the hijackers, who had demanded that the passengers' passports be collected, would see his U.S. military ID and target him

specifically, thereby leaving his wife and children even more vulnerable. Indeed, each of the witnesses testified as to their helplessness and sheer vulnerability in an extraordinarily volatile situation, and their belief that they and their loved ones might not escape from the plane alive.

The Commission takes particular note of this testimony, recognizing the horror that the claimants must have experienced during the hijacking and the fear they must have felt for not only their own lives, but those of their loved ones traveling with them. To the extent the “severity” of the incident is considered in determining the appropriate level of compensation under Category A, it is clear that the claimant and his fellow passengers endured, for a prolonged period, a level of stress, apprehension and suffering that few can imagine.

## *II. Level of Compensation Under International Law*

Claimant argues in his Objection Brief and Supplemental Objection brief that, among other things, the Commission erred in applying the international law precedents cited in its Proposed Decision. Specifically, claimant contends that the cases cited are inapposite because the circumstances of those cases are far less severe than the Pan Am 73 hijacking. Claimant further argues that, in any event, they are unsuitable for comparison in part because the calculation of damages for hostage-taking and unlawful detention is particularly challenging under international law, which, the claimant argues, warrants adoption of the State Department’s recommended level of compensation.

As the Commission acknowledged in its Proposed Decision, assessing the value of intangible, non-economic damages is particularly difficult and cannot be done using a

precise, mathematical formula.<sup>1</sup> Indeed, international legal scholars have pointed to this problem specifically in the case of unlawful detention. For example, one such scholar, Marjorie Whiteman, points out that “[t]he lack of settled rules for measuring damages for wrongful arrest, detention, and imprisonment is shown by the remarkable fact that the amounts recovered have varied from approximately eight dollars for a day’s imprisonment to \$2,000 for imprisonment for only one and a half hours.” I Marjorie M. Whiteman, *Damages in International Law* 383 (1937).

Despite the absence of uniform standards for computing damages for hostage-taking or unlawful detention under international law, an examination of past cases before various tribunals, under varying factual circumstances and applying different methods of calculation, reveals a useful range of awards for comparative purposes. Moreover, these cases indicate that, under international law, a variety of factors is considered in determining appropriate damages for instances of hostage-taking or unlawful detention. *Id.* at 385; Clyde Eagleton, *The Responsibility of States in International Law* 192 (1928). By reference to these cases, and notwithstanding claimant’s objection to such reference, it is clear that the State Department’s recommended level of compensation is difficult to justify on principles of international law alone. Indeed, even the \$500,000 level of compensation initially proposed by the Commission is far greater than awards that have been made in the past for less than twenty-four hours of captivity, reflecting the

---

<sup>1</sup> *Claim of*<sup>5</sup> U.S.C. §552(b)(6) Claim No. LIB-II-002, Decision No. LIB-II-002 (2009) (Proposed Decision) (citing 2 Dan B. Dobbs, *Dobbs’ Law of Remedies* ¶ 8.3(6) (2nd ed. 1993); I Marjorie M. Whiteman, *Damages in International Law* 777-78 (1937)).

Commission's regard for the severity of the Pan Am 73 hijacking. *See Whiteman, supra*, at 384-87, 408-09.<sup>2</sup>

Claimant argues in his Supplemental Objection Brief that the awards issued by U.S. courts in Foreign Sovereign Immunities Act (FSIA) hostage cases provide a more useful comparison, insofar as such cases, according to claimant, take account of factors more directly analogous to the instant claim. However, it is not clear that even these cases would support a \$1 million award for the claimant. The standard *per diem* award for victims of hostage-taking under the FSIA is \$10,000 for each day of captivity. *See Jenco v. Islamic Republic of Iran*, 154 F. Supp. 2d 27, 37 (D.D.C. 2001); *Anderson v. Islamic Republic of Iran*, 90 F. Supp. 2d 107, 113 (D.D.C. 2000); *Price v. Socialist People's Libyan Arab Jamahiriya*, 384 F. Supp. 2d 120, 134-35 (D.D.C. 2005); *Daliberti v. Republic of Iraq*, 146 F. Supp. 2d 19, 25-26 (D.D.C. 2001); *Levin v. Islamic Republic of Iran*, 529 F. Supp. 2d 1, 19-21 (D.D.C. 2007).

In some cases, where the period of captivity is relatively short, this *per diem* amount has been adjusted upwards; however, even in those cases, the effective *per diem* award for the captivity itself has been closer to \$500,000 than to \$1 million. *See, e.g., Cronin v. Islamic Republic of Iran*, 238 F. Supp. 2d 222, 235 (D.D.C. 2002), *abrogated on other grounds, Cicippio-Puleo v. Islamic Republic of Iran*, 353 F.3d 1024 (D.C.Cir. 2004); *Stethem v. Islamic Republic of Iran*, 201 F.Supp.2d 78, 88-89 (D.D.C. 2002). Therefore, it cannot be said that U.S. domestic court cases under the FSIA provide any

---

<sup>2</sup> Even where the detainee was held for a full day or more, the amount awarded, calculated on a *per diem* basis and taking inflation into account, is far less than what the State Department has proposed for compensable Category A claims. *See, e.g., Whiteman, supra*, at 388-408; A.H. Feller, *The Mexican Claims Commissions* 300-01 (1935); *Perry (U.S.) v. Pan.*, Bert L. Hunt, *American and Panamanian General Claims Arbitration (Hunt's Report)* 33-35, 71-77, 82-84 (1934).

greater support for an award of \$1 million for the Category A claimants who were aboard Pan Am 73 than does international law.

### *III. The State Department's Expertise and Knowledge of the Settlement*

During the oral hearing, and throughout the objection briefs, counsel for the claimant argued that the Commission should defer to the State Department's recommendation, on the basis that the State Department was more fully aware of the circumstances surrounding the negotiation of the Claims Settlement Agreement ("CSA"), and was therefore in a better position to evaluate the relative value of claims, including those for hostage-taking or unlawful detention. Counsel was unable to provide any legal or factual support for this proposition.<sup>3</sup>

### *IV. Language of the January Referral Letter*

Claimant further argued during the oral hearing that the language of the January Referral Letter itself provided a basis for awarding \$1 million for compensable Category A claims. Specifically, claimant cited to paragraph 3 of the January Referral Letter, which states: "Given the amount we recommended for physical injury claims in our December 11, 2008 referral, we believe and recommend that a fixed amount of \$1 million would be an appropriate level of compensation for all damages for a claim that meets the applicable standards under Category A." It is here that the claimant's arguments are most persuasive.

---

<sup>3</sup> Indeed, while the background documentation to the CSA, including the Libyan Claims Resolution Act ("LCRA"), Pub. L. No. 110-301, 122 Stat. 2999, and the *Letter from John D. Negroponte, Deputy Secretary of State, to the Honorable Mitch McConnell, United States Senate 2* (July 28, 2008), suggests that certain categories of claims were contemplated during negotiations with Libya, the issue of hostage claims does not appear to have been discussed. In addition, during the oral hearing, counsel for the claimant also acknowledged that none of the claimants in the Pending Litigation had asserted a claim purely for hostage-taking or unlawful detention; rather, all of the claims in the *Patel* litigation—the Pending Litigation associated with all of objecting claimants' Category A claims—had been set forth as injury claims.

At least two parts of this language are significant to the Commission in its review of the Proposed Decision on the appropriate level of compensation for hostage and unlawful detention claims.

The first clause of the sentence cited above makes clear that the State Department's recommendation was based on the level of compensation it had recommended for *another* category of claims, namely, physical injury claims in the December Referral Letter. That is to say, the recommended compensation was based not on the intrinsic value of claims for hostage-taking or unlawful detention, but rather on the relationship of such claims to physical injury claims, which were valued at \$3 million. As such, the recommendation for Category A claims appears to be an attempt to establish some parity among claimants using the recommended level of compensation for physical injury claimants as a baseline. Indeed, the recommendation for Category A claims appears to reflect the fact that both physical injury claimants and hostage claimants suffered immensely, and in the Pan Am 73 hijacking incident in particular, physical injury claimants and hostage claimants suffered many of the same horrors at the hands of Libyan-sponsored terrorists. This is especially the case given the relatively low threshold that has been established for physical injury claims. Seen in this light, the recommended award of \$1 million recognizes that, while many of the claimants involved in the Pan Am 73 hijacking did not suffer discernible physical injuries, the terror they experienced was in many ways similar to, and the emotional scars left behind every bit as permanent as, the experiences of those who suffered physical injuries at the "discernible, more significant than superficial" level.<sup>4</sup>

---

<sup>4</sup> The Commission's standard for physical injury claims in the Libya Claims Program was first articulated in the *Claim of* <sup>5</sup> U.S.C. §552(b)(6) Claim No. LIB-I-001, Decision No. LIB-I-001 (2009). The



The perspective described above is supported by the last part of the sentence from the January Referral Letter cited above; namely, that the recommended level of compensation for Category A was made in consideration of “all damages for a claim that meets the applicable standards under Category A.” This indicates that, while Category A claimants would be required to satisfy the Commission’s standard for hostage-taking or unlawful detention in order to be found compensable, the actual level of compensation would be in consideration of every aspect of damages to which the claimant might otherwise be entitled. This could include damages associated with, among other things, emotional distress, assault, or other psychiatric harm, such as post-traumatic stress disorder. If nothing else, the reference to “all damages” suggests that the amount awarded should not be limited to the actual limitations on movement experienced by Category A claimants, but rather should contemplate all harm that they suffered as a result of the incident (excluding physical injury, which would have been compensated under the December Referral Letter instead). In this regard, it is also noteworthy that the phrase “all damages” does not appear in the description of any other category of claims, indicating that the inclusion of this term was deliberate and targeted specifically at claimants filing a claim for hostage-taking or unlawful detention.

Accordingly, in light of the language of the January Referral Letter, as well as the horrific nature of the Pan Am 73 hijacking, the Commission holds that for all passengers on Pan Am Flight 73, taking into account the sixteen hours during which they were held hostage or unlawfully detained and the conditions of their confinement in the main cabin, the appropriate amount of compensation is \$1,000,000.

---

Commission held that claimants must have suffered a “discernible physical injury, more significant than a superficial injury.” *Id.* at 8.

In making its award, the Commission recognizes that no amount of compensation can fully compensate the claimant, nor any of the other Pan Am 73 hostages, for the horror to which they were subjected on September 5, 1986. As such, this award seeks merely to provide a level of compensation that is fair and just in the context of the CSA, and determined under applicable legal authority, including 22 U.S.C. § 1623 (a)(2) and the authorities cited therein.


As regards interest, in the *Claim of*<sup>5 U.S.C. §552(b)(6)</sup> Claim No. LIB-I-001, Decision No. LIB-I-001 (2009), the Commission held, after consideration of principles of international law and precedent decisions, that compensable tort claims in this claims program are not entitled to interest as part of the awards made therein. *Id.* Therefore, the award of \$1,000,000.00 made herein constitutes the entirety of the compensation that the claimant is entitled to under the CSA.

The Commission accordingly modifies the award made in its Proposed Decision in this claim, and enters the following award, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICSEA. 22 U.S.C. §§ 1626-1627 (2006).

AWARD

Claimant<sup>5 U.S.C. §552(b)(6)</sup> is entitled to an award in the amount of  
One Million Dollars (\$1,000,000.00).

Dated at Washington, DC, August 31, 2011  
and entered as the Final Decision  
of the Commission.

  
\_\_\_\_\_  
Timothy J. Feighery, Chairman

  
\_\_\_\_\_  
Rafael E. Martinez, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
UNITED STATES DEPARTMENT OF JUSTICE  
WASHINGTON, DC 20579

In the Matter of the Claim of

Personally Identifiable Information  
Redacted under 5 U.S.C. §552(b)(6)

Against the Great Socialist People's  
Libyan Arab Jamahiriya

Claim No. LIB-II-002

Decision No. LIB-II-002

Counsel for Claimant:

Stuart H. Newberger, Esq.  
Crowell & Moring LLP

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is based on the claimant being held hostage or unlawfully detained by armed hijackers on Pan Am Flight 73 at Karachi International Airport in Karachi, Pakistan, on September 5, 1986.

Under subsection 4(a) of Title I of the International Claims Settlement Act of 1949 ("ICSA"), as amended, the Commission has jurisdiction to

receive, examine, adjudicate, and render a final decision with respect to any claim of . . . any national of the United States . . . included in a category of claims against a foreign government which is referred to the Commission by the Secretary of State.

22 U.S.C. § 1623(a)(1)(C) (2006).

On January 15, 2009, pursuant to a delegation of authority from the Secretary of State, the State Department's Legal Adviser referred to the Commission for adjudication six categories of claims of United States nationals against Libya. *Letter dated January*

15, 2009, from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission (“January Referral Letter”). Category A consists of

claims by U.S. nationals who were held hostage or unlawfully detained in violation of international law, provided that (1) the claimant meets the standard for such claims adopted by the Commission; (2) the claim was set forth as a claim for injury other than emotional distress alone by the claimant named in the Pending Litigation; (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission; and (4) the claimant did not receive an award pursuant to the [Secretary of State’s] referral of December 11, 2008.

*Id.* at ¶ 3. Attachment 1 to the January Referral Letter lists the suits comprising the Pending Litigation.

The January Referral Letter, as well as a December 11, 2008 referral letter from the State Department, followed a number of official actions that were taken with respect to the settlement of claims between the United States and Libya. Specifically, on August 4, 2008, the President signed into law the Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999, and on August 14, 2008, the United States and Libya concluded the *Claims Settlement Agreement Between the United States of America and the Great Socialist People’s Libyan Arab Jamahiriya* (“Claims Settlement Agreement”) 2008 U.S.T. Lexis 72, entered into force Aug. 14, 2008. On October 31, 2008, the Secretary of State certified, pursuant to the LCRA, that the United States Government had received funds sufficient to ensure “fair compensation of claims of nationals of the United States for . . . physical injury in cases pending on the date of enactment of this Act against Libya . . . .” January Referral Letter, *supra*, ¶ 1. On the same day, the President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965 (Oct. 31, 2008), espousing the

claims of United States nationals coming within the terms of the Claims Settlement Agreement, barring United States nationals from asserting or maintaining such claims, terminating any pending suit within the terms of the Claims Settlement Agreement, and directing the Secretary of State to establish procedures governing claims by United States nationals falling within the terms of the Claims Settlement Agreement.

On July 7, 2009, the Commission published notice in the *Federal Register* announcing the commencement of this portion of the Libya Claims Program pursuant to the ICSA and the January Referral Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

#### BASIS OF THE PRESENT CLAIM

On August 18, 2009, the Commission received from claimant's counsel a completed Statement of Claim and accompanying exhibits supporting the claimant's claim. In substance, the claimant, Personally Identifiable Information  
Redacted under 5 U.S.C. §552(b)(6) states that on September 5, 1986, he and his wife and two daughters were held hostage or unlawfully detained by armed hijackers on board Pan Am Flight 73 in Karachi, Pakistan, for approximately sixteen hours. The claimant has provided evidence of his United States nationality, both on the date of the incident and at the time of the Claims Settlement Agreement. Additionally, he has provided an extensive description of the hijacking, a copy of the complaint in the litigation against Libya to which he was a party, a copy of the Stipulation of Dismissal of that litigation, and a copy of a list of the passengers on the flight which includes his name. Lastly, he states that he did not receive an award in a claim filed pursuant to the Department of State's December 11, 2008 referral letter.

## DISCUSSION

### Jurisdiction

As an initial matter, the Commission must consider whether this claim falls within the category of claims referred to it by the Department of State. The Commission's jurisdiction under the "Category A" paragraph of the January Referral Letter is limited to claims of individuals who are: (1) United States nationals; (2) named parties in a Pending Litigation case against Libya which has been dismissed; (3) parties who set forth a claim for injury other than emotional distress alone in the Pending Litigation; and (4) persons who did not receive an award pursuant to the December 11, 2008 referral letter. January Referral Letter, *supra*, ¶ 3.

### *Nationality*

As noted above, the January Referral Letter tasked the Commission with adjudicating and certifying six categories of claims of United States nationals. In order to determine who qualifies as a United States national, the Commission must look to the provisions of the ICSA, the statute under which the referral is made. Under that statute, the Commission is directed to apply, in the following order, "the provisions of the applicable claims agreement" and "the applicable principles of international law, justice and equity" in its deliberative process. 22 U.S.C. § 1623(a)(2) (2006).

Although the Claims Settlement Agreement states that it settles the claims of "United States nationals," it does not define that term. However, the Commission's authorizing statute defines the term "nationals of the United States" as "(1) persons who are citizens of the United States, and (2) persons who, though not citizens of the United

States, owe permanent allegiance to the United States. It does not include aliens.” 22 U.S.C. § 1621(c) (2006).<sup>1</sup>

In the *Claim of* Personally Identifiable Information  
Redacted under 5 U.S.C. §552(b)(6) Claim No. LIB-I-001, Decision No. LIB-I-001 (2009), the Commission held, consistent with its past jurisprudence and generally accepted principles of international law, that in order for a claim to be compensable, the claimant must have been a national of the United States, as that term is defined in the Commission’s authorizing statute, from the date the claim arose until the date of the Claims Settlement Agreement. This principle has also been recognized by the courts of the United States. *See, e.g., Haas v. Humphrey*, 246 F.2d 682 (D.C. Cir. 1957), *cert. denied* 355 U.S. 854 (1957). Therefore, consistent with its past jurisprudence, the Commission holds that in order for a claim to be compensable, the claimant must have been a national of the United States, as that term is defined in the Commission’s authorizing statute, at the time the claim arose and continuously thereafter until the date of the Claims Settlement Agreement.

Based on the evidence submitted with this claim—reflecting that the claimant was naturalized in the United States well before the date of the incident in question and currently holds a United States passport—the Commission determines that the claimant was a United States national at the time of the incident and has been a United States national continuously thereafter until the effective date of the Claims Settlement Agreement.

---

<sup>1</sup> The Commission notes that both LCRA, Pub. L. No. 110-301, 122 Stat. 2999 (2008), and Executive Order No. 13,477 define the term “national of the United States” by reference to the Immigration and Nationality Act, 8 U.S.C. § 1101(a) (22) (2006), which similarly defines the term as a citizen of the United States, or a person who, though not a citizen, owes permanent allegiance to the United States. LCRA § 2(3), 122 Stat. at 2999; Exec. Order No. 13,477, 73 Fed. Reg. at 65,965.



*Pending Litigation and its Dismissal*

To fall within the category of claims referred to the Commission, the claimant must be a named party in the Pending Litigation listed in Attachment 1 to the January Referral Letter and must provide evidence that the Pending Litigation against Libya has been dismissed. January Referral Letter, *supra*, ¶ 3. The claimant has provided a copy of the complaint in Case No. 06-cv-626, filed in the United States District Court for the District of Columbia, which names him as a party. Additionally, the claimant has provided evidence that the litigation was dismissed under a Stipulation of Dismissal dated December 16, 2008. Based on this evidence, the Commission finds that the claimant was a named party in the Pending Litigation and that the Pending Litigation has been properly dismissed.

*Claim for Injury Other than Emotional Distress*

Claimant has provided with his Statement of Claim an excerpted copy of the Second Amended Complaint in the Pending Litigation, in which he alleges that the incident caused him “pain, suffering, and economic loss.” The Commission notes that the claimant states causes of action for, *inter alia*, battery and assault under Counts VI and VII of the Second Amended Complaint. The Commission therefore finds that the claimant set forth a claim for injury other than emotional distress alone in the Pending Litigation.

*No Prior Award*

Claimant has stated under oath in his Statement of Claim, and Commission records confirm, that he has not received an award pursuant to the Department of State’s

December 11, 2008 referral letter. Accordingly, the Commission is satisfied that the claimant has received no such award and has therefore met this element of his claim.

In summary, therefore, the Commission concludes that this claim is within the Commission's jurisdiction pursuant to the January Referral Letter and is entitled to adjudication on the merits.

### Merits

#### *Standard for Claims under Category A*

As stated in the January Referral Letter, to be eligible for compensation, a claimant asserting a claim under Category A must meet the "standard . . . adopted by the Commission." January Referral Letter, *supra*, ¶ 3. In order to develop such a threshold standard for compensability, the Commission has considered pertinent sources in international law and domestic law. On this point, the Commission notes that the United Nations Compensation Commission ("UNCC"), which compensated for losses resulting from Iraq's invasion of Kuwait in 1991, developed a threshold standard to apply in determining whether a claimant had been illegally detained and what facts would qualify such a claimant for compensation for the resulting mental pain and anguish. The UNCC determined that a valid claim was one where the individual established that he or she 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[.]" *Decision taken by the Governing Council of the United Nations Compensation Commission during its second session, at the 15<sup>th</sup> meeting, held on 18 October 1991: Personal Injury and Mental Pain and Anguish*, S/AC.26/1991/3, Oct. 23, 1991 (emphasis added). The UNCC defined detention as "the holding of persons by force in a particular location . . ." *Id.*

Further, the International Convention Against the Taking of Hostages defines hostage taking as the offense committed by

[a]ny person who seizes or detains and threatens to kill, to injure or to continue to detain another person . . . in order to compel a third party, namely, a State, an international organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of [that other person.]

*International Convention Against the Taking of Hostages* art. 1, Dec. 18, 1979, T.I.A.S. 11,081, 1316 U.N.T.S. 205.

In enacting the Hostage Taking Act of 1984, Congress adopted similar language when it defined hostage taking as the offense committed by any person who

whether inside or outside the United States, seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third person or a governmental organization to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained, or attempts or conspires to do so[.]

18 U.S.C. §1203(a) (2006).

Based upon the foregoing, and after careful and thorough consideration, the Commission finds that in order for a claim to be considered compensable under the Claims Settlement Agreement and Category A of the January Referral Letter, a claimant must have been:

- (a) held illegally against his or her will;
- (b) in a particular area; and
- (c) for an extended period of time, or for shorter periods of time in circumstances in which he or she reasonably felt an imminent threat to his or her life.

*Application of Standard to this Claim*

According to his Statement of Claim, on September 5, 1986, claimant

Personally Identifiable Information  
Redacted under 5 U.S.C. §552(b)(6)

along with his wife and two daughters, was a passenger on PanAm Flight 73 when the aircraft was attacked and taken over by four heavily armed hijackers while waiting to take off from Karachi, Pakistan, en route to Frankfurt, West Germany. Claimant has provided an extensive narrative, in affidavit form, recounting the experiences he endured for the sixteen hours that he and the other passengers were detained by those gunmen. He has described in detail how the passengers suffered through sweltering heat, with little or no food or water or access to restrooms. They were constantly threatened and mocked by the hijackers, until the hijackers attacked them with guns and hand grenades as they attempted to escape from the airplane.

Based on the evidence and information submitted in this claim, and described above, the Commission therefore finds that the claim of Personally Identifiable Information  
Redacted under 5 U.S.C. §552(b)(6) meets the standard for compensability under the Category A paragraph of the January Referral Letter.

COMPENSATION

Having concluded that the present claim is compensable, the Commission must next determine the appropriate amount of compensation.

The January Referral Letter recommended “a fixed amount of \$1 million [as] an appropriate level of compensation for all damages for a claim that meets the applicable standards under Category A.” January Referral Letter, *supra*, ¶ 3. In order to determine whether this amount is the appropriate level of compensation, the Commission takes notice of the discussion in Dan B. Dobbs’ treatise, *Dobbs’ Law of Remedies*, Volume 2

(2nd ed. 1993) at section 8.3(6), which observes the difficulty in assessing intangible, non-economic damages. *See, also*, Marjorie M. Whiteman, *Damages in International Law*, Volume 1 (1937) at page 777-778 (citing a decision of Umpire Parker in *Mixed Claims Commission United States and Germany, Decisions and Opinions* at 17, 21-22 (November 1, 1923), which states that “it is manifestly impossible to compute mathematically or with any degree of accuracy or by the use of any precise formula” certain forms of damages, such as those sustained as a result of mental suffering. In this context, the Commission has carefully reviewed its prior claims programs as well as those of other tribunals and commissions which have adjudicated similar claims, and notes that the amount recommended by the State Department is significantly greater than the amounts that have been awarded in similar claims brought before international tribunals.<sup>2</sup>

---

<sup>2</sup> For example, pursuant to the UNCC Governing Council’s Decision S/AC.26/1992/8, *supra*, the UNCC limited its awards in claims for illegal detention against Saddam Hussein’s Iraqi government to a fixed amount of \$1,500 per incident.

The United States-Mexican General Claims Commission, sitting in the 1920s and early 1930s, issued damages awards in several cases involving unlawful detention, ranging from \$500 (\$6,466.14 in 2009 as adjusted for inflation using the Department of Labor’s Consumer Price Index (CPI) Inflation Calendar) for five days’ detention, *see Chazen (U.S.) v. United Mexican States*, 4 R. Int’l Arb. Awards 564 (Gen. Claims Comm’n 1930), to \$8,000 (\$101,038.13 in 2009 adjusted for inflation) for eighteen months’ detention, *see Dyches (U.S.) v. United Mexican States*, 4 R. Int’l Arb. Awards 458 (Gen. Claims Comm’n 1929).

The European Court of Human Rights (ECHR) has also issued awards in several unlawful detention cases; as with the UNCC and the General Claims Commission, these awards have been considerably less than the amount proposed by the State Department. For example, in *Raninen v. Finland*, 1997-VIII Eur. Ct. H.R. 2804, the ECHR awarded 10,000 Finnish Marks (\$1,857 in U.S. dollars) as non-pecuniary damages to an applicant who was unlawfully detained by military police. In *K.-F. v. Germany*, 1997-VII Eur. Ct. H.R. 2657—another case involving unlawful detention by police—the ECHR awarded 10,000 German Marks (\$5,764 in U.S. dollars) as non-pecuniary damages. However, in *Assanidze v. Georgia*, 2004-II Eur. Ct. H.R. 221, the court awarded EUR 150,000 (\$181,320 in U.S. dollars) to an applicant who had been illegally detained for over three years by local authorities, despite a presidential pardon and a court order for his release. The ECHR’s award covered both pecuniary and non-pecuniary compensation. In *Özkan v. Turkey*, App. No. 21689/93 Eur. Ct. H.R. (2004), *available at* <http://worldlii.org/eu/cases/ECHR/2004/133.html>, a case involving over thirty applicants, the court awarded a range of awards as non-pecuniary damages for inappropriate detentions, although none exceeded EUR 49,800 (\$60,203 in U.S. dollars).

The Commission recognizes that the claimant in this case—as well as other claimants similarly situated—has waited many years to have his claim resolved. However, even with this point in mind, the Commission is not persuaded that the recommended amount of \$1 million is justified. After careful consideration, the Commission, for purposes of determining the appropriate level of compensation for claimants meeting the standard for Category A claims, will take into account both the duration and severity of the incident. In the instant case, the Commission notes that although the passengers on Pan Am Flight 73, including the claimant, were detained for a relatively short time, they were forced to endure the entire ordeal under conditions entailing severe physical discomfort and the constant threat of violence. Moreover, the psychological trauma of the passengers' detention could only have been exacerbated by the hijackers' final assault on the main cabin, characterized by indiscriminate machine-gun fire, the throwing of grenades, and the resulting panic that ensued as passengers were killed, injured, and/or covered with blood and shrapnel.

As this Commission has previously stated, each claims settlement is based on a unique set of circumstances, which may in turn lead to breaks with past practices, albeit without setting a precedent for the future. Under this Claims Settlement Agreement and noting the specific circumstances described above, the Commission holds that for all passengers on Pan Am Flight 73, taking into account the sixteen hours during which they were held hostage or unlawfully detained and the conditions of their confinement in the main cabin, the appropriate amount of compensation is \$500,000.00. Accordingly, the Commission determines that the claimant, Personally Identifiable Information  
Redacted under 5 U.S.C. §552(b)(6), is entitled herein to an award of \$500,000.

As regards interest, in the *Claim of* Personally Identifiable Information  
Redacted under 5 U.S.C. §552(b)(6) *supra*, after consideration of principles of international law and precedent decisions, the Commission held that compensable tort claims in this claims program are not entitled to interest as part of the awards made therein. *Id.* Therefore, the award of \$500,000.00 made herein constitutes the entirety of the compensation that the claimant is entitled to under the Claims Settlement Agreement.

### CONCLUSION

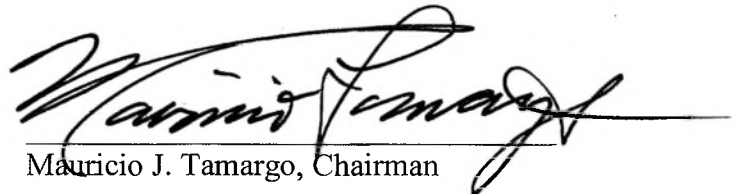
Accordingly, the Commission enters the following award, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICSA. 22 U.S.C. §§ 1626 and 1627 (2006).

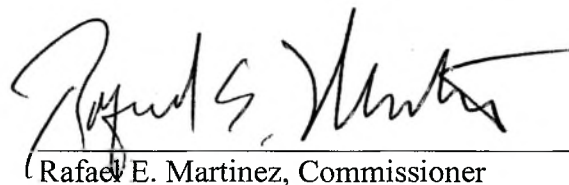
### AWARD

Claimant Personally Identifiable Information  
Redacted under 5 U.S.C. §552(b)(6) is entitled to an award in the amount of Five Hundred Thousand Dollars (\$500,000.00).

Dated at Washington, DC, and entered as the Proposed Decision of the Commission.

NOV 18 2009

  
Mauricio J. Tamargo, Chairman

  
Rafael E. Martinez, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days after service or receipt of notice of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2008).