



*Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission*  
("January Referral Letter").

The present claim is made under Category E. According to the January Referral Letter, Category E consists of

claims of U.S. nationals for wrongful death or physical injury resulting from one of the terrorist incidents listed in Attachment 2 ("Covered Incidents"), incidents which formed the basis for Pending Litigation in which a named U.S. plaintiff alleged wrongful death or physical injury, provided that (1) the claimant was not a plaintiff in the Pending Litigation; and (2) the claim meets the standard for physical injury or wrongful death, as appropriate, adopted by the Commission.

*Id.* at ¶ 7. Attachment 1 to the January Referral Letter lists the suits comprising the Pending Litigation and Attachment 2 lists the Covered Incidents.

The January Referral Letter, as well as a December 11, 2008 referral letter ("December 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 President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008), which, *inter alia*, espoused the claims of U.S. nationals coming within the terms of the Claims Settlement Agreement, barred U.S. nationals from asserting or maintaining such claims, terminated any pending suit within the terms of the Claims Settlement Agreement, and directed the Secretary of State to

establish procedures governing claims by U.S. 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 July 1, 2010, the Commission received from the claimant a Statement of Claim, in which the claimant asserts a claim under Category E of the January Referral Letter, along with accompanying exhibits supporting the elements of her claim, including evidence of her U.S. nationality, her presence at the Lod Airport in Israel on May 30, 1972, and her injuries.

According to her Statement of Claim, the claimant, <sup>5 U.S.C. §552(b)(6)</sup>, alleges that she suffered two separate injuries as a result of the incident: a rash requiring medical treatment, and post traumatic stress disorder. In support of her claim, claimant has provided an account of her experience and recent medical records. In claimant's account she states that she "came out of the bathroom and outside in the baggage hall [she] found a stream of blood, dead bodies, wounded people and body parts of the injured. This caused [her] great pain and suffering and [she] began to break out in a rash all over [her] body. Due to this rash [she] had to go to a hospital and they gave [her] treatment." The medical records document only the psychiatric treatment of claimant beginning in 2003. The claimant has also submitted contemporaneous newspaper reports, and several statements in support of her claim.

## DISCUSSION

### Jurisdiction

Under subsection 4(a) of the ICSA, the Commission's jurisdiction here is limited to the category of claims defined under the January Referral Letter; namely, claims of individuals who: (1) are U.S. nationals; (2) set forth a claim before the Commission for wrongful death or physical injury resulting from one of the Covered Incidents; and (3) were not plaintiffs in a Pending Litigation case against Libya. January Referral Letter, *supra* ¶ 7.

### *Nationality*

In *Claim of* 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 the nationality requirement to have been met, the claimant must have been a national of the United States, as that term is defined in the Commission's authorizing statute, continuously from the date the claim arose until the date of the Claims Settlement Agreement. To meet this requirement, the claimant has provided copies of her United States birth certificate and her United States passport valid from March 2004 through March 2014. Based on this and other evidence in the record, the Commission finds that this claim was held by a U.S. national at the time of the incident upon which the claim is based and that it has been so held until the effective date of the Claims Settlement Agreement.

### *Claim for Death or Injury Resulting From a Covered Incident*

To fall within the category of claims referred to the Commission, the claimant must also assert a claim for wrongful death or physical injury resulting from one of the Covered Incidents listed in Attachment 2 to the January Referral letter. January Referral

Letter, *supra*, ¶ 7. This list includes the “May 30, 1972 attack at Lod Airport in Israel, as alleged in *Franqui v. Syrian Arab Republic, et al.* (D.D.C.) 06-cv-734.” *Id.*, Attachment 2, ¶ 1. In her Statement of Claim, the claimant sets forth a claim for physical injury suffered as a result of this terrorist attack. Accordingly, the Commission finds that the claimant has also satisfied this element of her claim.

#### *Pending Litigation*

Finally, the January Referral Letter states that the claimant may not have been a plaintiff in the Pending Litigation. January Referral Letter, *supra*, ¶ 7. Attachment 2 to the January Referral Letter identifies the Pending Litigation cases associated with each Covered Incident, which in this claim, as noted above, is the *Franqui* case. Claimant has averred under oath in the Statement of Claim, and the pleadings in the *Franqui* case confirm, that she was not a plaintiff in the Pending Litigation against Libya. Based on this evidence, the Commission finds that the claimant has satisfied this element of her claim.

In summary, the Commission concludes, on the basis of the foregoing, 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 Physical Injury*

As stated in the January Referral Letter, to be eligible for compensation, a claimant asserting a claim under Category E must meet “the standard for physical injury or wrongful death, as appropriate, adopted by the Commission” for purposes of this referral. January Referral Letter, *supra*, ¶ 7. The Commission held in *Claim of* 5 U.S.C. §552(b)(6)

, Claim No. LIB-II-039, Dec. No. LIB-II-015 that in order for a claim for physical injury pursuant to Category E to be considered compensable, a claimant:

- (1) must have suffered a discernible physical injury, more significant than a superficial injury, as a result of a Covered Incident; and
- (2) must have received medical treatment for the physical injury within a reasonable time; and
- (3) must verify the injury by medical records.

*Claim of* 5 U.S.C. §552(b)(6) , *supra*, at 6-7. The present Category E claim must likewise meet this standard to be compensable.

#### *Physical Injury*

Claimant states that she was in the bathroom near the attack at the Lod Airport terminal when shooting started on May 30, 1972. When she left the bathroom she further states that she “found a stream of blood, dead bodies, wounded people and body parts of the injured,” which caused her to break out in a rash all over her body, for which, she alleges, she was taken to a hospital for treatment. The claimant has not provided any medical records, contemporaneous or otherwise, to support the allegation that she was hospitalized because of a rash suffered as a result of the incident.

The claimant also asserts that she suffers from post-traumatic stress disorder (PTSD) as a result of the incident. As stated above, under subsection 4(a) of the ICOSA, the Commission’s jurisdiction is limited to the category of claims defined in the January Referral Letter. Under Category E of the January Referral Letter, the Commission may only provide compensation for claims for physical injury and wrongful death. This specific reference to compensation for “physical injury” claims, and not “personal injury” claims more broadly, makes clear that the Secretary of State drew a clear distinction

between physical and mental injuries, and opted to provide compensation only for the former under this referral. Thus, the January Referral Letter contemplates a distinction between the two types of injuries and precludes the Commission from compensating for anything other than physical injuries. For the Commission to do otherwise would render the term “physical injury” (as opposed to “personal injury”) effectively meaningless.<sup>1</sup>

Moreover, insofar as the Commission is directed to apply “applicable principles of international law” in deciding the claims before it, *see* 22 U.S.C. § 1623(a)(2) (2006), the Commission notes that the distinction between physical and mental injuries is well-established in both international conventions<sup>2</sup> and decisions of international tribunals<sup>3</sup>.

Based on the evidence and information submitted in support of claimant’s asserted injuries, and for the reasons set forth above, the Commission finds that the claimant has not met her burden of proof in this claim in that she has not satisfied the Commission’s standard for physical injury.<sup>4</sup> In light of the foregoing, the Commission concludes that the claim of OLGA ALCAIDE-VEGA does not qualify for compensation under Category E of the January Referral Letter. Accordingly, while the Commission

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<sup>1</sup> That the term “physical injury” was intended to have a specific meaning is clear from the fact that the Referral Letter suggests that passage of the LCRA was predicated on assurances made to Congress that *physical injury* claimants would receive compensation comparable to the amount provided for *physical injuries* in the private settlement made by the Libyan government with victims of the 1986 Labelle Discotheque terrorist attack in Berlin, Germany. *See* December Referral Letter at pp. 1-2.

<sup>2</sup> *See, e.g.*, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1, *opened for signature* Dec. 10, 1984, S. TREATY DOC. NO. 100-20, at 3-5, 19, 1465 U.N.T.S. 85; Rome Statute of the International Criminal Court, arts. 6, 7, *opened for signature* July 17, 1998, 2187 U.N.T.S. 3; Geneva Convention Relative to the Treatment of Prisoners of War, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Convention on the Prevention and Punishment of the Crime of Genocide, art. 2, *entry into force* Jan. 12, 1951, Sen. Exec. Doc. 81-O, 78 U.N.T.S. 277.

<sup>3</sup> *See, e.g.*, Prosecutor v. Muhimana, Case No. ICTR-95-1B-T, Judgment and Sentence, ¶¶ 492-494 & n.454, ¶¶ 501-501 (citing, *inter alia*, Prosecutor v. Gacumbitsi, Case No. ICTR-2001-64-T, Judgment, ¶ 291); Prosecutor v. Krajišnik, Case No. IT-00-39-T, Judgment, ¶ 746 (citing Prosecutor v. Delalic (“The Čelebići case”), Case No. IT-96-21-A, Judgment, ¶¶ 424, 426); Prosecutor v. Bagosora, ICTR-98-41-T, Decision on Motions for Judgment of Acquittal, ¶ 34 & n.77; South West Africa (Eth. v. S. Afr.; Liber. v. S. Afr.), 1966 I.C.J. 6, 253 (July 18).

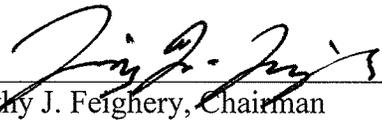
<sup>4</sup> Section 509.5(b) of the Commission’s regulations provides:

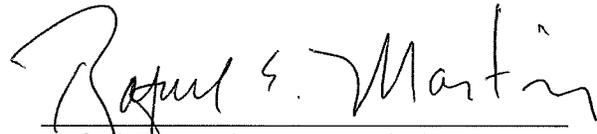
The claimant will have the burden of proof in submitting evidence and information sufficient to establish the elements necessary for a determination of the validity and amount of his or her claim. 45 C.F.R. 509.5(b) (2010).

sympathizes with the claimant for the ordeal that she must have endured during the terrorist attack in question, her claims based on injuries suffered as a result of that incident must be and are hereby denied.

The Commission finds it unnecessary to make determinations with respect to other aspects of this claim.

Dated at Washington, DC, May 10, 2011  
and entered as the Proposed Decision  
of the Commission.

  
\_\_\_\_\_  
Timothy J. Feighery, 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) (2010).



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

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*Claim of* 5 U.S.C. §552(b)(6) , *supra*, at 6-7. The present Category E claim must likewise meet this standard to be compensable.

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Moreover, insofar as the Commission is directed to apply “applicable principles of international law” in deciding the claims before it, *see* 22 U.S.C. § 1623(a)(2) (2006), the Commission notes that the distinction between physical and mental injuries is well-established in both international conventions<sup>2</sup> and decisions of international tribunals<sup>3</sup>.

Based on the evidence and information submitted in support of claimant’s asserted injuries, and for the reasons set forth above, the Commission finds that the claimant has not met her burden of proof in this claim in that she has not satisfied the Commission’s standard for physical injury.<sup>4</sup> In light of the foregoing, the Commission concludes that the claim of 5 U.S.C. §552(b)(6) does not qualify for compensation under Category E of the January Referral Letter. Accordingly, while the Commission sympathizes with the claimant for the ordeal that she must have endured during the

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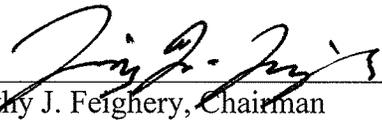
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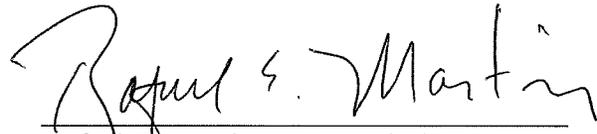
The claimant will have the burden of proof in submitting evidence and information sufficient to establish the elements necessary for a determination of the validity and amount of his or her claim. 45 C.F.R. 509.5(b) (2010).

sympathizes with the claimant for the ordeal that she must have endured during the terrorist attack in question, her claims based on injuries suffered as a result of that incident must be and are hereby denied.

The Commission finds it unnecessary to make determinations with respect to other aspects of this claim.

Dated at Washington, DC, May 10, 2011  
and entered as the Proposed Decision  
of the Commission.

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

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

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