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## The United Nations Compensation Commission: Mass Reparations Apotheosis

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# The United Nations Compensation Commission: Mass Reparations Apotheosis

BY GREGORY TOWNSEND\*

## I. INTRODUCTION

I am honored to contribute to this 40<sup>th</sup> anniversary symposium issue of the *Loyola of Los Angeles International and Comparative Law Review*. For the 1995–1996 academic school year in the last millennium, the outgoing editorial board selected me to serve as Editor-in-Chief of volume 18 of the (then) *Loyola of Los Angeles International and Comparative Law Journal*.<sup>1</sup> Having had, with great fortune, the ‘red pen’ passed to me, I spent the next year toiling with, among other things, correcting the torturous syntax of several articles, learning Christensen copyediting symbols (and deciphering others’ use of them),<sup>2</sup> and mollifying authors with belated edits to their already finalized galley proofs. Despite these rites of passage experienced by all review staff, in retrospect, what I remember and cherish most is the camaraderie and support of my fellow students (including on long, weekend, pizza-fueled ‘production days’), our engaging, often heated, and erudite legal and editorial debates, and our shared pride in finally putting an issue ‘to bed.’ Flush with these memories of my heady learning experience working on a journal and twenty years spent since then working on accountability for United Nations institutions, it was an easy decision to respond in the affirmative when asked to contribute a paper to this symposium.

After leaving Loyola Law in 1996, and with the help of several mentors, including Professor Laurie Levenson, I entered the criminal

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1. See *About the Review*, LOY. L. SCH. L.A., INT’L & COMP. L. REV., <https://digitalcommons.lmu.edu/ilr/about.html> (last visited Jan. 21, 2019).

2. See JOE CHRISTENSEN INC., <http://www.christensen.com> (last visited Jan. 21, 2019).

law field. In 1998, I left the excellent training grounds of the Los Angeles Public Defender's Office when I received a job offer (on thermal fax paper) from the United Nations ("UN") International Criminal Tribunal for Rwanda, based in Arusha, Tanzania, where I grabbed the opportunity and spent more than seven years working on genocide cases and prosecuting some notable trials. This experience had a lasting impact on me, both professionally and personally. One UN job in international criminal law led to another, including going from Arusha to Kosovo to Sierra Leone to The Hague. In 2018, twenty years after 'temporarily' joining the UN, I completed my most recent UN contract at my sixth international criminal jurisdiction, the UN International Residual Mechanism for Criminal Tribunals. My practice today remains focused on international criminal law and teaching the subject.

While studying in Geneva in 1992, my previous interest in public international law was sparked by a guest lecture on the topic of the UN Compensation Commission ("UNCC"). This lecture by John R. Crook, Counselor for Legal Affairs at the U.S. Mission in Geneva and an early U.S. proponent of the UNCC, directly led to my writing of my comment.

My graduation from Loyola Law in 1996 serendipitously coincided with the resurgence of international criminal law and, lucky for me, an upturn in the number of UN jobs in this niche area. Today, however, the job market is shrinking, internationalism is retrenching, and prospects waning that the international community will close gaps in impunity in recent armed conflicts.

In Part II of this paper, I provide a succinct overview of my less-succinct, fifty-five page, 1995 comment on the UNCC.<sup>3</sup> In Part III, I give an update on the UNCC since the passage of twenty-four years since publication of my comment. In Part IV, I give a pithy and positive assessment of the UNCC in its twenty-seventh year of what appears likely to be a thirty year life span, noting its legal innovations and accomplishments. Finally, in Part V, I conclude by remarking that the success of the UNCC is partially attributable to the relative consensus within the United Nations Security Council ("UNSC") that characterized the years of the UNCC's establishment and operation in the 1990s and early 2000s.

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3. See generally Gregory Townsend, Comment, *The Iraq Claims Process: A Progress Report on the United Nations Compensation Commission & U.S. Remedies*, 17 LOY. L.A. INT'L & COMP. L. REV. 973 (1995).

In this immediate post-Cold War era, the permanent members of the UNSC were in accord on questions of international justice.<sup>4</sup> It was this same period of consensus that saw the UNSC establish the UN International Criminal Tribunal for the former Yugoslavia in 1993 and the UN International Criminal Tribunal for Rwanda in 1994, and the international community adopt the Rome Statute establishing the International Criminal Court in 1998.<sup>5</sup> I mention this not only out of a sense of nostalgia but to put the UNCC in this political and temporal context for the purpose of assessing it today.

## II. OVERVIEW OF 1995 COMMENT

While recently re-reading my 1995 comment, what first struck me is that the viability of the UNCC really hung in the balance for the first phase of its existence. Today, in the twilight of the UNCC, we can look back, take its existence for granted, and fail to appreciate the breadth and size of its accomplishments as the “largest-ever war reparation exercise.”<sup>6</sup> In 1995, this was far from evident. The UNCC’s first Executive Secretary conceded that the institution constituted “an unprecedented experiment in international practice” and commentators debated its “legitimacy.”<sup>7</sup> Critics saw the UNCC as “doomed” because it would never garner sufficient funds to compensate the victims of Iraq’s invasion,<sup>8</sup> occupation, and damage to Kuwait in 1990 and the First Gulf War that followed in 1991.<sup>9</sup> The “UNCC’s sine qua non was [always] the availability of money to pay claims.”<sup>10</sup> Labeled “retributive,” “disturbing” by those contending that the UNSC had violated Iraqi sovereignty, and “unduly imposing of” the process upon a

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4. See generally DAG HAMMARSKJÖLD LIBRARY, UN Documentation: International Law, <https://research.un.org/en/docs/law/courts> (last visited Mar. 14, 2019).

5. *Id.*

6. Veijo Heiskanen, *The United Nations Compensation Commission*, in 296 RECUEIL DES COURS 259, 268 (2002).

7. Carlos Alzamora, *The UN Compensation Commission: An Overview*, in THE UNITED NATIONS COMPENSATION COMMISSION: THIRTEENTH SOKOL COLLOQUIUM 3 (Richard B. Lillich ed., 1995); David D. Caron, *The UNCC and the Search for Practical Justice*, in THE UNITED NATIONS COMPENSATION COMMISSION: THIRTEENTH SOKOL COLLOQUIUM 367 (Richard B. Lillich ed., 1995).

8. Alan D. Meltzer, *The United Nations Compensation Commission*, 90 AM. J. INT’L L. 532, 533 (1996) (reviewing THE UNITED NATIONS COMPENSATION COMMISSION (Richard B. Lillich ed., 1995) and noting that “the UNCC’s ultimate legacy remains uncertain, as it continues to lack sufficient funding to pay most claim awards”).

9. See Townsend, *supra* note 3, at 975.

10. Jeremy Carver, *Introduction: International Claims Litigation II: A Case Study on the UNCC*, 99 AM. SOC’Y INT’L L. PROC. 325, 326 (2005).

vanquished Iraq,<sup>11</sup> the UNCC appeared to be in jeopardy. The UNCC risked the political tides turning, being one UNSC vote away from dissolution,<sup>12</sup> and unable “to produce anything except jobs for international bureaucrats.”<sup>13</sup> The UNSC, however, was consistent from the start on the liability of Iraq pursuant to international law for any loss, damage or injury arising in regard to Kuwait.<sup>14</sup> As time would tell, the UNCC eventually turned a corner when Iraq finally started to replenish its compensation fund. This replenishing of the UNCC’s compensation fund put it in a position to process an unprecedented volume of claims settlements, both in terms of the number of claims and the overall monetary value of the compensation claims payments.

My comment described the UNCC’s legal nature and structure, stating that the UNCC’s mandate was not judicial or adjudicatory but rather administrative, fact-finding, and political.<sup>15</sup> Those establishing the UNCC modeled it on U.S. mass tort claims administration.<sup>16</sup> It is noteworthy that the UNCC served as a subsidiary organ of the UNSC, and its Governing Council mirrored the UNSC’s (partially rotating) membership.<sup>17</sup> In retrospect, this structure ensured that the UNCC had strong political support, which it retains to this day.

As of 2019, we know the UNCC “has paid out \$48.1 billion” in claims compensation.<sup>18</sup> This payout is a staggering figure, even more so as it is in stark contrast to the situation in 1994, when the UNCC did not have on hand sufficient funds, \$200 million, to compensate even its first claimants, victims forced to depart Iraq or Kuwait.<sup>19</sup> These victims claimed a fixed sum between \$2,500 and \$8,000.<sup>20</sup> In 1995, the UNCC

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11. See Townsend, *supra* note 3, at 975.

12. See *id.* at 979; see also Michael Raboin, *Summary of Remarks: Part 2: The UNCC and Future International Claims Practice*, 99 AM. SOC’Y INT’L L. PROC. 332-33 (2005) (noting that for those at the UNCC, “[o]ne of our constant fears was that the Security Council would discontinue the UNCC for political reasons before we could process all the claims”).

13. Townsend, *supra* note 3, at 1025.

14. See S.C. Res. 687, ¶ 16 (Apr. 3, 1991).

15. Townsend, *supra* note 3, at 978.

16. *Id.* at 986.

17. See *id.* at 982; see also Laurence Boisson de Chazournes & Danio Campanelli, *The United Nations Compensation Commission: Time for Assessment?*, in FRIEDEN IN FREIHEIT: FESTSCHRIFT FÜR 3, 7 (Andreas Fischer-Lescano, et al eds., 2008). Iraq has not been elected as a non-permanent member of the UNSC since 1974-1975.

18. Press Release, U.N. Compensation Comm’n, United Nations Compensation Commission Pays Out US \$100 Million, U.N. Press Release PR/2019/1 (Jan 18, 2019) [hereinafter Press Release, U.N. Doc. PR/2019/1].

19. Townsend, *supra* note 3, at 988, 1005.

20. *Id.*

also could not pay some of those making claims for personal injury and death of family members.<sup>21</sup> As of 1995, the UNCC's claim settlement process was just getting underway for the various categories of claims and deadlines for submission of some claims were still pending.

My 1995 comment indicated that the lack of Iraqi compliance with UNSC resolutions stymied the UNCC claims process and proposed possible solutions.<sup>22</sup> Most curious, in retrospect, is that some of the then, more far-fetched solutions played out to some extent in future years. The UNSC waited out a change in the Iraqi government,<sup>23</sup> and the UNSC enacted more drastic sanctions in the years following the change,<sup>24</sup> though largely in relation to purported biological weapons and other so-called weapons of mass destruction.<sup>25</sup> While the UNSC did not take control of Iraqi oil production,<sup>26</sup> U.S. military action achieved "regime change" without UN Charter Chapter 7 authorization in the Second Gulf War from 2003. Successor Iraqi governments could do little but comply with the UNSC's previous imposition of liability for compensation stemming from the 1990–1991 invasion and occupation of Kuwait.<sup>27</sup>

The UNCC remains one of a kind. In 1995, I concluded that the UNCC would "prove itself a successful and innovative international institution" once Iraq made available funding from its oil sales.<sup>28</sup> I still agree with that proposition today, but what I grossly under estimated was the duration of the international political impasse in Iraq. What I guessed to be potentially two years was many more.<sup>29</sup> I suspect this under estimate was attributable both to the impatience of my youth and perhaps the tenacity of Saddam Hussein's regime to remain in power, blocking the UNCC from making progress on the bigger claims.

### III. UPDATE SINCE 1995

Between 1991 (when established), 1995 (the year of publication of my "progress report" comment) and today, in 2019, the UNCC has made tremendous progress. Summing up the UNCC by its milestones

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21. *Id.* at 990.

22. *Id.* at 1011, 1019.

23. *Id.* at 1020.

24. *Id.* at 1021.

25. *See id.* at 1016, 1026.

26. *See id.* at 1022-23.

27. *See id.* at 976.

28. *Id.* at 1026.

29. *Id.* at 1025-26.

and figures over the course of its nearly twenty-seven years of existence, its most recent press release of January 18, 2019 reported:

The Commission received approximately 2.7 million claims and concluded its review of all claims in 2005. Approximately \$52.4 billion was awarded to over 100 Governments and international organizations for distribution to 1.5 million claims in all claim categories ... [as of January 18, 2019] the Commission has paid out \$48.1 billion, leaving approximately \$4.3 billion remaining to be paid to the only claim with an outstanding award balance. This category E claim was submitted by the Government of the State of Kuwait on behalf of the Kuwait Petroleum Corporation and awarded \$14.7 billion in 2000 for oil production and sales losses as a result of damages to Kuwait's oil field assets. It represents the largest award by the Commission.<sup>30</sup>

The UNCC anticipates paying out the \$4.3 billion balance of this one, last remaining claim to the Kuwait Petroleum Corporation by the end of 2021. The year 2021 will represent the UNCC's thirtieth year of operation, having been established by UNSC Resolution 687 (the ceasefire resolution) of April 3, 1991.<sup>31</sup> It seems unlikely that anyone working for the UNSC would have anticipated that the UNCC would last that long, let alone that it would decide 2.7 million claims, granting 1.5 million, and paying out more than \$52 billion. This is remarkable and exceeds expectations, especially considering that the Security Council at first set up the UNCC to have the "ultimate objective . . . to provide some rough sense of justice for the little guy," namely claimants in "small" claims categories.<sup>32</sup>

The UNCC was speedy in processing most claims.<sup>33</sup> One panel finished category "B" claims in 1995, category "A" in 1996,<sup>34</sup> and

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30. Press Release, U.N. Doc. PR/2019/1, *supra* note 18.

31. S.C. Res. 687, *supra* note 14, ¶ 6.

32. Nicholas C. Ulmer, *Claimant's Expectations from the United Nations Compensation Commission*, 15 J. INT'L ARB. 7 (1998).

33. See generally Francis E. McGovern, *Dispute System Design: The United Nations Compensation Commission*, in WAR REPARATIONS AND THE UN COMPENSATION COMMISSION: DESIGNING COMPENSATION AFTER CONFLICT 29, 30 (Timothy J. Feighery, et. al., eds., 2015) [hereinafter WAR REPARATIONS] (noting that the UNCC had completed the entire claim review process by June 2005, including after late-filed claims); see also Jason Scott Palmer, *The Palestinian "Late Claims" Program: Remedying Mistakes in Mass Claims Processing Without Compounding the Error*, in WAR REPARATIONS 103, 133 (discussing the so-called "late" claims before the UNCC and concluding that future claims processes should anticipate claims after the deadlines from deserving claimants).

34. See generally Inigo Salvador-Crespo, *Making Good for Forced Exodus: Compensation for Departure from Iraq or Kuwait—Claims of Individuals: "A" Claims*, in WAR REPARATIONS,

category “C” in 1999.<sup>35</sup> Thus, the UNCC paid out these three “urgent” categories first, which represent the numerical bulk of the claims within eight years of the armed conflict.

### A. Funds for Compensation

UNSC Resolution 705 (1991) fixed the percentage of Iraqi oil proceeds that fund compensation to not exceed 30% (based on previous Iraqi domestic military spending).<sup>36</sup> From 1991–1996 however, the UNCC did not secure the billions of dollars needed to fund this ambitious undertaking in mass claims compensation.<sup>37</sup> The UNSC’s credibility and the UNCC’s viability were precariously on the line. It seemed possible that the UNCC would award only pennies on the dollar, if any compensation at all, to those suffering losses.<sup>38</sup> “No one predicted that Iraq would not export any oil for five years, creating repeated funding crises” for the UNCC.<sup>39</sup> In 1998, the prospect of the UNCC actually paying out large claims was not promising and “still very much a question mark.”<sup>40</sup> In this first five-year period, when Iraq declined to cooperate,<sup>41</sup> funds available for compensation came only from liquidated, foreign-held Iraqi assets, voluntary contributions, and loans by states.<sup>42</sup> In April 1995, UNSC Resolution 986 established the so-called Oil-For-Food program that allowed billions of dollars in Iraqi oil sales every six months, but Iraq declined to cooperate and actually make such sales until December 1996.<sup>43</sup> The UNSC set ceilings on Iraq’s oil sales revenues: first \$2 billion, then \$5.2 billion, then \$3 billion, and then final removal of the ceiling altogether in 1999 under

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*supra* note 33 (contending that the “A” claims awards solely for departures represented a “jurisdictional landmark”).

35. Boisson de Chazournes & Campanelli, *supra* note 17, at 17.

36. S.C. Res. 705, ¶ 2 (Aug. 15, 1991).

37. John R. Crook, *Mass Claims Processes: Lessons Learned Over Twenty-Five Years*, in REDRESSING INJUSTICES THROUGH MASS CLAIMS PROCESSES: INNOVATIVE RESPONSES TO UNIQUE CHALLENGES 41, 57 (Permanent Court of Arbitration ed., 2006) (noting that the UNCC was operational for several years before Iraq began to participate in the UN Oil-For-Food program in 1996, which assured “a secure source of funding”).

38. See generally Townsend, *supra* note 3, at 1012-13.

39. Ronald J. Bettauer, *Policy Issues Surrounding the Creation and Operations of the UNCC*, in WAR REPARATIONS, *supra* note 33, at 3, 6.

40. Ulmer, *supra* note 32, at 7-8.

41. See Andrea Gattini, *The UN Compensation Commission: Old Rules, New Procedures on War Reparations*, 13 EUR. J. INT’L L. 161, 181 (2002).

42. Hans van Houtte, Hans Das & Bart Delmartino, *The United Nations Compensation Commission*, in THE HANDBOOK OF REPARATIONS 364 (Pablo de Greif ed., 2006).

43. *Id.*



UNSC Resolution 1284.<sup>44</sup> In 2000, under UNSC Resolution 1330—reacting to the controversy generated by the UNCC’s massive award to the Kuwait Petroleum Corporation—the UNSC reduced the level of Iraq’s compensation contribution from 30% to 25%.<sup>45</sup> Between 1996 and 2003, Iraqi oil sales totaled \$65 billion, thus yielding more than \$15 billion for the UNCC compensation fund.<sup>46</sup> Following the Second Gulf War in Iraq, UNSC Resolution 1483 (2003) reduced the percentage of the oil revenue paid by Iraq into the UNCC compensation fund from 25% to 5% of oil revenues (and disentangled compensation from sanctions).<sup>47</sup> This led to reduced funding, leading the UNCC to reduce the amount it paid out annually in compensation.<sup>48</sup> UNSC Resolution 1956 (2010) affirmed the 5% of oil proceeds figure,<sup>49</sup> but starting in December 2014, after considering Iraq’s request for relief based on “the extraordinarily difficult security circumstances in Iraq and the unusual budgetary challenges,” the UNCC Governing Council postponed all Iraqi payments until 2016,<sup>50</sup> then until 2017,<sup>51</sup> and then until 2018.<sup>52</sup> In November 2017, Iraq proposed to resume graduated payments of oil proceeds into the compensation fund—namely 0.5% in 2018, 1.5% in 2019, and 3% from 2020—and, significantly, continue until the last outstanding award is paid in full (which is anticipated by the end of 2021).<sup>53</sup>

Reductions and postponements in the payments of Iraqi oil proceeds have significantly prolonged the life span of the UNCC. The compromises resulting in extensions meant that, over time, all claims

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44. *Id.*

45. *Id.* at 366; *see also* Mojtaba Kazazi, *Summary of Remarks: Part 2: The UNCC and Future International Claims Practice*, 99 AM. SOC’Y INT’L. L. PROC. 333, 333-34 (2005) [hereinafter Kazazi].

46. van Houtte, et al, *supra* note 42, at 364.

47. *Id.* at 376.

48. *Id.* at 376-77.

49. *Id.* at 375.

50. U.N. Compensation Comm’n Governing Council Dec. 272, U.N. Doc S/AC.26/Dec.272 (Dec. 18, 2014).

51. U.N. Compensation Comm’n, Governing Council Dec. 273, U.N. Doc. S/AC.26/Dec.273 (Oct. 28, 2015).

52. U.N. Compensation Comm’n, Governing Council Dec. 274, U.N. Doc. S/AC.26/Dec.274 (Nov. 3, 2016).

53. U.N. Compensation Comm’n, Governing Council Dec. 276, U.N. Doc. S/AC.26/Dec.276 (Nov. 21, 2017); *see* Press Release, U.N. Compensation Comm’n, Governing Council of United Nations Compensation Commission Concludes Its Eighty-Fifth Session, U.N. Doc. PR/2018/7 (Nov. 7, 2018).

could be paid out. The international community's political will was essential in securing funding for the UNCC.<sup>54</sup>

As of January 2019, the UNCC has paid out \$48.1 billion, leaving only \$4.3 billion to be paid on an award decided in 2000 for \$14.7 billion for the Kuwait Petroleum Corporation, which is the UNCC's last outstanding award.<sup>55</sup> I therefore expect that the UNCC could close definitively in 2021 after paying \$52.4 billion in awards over the course of thirty years.

Before the Second Gulf War, in 2002, commentators, foreseeing greater Iraqi intransigence on paying compensation and growing political opposition to UN sanctions (with which the UNCC was often conflated), had explained the difference between the compensation and sanctions regimes and anticipated that the international community might consider "debt relief" for Iraq that would effectively ending the UNCC.<sup>56</sup>

Initially, "Iraq denounced the UNCC repeatedly. [After the Second Persian Gulf War that saw the "U.S.-led coalition" invade Iraq and depose Saddam Hussein, the new government] became more cooperative."<sup>57</sup> The new Iraqi government was willing to work with the UNCC, though this was years after the establishment of the UNCC.<sup>58</sup>

### B. Payment of Interest

My 1995 comment recalled that the UNCC issued a decision early on to include interest owed on awards, as accrued from the date of the loss to the date of payment, but the Governing Council was split at that time as to the lawfulness of such interest payments under international law and was unable to fix an interest rate.<sup>59</sup> Iraq had also formally objected to being liable for interest.<sup>60</sup> Paying interest seemed to me to be a potential 'straw that breaks the camel's back,' because any delay in

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54. Fred Wooldridge & Olufemi Elias, *Humanitarian Considerations in the Work of the United Nations Compensation Commission*, 85 INT'L REV. RED CROSS 555, 579 (2003).

55. Press Release, U.N. Doc. PR/2019/1, *supra* note 18.

56. David D. Caron & Brian Morris, *The UN Compensation Commission: Practical Justice, not Retribution*, 13 Eur. J. Int'l L. 183, 199 (2002).

57. Lea Brilmayer, *Understanding IMCCs: Compensation and Closure in the Formation and Function of Intentional Mass Claims Commissions*, 43 YALE J. INT'L L. 273, 298 (2018).

58. Cymie R. Payne, *Legal Liability or Environmental Damage: The United Nations Compensation Commission and the 1990-1991 Gulf War*, in GOVERNANCE, NATURAL RESOURCES, AND POST-CONFLICT PEACEBUILDING 719, 735 (Carl Bruch, et al. eds., 1st ed. 2016).

59. Townsend, *supra* note 3, at 994-95.

60. *Id.*

settling claims would mean accrual of significant amounts of interest owed, particularly in light of the lack of adequate funds to even pay the principal amount of claims awards.<sup>61</sup> In March 2005, with Iraq still objecting to paying interest, the Governing Council “finally decided not to follow up on this issue, which meant not awarding interest, [considering] in particular the unavailability of adequate funds and the imminent completion of the Compensation Commission’s claims processing program.”<sup>62</sup> On this point, the Governing Council’s prudent decision in 2005 belatedly coincided with my analysis.

While the UNCC effectively “finished its work and closed its doors in 2005,”<sup>63</sup> with Commissioners having completed their work in panels making recommendations on claims the “UNCC itself is still in operation to correct duplicate awards and to make additional [and eventually in 2021, final] payments.”<sup>64</sup> Since 2013, the UNCC has been awarding compensation in tranches for the one outstanding claim.<sup>65</sup> Depending on Iraqi oil sales, final payment on this one outstanding claim should occur in 2021.

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61. *Id.* at 995.

62. Dražen Petrović, *The UN Compensation Commission*, in *THE LAW OF INTERNATIONAL RESPONSIBILITY* 849, 857 (James Crawford, et al. eds., 2010); see U.N. Compensation Comm’n, Governing Council Dec. 243, U.N. Doc. S/AC.26/Dec.243 (Mar. 10, 2005); John Lonsberg, *Summary of Remarks: Part 2: The UNCC and Future International Claims Practice*, 99 AM. SOC’Y INT’L L. PROC. 332, 336 (2005) (pointing out that had the UNCC decided from the start not to award interest on claims, claimants would have saved much unnecessary “time and work” calculating such interest).

63. Brilmayer, *supra* note 57, at 295.

64. Arturo J. Carrillo & Jason S. Palmer, *Transnational Mass Claim Processes (TMCPs) in International Law and Practice*, 28 BERKELEY J. INT’L L. 343, 372 (2010).

65. See e.g. Press Release, U.N. Compensation Comm’n, United Nations Compensation Commission Pays Out US \$90 Million, U.N. Press Release PR/2018/5 (Oct. 23, 2018) (noting recent payment of US \$90 million towards the last claim); Press Release, U.N. Compensation Comm’n, United Nations Compensation Commission Pays Out US \$1.13 Billion, U.N. Doc. PR/2013/3 (Apr. 25, 2013) (noting only one claim remained); Press Release, U.N. Compensation Comm’n, United Nations Compensation Commission Pays Out US \$1.09 Billion, U.N. Doc. PR/2012/6 (Oct. 25, 2012) (noting only two claims remained); Press Release, U.N. Compensation Comm’n, United Nations Compensation Commission Pays Out US \$1.3 Billion, U.N. Doc. PR/2012/5 (July 26, 2012) (noting only six claims remained); Press Release, U.N. Compensation Comm’n, United Nations Compensation Commission Pays Out US \$1,038,375,281 Billion, U.N. Doc. PR/2011/8 (Oct. 27, 2011) (noting only eight claims remained); Press Release, U.N. Compensation Comm’n, United Nations Compensation Commission Pays Out US \$1,059,048,547, U.N. Doc. PR/2011/5 (July 28, 2011) (noting only nine claims remained); Press Release, U.N. Compensation Comm’n, United Nations Compensation Commission Pays Out US \$674.2 million, U.N. Doc. PR/2010/1 (Jan. 28, 2010) (noting only ten claims remained); see generally *Press Releases 2014-2019*, United Nations Compensation Comm’n, <https://uncc.ch/2014-2019> (last visited Jan. 21, 2019).

## IV. ASSESSMENT OF UNCC IN ITS 27TH YEAR OF 30

My 1995 comment outlined precedent that the UNCC had established by then.<sup>66</sup> In subsequent years, the UNCC proved to be innovative and sought to be fast but fair. The UNCC's innovations included: prioritizing claims of individuals (over corporate and governmental claims); using computing tools; categorizing claims; tailoring evidentiary requirements and standards per category; making awards for environmental damage; providing experts to assist Iraq to challenge claims; and affording more due process to Iraq over time.<sup>67</sup> Other observers have also noted the UNCC's "rich treasury of jurisprudence" particularly on "causation and valuation issues on contractual and non-contractual losses."<sup>68</sup>

A. *Fast but Fair?*

A successful claims settlement mechanism must render correct decisions and act fairly towards the parties without undue delay.<sup>69</sup> Those who created the UNCC faced two institutional design challenges: making a claims system that was fast but fair, and dividing proportionally an "inadequate pie" among claimants.<sup>70</sup> A third challenge—that of handling claims for damage to the environment—was looming further down the road.<sup>71</sup> Caron, analyzing the UNCC in retrospect, described the institution as having faced two broad stages: the first where it quickly processed about 2.5 million mass claims (for categories "A" to "C"),<sup>72</sup> and the second stage (for categories "D" to "F") requiring a shift to individualized case review, holding oral proceedings, inviting more Iraqi participation, conducting site visits,

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66. Townsend, *supra* note 3, at 999-1006.

67. Boisson de Chazournes & Campanelli, *supra* note 17, at 15-16.

68. Carver, *supra* note 10, at 326; Kazazi, *supra* note 45, at 331-32.

69. Crook, *supra* note 37, at 48 (noting that the UNCC "was marked throughout by a recurring tension between the needs for accuracy and fundamental fairness, and for timely claims processing at acceptable cost").

70. David D. Caron, *The United Nations Compensation Commission: Understanding an Institution and the Three Phases of Its Work, Introduction*, in WAR REPARATIONS, *supra* note 33, at xxvii.

71. *Id.*

72. Michael Raboin, *UNCC Origin, Structure, and Operations, Summary of Remarks*, 99 AM. SOC'Y INT'L L. PROC. 327 (2005) (noting that the UNCC "spent most of the first five years concentrating on these humanitarian claims. This was partly because we had not real funds to operate beyond these categories").

and raising evidentiary requirements.<sup>73</sup> Caron attributed the UNCC's speed in the first stage to the key decisions it took in setting fixed amounts for categories of claims,<sup>74</sup> standardizing the evidence required to prove a claim, and using computers to cross-check claims against databases (airline registers, for example).<sup>75</sup> Interestingly, Caron remarked that the UNCC at this stage "was trying not to think only like a lawyer."<sup>76</sup> One lawyer that represented Kuwait suggested, however, that the UNCC was "unduly strict" in its rejection of claims lacking documentation because it failed to appreciate that Kuwaiti ministries had "suffered massive destruction during the [Iraqi] invasion."<sup>77</sup>

### B. Priority Given to Claims of Individuals

The UNCC's paying out of claims to individuals on an urgent basis, accepting late claims, compensating the costs of charitable relief provided to refugees, and limiting the administrative fees governments could charge claimants were due to "humanitarian" considerations and benefited more than a million individuals, mostly workers from Egypt, Jordan, Pakistan, India, Sri Lanka, Bangladesh and the Philippines.<sup>78</sup> This prioritization also reflected the UNCC's expectation that funding for all compensation might run out. Claimants in categories "A" to "C" were largely successful as the UNCC awarded 93, 67 and 57% of the

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73. Caron, *supra* note 70, at xxxi-xxxiv; Boisson de Chazournes & Campanelli, *supra* note 17, at 12 (noting that the UNCC used a "multi-speed regime for evidence"); Rajesh Singh, *Raising the Stakes: Evidentiary Issues in Individual Claims Before the United Nations Compensation Commission*, in *The Int'l Bureau of the Permanent Court of Arbitration* (ed.), REDRESSING INJUSTICES THROUGH MASS CLAIMS PROCESSES: INNOVATIVE RESPONSES TO UNIQUE CHALLENGES (2006) 61, at 93 (noting the UNCC "effectively used a sliding scale approach to evidential burdens"); *see id.* at 62 (noting that the evidential burden was lower for smaller claims and it was higher for bigger claims); *see id.* (noting the UNCC did not change the legal standard of proof of "balance of probabilities," but relaxed the evidence required to "simple documentation" for "A" and "B" individual claimants); *see id.* at 73 (individual claimants represented 99.7% of all claims before the UNCC); *see also* U.N. Compensation Commission Governing Council Dec. 10, U.N. Doc. S/AC.26/1992/10, Provisional Rules for Claims Procedures, art. 35(2)(a) and (b) (June 26, 1992) (relating to "Evidence" and establishing the requirement of "simple documentation").

74. Arif H. Ali & Marguerite C. Walter, *Principles of Valuation Taken from the UNCC Perspective*, in *WAR REPARATIONS*, *supra* note 33, at 81, 101 (noting the UNCC's instructive "valuation jurisprudence").

75. Caron, *supra* note 70, at xxxii.

76. *Id.*

77. John Lonsberg, *Summary of Remarks*, 99 AM. SOC'Y INT'L. L. PROC. 328-29 (2005).

78. Wooldridge & Elias, *supra* note 54, at 555, 564, 569-70, 577 (2003).

amount claimed, respectively, while the average success rate for corporate and government claims, as of 2003, was only 16%.<sup>79</sup>

### C. A Sizable Institution that Applied Innovative Tools

The UNCC's mass claims processing relied heavily on the support of a substantial secretariat and the "use of modern information technology."<sup>80</sup> The secretariat had as many as three hundred staff members.<sup>81</sup> As Caron put it, the UNCC secretariat "arguably became, in some respects, the most influential organ."<sup>82</sup> The UNCC ran "seventeen separate claims programs, with nineteen panels of three commissioners each."<sup>83</sup> Commissioners had six months to decide claims, or twelve months if the claims were large and complex.<sup>84</sup> Usually, the UNCC Governing Council quickly approved the panel's recommendations and awards—as it viewed its role as not one of close scrutiny but checking "only for basic consistency with the claims criteria"—and only rarely

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79. *Id.* at 578-79.

80. Heike Niebergall, *Overcoming Evidentiary Weakness in Reparation Claims Programmes* in Carla Ferstman, Mariana Goetz & Alan Stephens (eds.), REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY, SYSTEMS IN PLACE AND SYSTEMS IN THE MAKING 145, 148 (2009) [hereinafter SYSTEMS].

81. INT'L MASS CLAIMS PROCESS: LEGAL AND PRACTICAL PERSPECTIVES (Howard M. Holtzmann & Edda Kristjánsdóttir (eds., 2007) 302 (noting "[a]t its height, it had at one time approximately three hundred professional and general service staff in Geneva, Switzerland. These included legal staff, accountants, loss adjusters, statisticians, information technology specialists, and administrative support staff from a number of different countries"); *id.* (noting the Secretariat was organized into: (i) the Office of the Executive Secretary; (ii) the Claims Processing Division, consisting of legal services branch, support for verification and valuation of claims, and a claims registry; (iii) the Support Services Division, whose functions include payment of claims and the administration of the Compensation Fund, and information section; (iv) the Executive Offices, as part of the Support Services Division, responsible for personnel and budgetary matters, and; (v) the Governing Council Secretariat). Up to 2005, the Secretariat "employed 206 lawyers throughout its existence." Raboin, *supra* note 72, at 328.

82. Caron, *supra* note 70, at xxx.

83. Raboin, *supra* note 72, at 327-28.

84. John P. Gaffney, *The United Nations Compensation Commission: A Structural and Procedural Overview*, 65 ARBITRATION: JOURNAL OF THE CHARTERED INSTITUTE OF ARBITRATORS 214 (1999); *see also* Robert C. O'Brien, *Government and International Organization Claims Precedential Claims by Governments for Damage to Diplomatic Property and Related Losses, in WAR REPARATIONS, supra* note 33, at 329, 358 (noting "[t]his judicious use of the designation ["large and complex" for claims] allowed the panels much-needed time to evaluate and settle the F1 claims, as well as to invite greater participation from both the claimants and Iraq").

did it delay approval or seek clarifications.<sup>85</sup> The UNCC budget was approximately \$41 to \$50 million per year.<sup>86</sup>

The UNCC's processing innovations lead to efficiencies by: requiring computerized submission; requiring (and distributing to States) a standardized claim form; and designing a database to receive, organize, and provide access to the entirety of the claim information.<sup>87</sup> The UNCC also applied a "two-stage process: a precedent-setting phase [on representative claims, decided by panels] and an application phase" in which the secretariat staff "applied the decisions to the [groupings of] remaining similar claims."<sup>88</sup> The UNCC took this model from category "A" claims and expanded it to subsequent claims categories.<sup>89</sup> These "innovative methods" serve as a model for future claims procedure and institutions.<sup>90</sup>

#### D. Environmental Claims

With respect to environmental claims, the UNCC's decisions have "significantly contributed . . . to the development of international environmental law."<sup>91</sup>

In 1990–1991, during the First Gulf War, retreating Iraqi soldiers set alight more than six hundred oil wells and dumped millions of gallons of oil into the sea in the Persian Gulf. Natural resources thus served as the pretext for war, and as instruments for victims of aggression.<sup>92</sup> The UNCC's compensation for such environmental damage represented a precedent (as indicated in my comment).<sup>93</sup> Moreover commentators view its handling of environmental compensation as relatively speedy, efficient (especially when compared

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85. Ronald Bettauer, *Summary of Remarks*, 99 AM. SOC'Y INT'L. L. PROC. 331 (2005); but see Kazazi, *supra* note 45, at 333-34 (noting that in 2000 the UNCC Governing Council took a few months of political consultations and reached a "compromise" to approve the \$15.9 billion award to the Kuwait Petroleum Company on its E1 claim but consider enhancing Iraq's participation, and that payment of pending claims "is more subject to political circumstances").

86. See van Houtte, et al, *supra* note 42, at 370.

87. Norbert Wühler, *Summary of Remarks*, 99 AM. SOC'Y INT'L. L. PROC. 329, 338 (2005).

88. *Id.* at 329-30.

89. *Id.* at 329.

90. Jean-Christophe Martin, *La pratique de la Commission d'indemnisation des Nations Unies pour l'Irak en matière de réclamations environnementales* [The practice of the United Nations Compensation Commission for Iraq in environmental claims], in LE DROIT INTERNATIONAL FACE AUX ENJEUX ENVIRONNEMENTAUX 257, 273 (A. Pedone ed., 2010).

91. *Id.*

92. Payne, *supra* note 58, at 719.

93. Townsend, *supra* note 3, 993.

to domestic cases like that of the Exxon Valdez oil spill that took twenty years), and successful, particularly in its tracking, monitoring and assessing environmental damage.<sup>94</sup> Commentators note that the UNCC's granting awards for monitoring and assessment (effectively studies and surveys to impute environmental damage to the Gulf War) was innovative as it represented "the first time in the history of claims commissions that costs incurred in collecting the evidence necessary for the submission of claims were deemed compensable."<sup>95</sup> Equally innovative was the UNCC's compulsory follow-up tracking that ensured claimants spent award payments on the agreed, remedial environmental objectives.<sup>96</sup>

On environmental claims, Caron observed that the UNCC made a mistake in not prioritizing them early on and in waiting until 1998 to address them, because state agencies could have mitigated more environmental damage if awarded compensation earlier.<sup>97</sup> Nevertheless, Caron assessed the UNCC panel handling these complex environmental claims as having made a positive and remarkable shift by ordering the use of monitoring and assessment activities to protect the environment, and suggesting reasonable projects funded by awards to ameliorate the environment.<sup>98</sup> This was also an innovative approach.

### *E. Affording Greater Due Process Over Time*

Proceedings before the UNCC were purportedly inquisitorial rather than adversarial in nature.<sup>99</sup> Some even argue the UNCC process, like the UNSC, was inherently political.<sup>100</sup> What is telling about the

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94. Payne, *supra* note 58, at 746.

95. Boisson de Chazournes & Campanelli, *supra* note 17, at 13-14; Carver, *supra* note 10, at 326 (noting that "Iraq paid for all of the UNCC's operations and even, in the case of the environmental claims, for work done by claimants to determine whether a claim existed at all"); Michael Schneider, *Summary of Remarks: Part 1: UNCC Origin, Structure, and Operations*, 99 AM. SOC'Y INT'L. L. PROC. 330 (2005) (noting that for the F4 claims, "Iraq even funded monitoring and assessment programs to assist claimants in identifying the existence and extent of claims!").

96. Boisson de Chazournes & Campanelli, *supra* note 17, at 14; *see also* Martin, *supra* note 90, at 257.

97. Caron, *supra* note 70, at xxxiii-xxxv.

98. *Id.* at xxxvi-xxxvii; *see also* Peter H. Sand, *Compensation for Environmental Damage from the 1991 Gulf War*, in *LAW OF THE ENVIRONMENT AND ARMED CONFLICT* 318-23 (Karen Hulme ed., 2017).

99. *See* Wooldridge & Elias, *supra* note 54, at 557.

100. Lalanath de Silva, *Reflections on the United Nations Compensation Experience*, in *GOVERNANCE, NATURAL RESOURCES, AND POST-CONFLICT PEACEBUILDING* 761-62 (Carl Bruch, Carroll Muffett & Sandra S. Nichols eds., 2016) (contending that "[t]he United States and



UNCC is that its panels over time, after starting with an early debate on Iraq's lack of standing or right to "defend" itself,<sup>101</sup> invited progressively more Iraqi participation in the proceedings. This participation varied from receiving submissions on claims, holding oral proceedings, hearing from Iraqi representatives, and appointing counsel to support Iraq to afford it greater due process as was appropriate to the various categories of claims.<sup>102</sup>

In its early years, observers criticized the UNCC for what they perceived as a lack of due process and pointed out that in the UNCC process, "Iraq is not given the right to be heard as a defendant. Much worse, Iraq does not have the right to dispose of its own funds to avail itself of the very limited opportunities for comments that it has in these proceedings."<sup>103</sup> At the request of the United States (which wanted to avoid delaying, procedural tactics), the UNSC established the UNCC to be administrative (not judicial) in nature and greatly limited Iraqi participation from the start; most proceedings were virtually *ex parte*.<sup>104</sup> The UNCC transmitted only large and complex claims "to Iraq for comments."<sup>105</sup> Oral hearings before the UNCC were relatively rare, and when "hearings were held, representatives of Iraq were allowed to attend for purposes of answering questions put by the Commissioners."<sup>106</sup>

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other Western powers, including the United Kingdom, played a major role in the 1990-1991 Gulf War. There is ample material to support the view that the UNCC's rules and claims outcomes, including the environmental claim outcomes, were influenced by these political dynamics").

101. THE UNITED NATIONS COMPENSATION COMMISSION: A HANDBOOK 15 (Marco Frigessi di Rattalma & Tullio Treves eds., 1999); *id.* at n.36 (noting that article 36 of the UNCC Provisional Rules also allowed panels to invite any government, including Iraq, to present its views in oral proceedings).

102. Timothy J. Feighery, *The United Nations Compensation Commission*, in THE RULES, PRACTICE, AND JURISPRUDENCE OF INTERNATIONAL COURTS AND TRIBUNALS 525 (Chiara Giorgetti ed., 2012).

103. Michael E. Schneider, *How Fair and Efficient is the UNCC System? A Model to Emulate?*, 15(1) J. INT'L ARB 1 (1998); see John R. Crook, *The UNCC and its Critics: Is Iraq Entitled to Due Process*, in THE UNITED NATIONS COMPENSATION COMMISSION: THIRTEENTH SOKOL COLLOQUIUM 95 (Richard B. Lillich ed., 1995).

104. See Meltzer, *supra* note 8, at 533; Ronald J. Bettauer, *Establishment of the United Nations Compensation Commission: The U.S. Government Perspective*, in THE UNITED NATIONS COMPENSATION COMMISSION: THIRTEENTH SOKOL COLLOQUIUM 29 (Richard B. Lillich ed., 1995); Danio Campanelli, *The United Nations Compensation Commission (UNCC): Reflections on Its Judicial Character*, 4 LAW & PRAC. INT'L CTS. & TRIBUNALS 107, 125 (2005); Robert C. O'Brien, *The Challenge of Verifying Corporate and Government Claims at the United Nations Compensation Commission*, 31 CORNELL INT'L L. J. 1, 28 (1998) (arguing that permitting Iraq a larger role in the proceedings risked causing "serious delays").

105. INT'L MASS CLAIMS PROCESS, *supra* note 81, at 267.

106. *Id.* at 233.

The Governing Council, after some cajoling,<sup>107</sup> decided in 2001 to permit Iraq to submit its views and “benefit from the assistance of experts for preparing its comments,”<sup>108</sup> the cost of which the UNCC bore.<sup>109</sup> For environmental (“F4”) claims, the UNCC permitted greater Iraqi participation because these claims were complex and legally novel. After overcoming the UNCC’s administrative hurdles, Iraq retained and relied upon a sizable legal, technical and scientific team, just in time for the second and subsequent instalments of the environmental claims.<sup>110</sup> Iraq “seized this opportunity and took a very active part in the proceedings, defending its interests in a constructive manner and assisting, within the limits of its possibilities, the panel in its search for a fair and just outcome to the extent to which the system allowed such an outcome.”<sup>111</sup>

The UNCC thus evolved over time and afforded Iraq “participatory space” in the claims process with respect to large environmental claims, “similar to that of a defendant in a civil suit or party to an arbitration.”<sup>112</sup> Key political actors in the UNCC influenced this evolution.<sup>113</sup> The panel (and its legal team under the secretariat) deciding the third to the fifth instalments of the environmental claims “consistently supported expanding Iraq’s” participation to clarify issues and bolster the credibility and legitimacy of the panel’s decisions.<sup>114</sup> In

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107. Kazazi, *supra* note 45, at 334 (noting a 2001 political compromise that saw the: (1) UNCC Governing Council agree to consider enhancing Iraqi participation; (2) the UNCC Governing Council award \$15.9 billion to the Kuwait Petroleum Company; and (3) the UNSC reduce Iraq’s contribution to compensation from 30 to 25%. Iraq had requested expanded representation at least five years earlier); see Bhushan Bahree, *Iraq Stakes Claim to Funds Earmarked for Compensation*, WALL ST. J., Aug. 1, 1996, (Eur. Ed.), at 2 (reporting that the Iraqi government states that it needs UNCC funds pay for its “legal defense” against compensation claims).

108. Boisson de Chazournes & Campanelli, *supra* note 17, at 11; U.N. Compensation Comm’n Governing Council Dec. 124, U.N. Doc. S/AC.26/2001/124, annex (June 19, 2001) (“arrangement to provide technical assistance to Iraq in respect of environmental claims before the UNCC”) (permitting Iraq to select experts “freely,” seeking a “full range of views,” authorizing \$3 to \$5 million US dollars for such experts to be paid directly by the UNCC, and noting that this arrangement “cannot be construed as a precedent ... [nor does it] create any changes to the Rules.”); see also U.N. Compensation Comm’n Governing Council Dec. 114, U.N. Doc. S/AC.26/Dec. 114 (Dec. 7, 2000), ¶ 22 (discussing “technical assistance” to Iraq).

109. Kazazi, *supra* note 45, at 334 (noting that altogether the UNCC provided Iraq with \$14 million “in technical assistance to defend the environmental claims”).

110. Michael E. Schneider, *The Role of Iraq in the UNCC Process with Special Emphasis on the Environmental Claims*, in WAR REPARATIONS, *supra* note 33, at 135, 156-59.

111. *Id.* at 135.

112. De Silva, *supra* note 100, at 761-62.

113. *Id.* at 762.

114. *Id.* at 762-63.

the third to fifth instalments of the environmental claims, the UNCC had greatly expanded “due process” procedures for Iraq (beyond the initially granted right to file reports and access to basic claims materials) including: (1) responding in writing to claims; (2) granting extensions to Iraq; (3) affording legal and technical aid to Iraq from UNCC funds; (4) allowing requests for documents by counsel for Iraq; (5) disclosing monitoring and assessing material to Iraq; (6) providing to Iraq the responses to interrogatories submitted by claimants; (7) meeting with the panel’s experts; and (8) holding more extensive oral hearings. The UNCC, however, did not afford Iraq an opportunity to participate in on-site inspections.<sup>115</sup> To “Iraq’s credit,” it adopted a “cooperative strategy” to “help the panel reach the right decision” when the UNCC afforded it technical assistance that fostered wider Iraqi participation in the process.<sup>116</sup>

#### *F. The UNSC’s Determination of State Responsibility to Pay Compensation*

Though it represented an innovation in New York (and not in Geneva, the seat of the UNCC), from a legal standpoint, it is important to mention that the UNSC’s establishing of Iraqi liability still remains an important precedent under the law of state responsibility.<sup>117</sup> The efficiency and effectiveness of the UNCC rested on this foundation, forged from UNSC concerted action at the time.

### V. CONCLUSION

The UNCC was as exceptional as was the UNSC’s extraordinary enforcement action in the 1991 Gulf War, and arose in “a very particular historical and political context.”<sup>118</sup> In the future, the UN may be called upon to establish and oversee a regime for compensation, and such a regime would benefit from understanding the UNCC’s innovations and lessons learned.

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115. *Id.* at 764.

116. Michael Schneider, *Summary of Remarks: Part 2: The UNCC and Future International Claims Practice*, 99 AM. SOC’Y INT’L L. PROC. 335 (2005).

117. Townsend, *supra* note 3, 1002-3; *see generally* ALEXANDROS KOLLIPOULOUS, LA COMMISSION D’INDEMNISATION DES NATIONS UNIES ET LE DROIT DE LA RESPONSABILITÉ INTERNATIONALE [THE U.N. COMPENSATION COMMISSION AND THE LAW OF INTERNATIONAL RESPONSIBILITY] 247-446 (2001).

118. Boisson de Chazournes & Campanelli, *supra* note 17, at 15.

Despite early critics describing the UNCC as a “completely misconceived [model that] should be discarded as soon as possible,”<sup>119</sup> I would beg to differ as do the overwhelming majority of commentators that deem the UNCC to be a success.<sup>120</sup> As one commentator noted in 2005, after “14 years of effective work,” no one can doubt now the UNCC’s authority or legitimacy.<sup>121</sup>

The UNCC achieved its goal of deciding voluminous (2.7 million) claims—the highest in the history of claims commissions<sup>122</sup>—in a “fair and efficient manner” in less than fifteen years.<sup>123</sup> The “sheer volume of its work, and the fact that this work was completed in such a relatively short time, make the UNCC a unique success story as a post-conflict claims resolution mechanism.”<sup>124</sup> In sum, Feighery attributes its success to its innovative design, flexible approaches, use of information technology, and the skill of its commissioners.<sup>125</sup>

Following the UNCC, other mass claim settlement mechanisms for victims of armed conflict benefitted from the model set by the UNCC, including the Commission for Real Property Claims in Bosnia, the Housing and Property Claims Commission in Kosovo, and the Claims Resolution Tribunal for Dormant Accounts in Switzerland.<sup>126</sup> The UNCC also may have served as inspiration for a proposed UN fund to compensate victims of terrorist acts.<sup>127</sup> One academic even posits that the international community should go even further and set up an international court of civil justice.<sup>128</sup> In any case, the UNCC certainly set a new standard for post-conflict compensation institutions.<sup>129</sup>

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119. Schneider, *supra* note 103, at 12; *id.* at 8, 12 (contending the UNCC process violated Iraqi sovereignty, amounted to “victor’s justice” because the relevant UNSC resolutions never “have been accepted by Iraq” and should have been based on model of consensual arbitration); see also Michael Schneider, *Summary of Remarks*, 99 AM. SOC’Y INT’L. L. PROC. 330 (2005) (describing the UNCC as a “disgrace”).

120. See e.g. Carver, *supra* note 10, at 325; Wühler, *supra* note 87, at 338.

121. Bettauer, *supra* note 85, at 337-38.

122. Boisson de Chazournes & Campanelli, *supra* note 17, at 15.

123. Linda A. Taylor, *The United Nations Compensation Commission*, in SYSTEMS, *supra* note 80, at 197, 213.

124. Feighery, *supra* note 102, at 515.

125. *Id.* at 515-16.

126. See van Houtte, et al., *supra* note 42, at 369, n.185.

127. S.C. Res. 1566, ¶ 10 (Oct. 8, 2004) (requesting consideration “of establishing an international fund to compensate victims of terrorist acts and their families”); see generally Crook, *supra* note 37, at 57.

128. See generally, MAYA STEINITZ, THE CASE FOR AN INTERNATIONAL COURT OF CIVIL JUSTICE (2018); Maya Steinitz, *The Case for an International Court of Civil Justice*, 67 STAN. L. REV. ONLINE 75 (2014).

129. See Campanelli, *supra* note 104, at 139.

The success of the UNCC is partially attributable to the relative consensus within the UNSC that characterized the years of the UNCC's operation. "We can be grateful that the [international] political dynamics in 1991 allowed for the UNCC's creation and its ensuring success for the practical application of state responsibility principles."<sup>130</sup> One knowledgeable observer recently stated that the positive political context that facilitated the establishment and success of the UNCC was one that only occurs "once in a generation."<sup>131</sup>

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130. Bettauer, *supra* note 85, at 338.

131. Telephone interview with Veijo Heiskanen, Jan. 16, 2019.