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THE IRAQ CLAIMS PROCESS: A PROGRESS REPORT ON THE UNITED NATIONS COMPENSATION COMMISSION & U.S. REMEDIES

I. Introduction ........................................ 974
II. Iraq's International Responsibility .................. 976
III. Structure and Claims Process of the UNCC ........... 978
    A. Funding Mechanism .................................. 980
    B. Structure of the UNCC .............................. 982
        1. Governing Council ................................ 982
        2. Committee on Administrative Matters ............ 983
        3. Executive Secretary and Secretariat ............. 983
        4. Commissioners and Panels ....................... 984
    C. Processing of Claims ................................ 985
    D. Types of Claims ..................................... 987
        2. "B" Claims: Serious Personal Injury/Death ........ 988
        3. "C" Claims: Damages Up To $100,000 ............... 990
        4. "D" Claims: Damages Above $100,000 .............. 991
        5. "E" Claims: Corporate and Other Entities ........ 991
        6. "F" Claims: Governmental Claims ................. 992
        7. Compensation for Mental Pain & Anguish ........ 993
        8. Interest .......................................... 994
    E. Payment of Claims ................................... 995
    F. Determining the Eligibility of Claims ............. 996
IV. Precedents Established in International Law .......... 999
    A. Residents, Stateless Persons & Dual Nationals ... 1000
    B. Presumption of State Responsibility ............... 1002
    C. Recent Decisions Awarding "B" Claim Funds .......... 1003
    D. Prioritization of Individuals' Claims ............. 1005
    E. Measures to Avoid Multiple Recovery ............. 1006
V. Domestic Remedies .................................... 1006
VI. Impediments to the Claims Process .................. 1011
    VII. Possible Solutions To Impediments ............... 1019
        A. Wait for a Change in Government or Policy .... 1020
        B. Enact More Drastic UNSC Sanctions .............. 1021
        C. Impose U.N. Control of Iraqi Oil Production ... 1022
        D. Lend Frozen Iraqi Assets to UNCC ............... 1023
        E. Issue Bonds on Iraqi Debt to Pay Claims ...... 1024
VIII. Conclusion .......................................... 1024

973
I. INTRODUCTION

The creation of the United Nations Compensation Commission ("UNCC") to pay damages to those injured by Iraq's invasion and occupation of Kuwait may be the global community's most ambitious undertaking in international claims settlement. The number and dollar amount of claims before the UNCC, and the complex legal issues they present, dwarf those of any previous international arbitrations or claims settlements. Observers estimate that more than 100 states will file over two million claims totalling over $200 billion. Kuwaiti claims alone are approaching $100 billion.


Critics argue that the entire endeavor is doomed because there are insufficient funds to recompense the victims. They further contend that the creation of the UNCC violates the principle of sovereign equality of states. Iraq has never agreed to the process, and the United Nations Security Council ("UNSC") "is imposing the claims process on Iraq, a defeated nation." Victors' justice, critics contend, is no justice at all.

This Comment analyzes the Iraq claims process and proposes possible solutions to the current impediments. Part II describes Iraq's international responsibility. Part III explains the funding mechanism, development, structure, and function of the UNCC. Part IV presents the international legal precedents that the UNCC has established. Part V outlines remedies in the United States for domestic claimants. Part VI analyzes the impediments to the Iraq claims process, and Part VII proposes possible solutions to these impediments. Finally, Part VIII concludes that the precedents that the UNCC has established and its recent first payment of compensation awards bode well for continued success, but recognizes that the entire Iraq claims process still may be in jeopardy. If Iraq does not comply, or is not made to comply, with the UNSC resolutions—a requirement for the lifting of UNSC sanctions—most claimants against Iraq will receive little or no compensation.

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9. Bederman, *supra* note 2, at 6 (stating that the UNCC is a retributive instrument of international power that has coercive, unilateral, and fundamentally inequitable features, much like the reparations structures employed after the First and Second World Wars).
II. IRAQ'S INTERNATIONAL RESPONSIBILITY

On August 2, 1990, Iraq invaded Kuwait and declared it Iraq's nineteenth province. The UNSC condemned Iraq's invasion of Kuwait and imposed sanctions against Iraq. Iraq's violation of Kuwait's territorial sovereignty engaged Iraq's international responsibility. This invasion led to the Persian Gulf War, which began on January 16, 1991.

Before the cease-fire of April 3, 1991, the UNSC, acting under its Chapter VII powers, planted the legal seeds for holding Iraq liable for its unlawful acts of aggression against Kuwait, and for all illegal acts committed during the Persian Gulf War. On October 29, 1990, the UNSC informed Iraq that "under international law [Iraq] is liable for any loss, damage or injury arising in regard to Kuwait and third [party] states, and their nationals and corporations, as a result of the invasion and illegal occupation of Kuwait." On March 2, 1991, the UNSC reiterated its pronouncement that Iraq must "accept in principle its liability under international law."

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12. This is true under international law as well as under Islamic law (Shari'a). "Iraq's unprovoked aggression against a neighboring Muslim country is considered an act of forceful usurpation (istila') of property and an act of governmental tyranny (istibdad) over peaceful inhabitants." Kamal Hussain Shukri, Available Defenses For Contracting Parties Affected by the War, MIDDLE E. EXECUTrIVE REP., Oct. 1991, at 14, 15.
14. Chapter VII of the U.N. Charter discusses "action with respect to threats to the peace, breaches of the peace, and acts of aggression." U.N. CHARTER ch. VII.
On January 12, 1991, after the U.S. Congress authorized Operation Desert Storm, President George Bush maintained that Iraq was responsible for reparations and compensation. At a news conference, President Bush stated, in regard to the UNSC resolutions, "One of them relates to reparations, and reparations is a very important part of this. It is a very important part of what the United Nations has done." On February 19, 1991, President Bush also rejected a Soviet peace initiative to end the Persian Gulf War because, inter alia, the initiative failed to recognize Iraq's international responsibility to pay compensation.

In the Persian Gulf War "cease-fire" resolution of April 3, 1991, the UNSC stated that Iraq "is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign governments, nationals and corporations as a result of Iraq's unlawful invasion and occupation of Kuwait." Having lost the Persian Gulf War, Iraq was, according to one commentator, "at the mercy of the United Nations, which has taken unto itself a right to a perpetual stranglehold on the Iraqi economy." The "cease-fire" resolution created the UNCC to administer a compensation fund to settle claims against Iraq and maintain UNSC sanctions. The UNSC adopted an operating scheme for the UNCC in a

23. Brower, supra note 5, at 52.
25. Id. ¶ 22.
subsequent resolution on May 20, 1991.\textsuperscript{26} Iraq immediately denounced the UNCC as "totally illegal."\textsuperscript{27}

III. STRUCTURE AND CLAIMS PROCESS OF THE UNCC

The UNCC is neither a court nor a tribunal; it is a "fact-finding"\textsuperscript{28} organ of the UNSC. Its mission is political\textsuperscript{29} or administrative, rather than judicial or adjudicatory.\textsuperscript{30} In this regard, it differs significantly from the Iran-U.S. Claims Tribunal established by the Algiers Accords of 1980.\textsuperscript{31} U.S. opposition to any sort of arbitration scheme influenced the UNSC's choice of a political body over a judicial body.\textsuperscript{32} From its ten years of experience with the Iran-U.S. Claims Tribunal, the United States apparently learned that conventional arbitration is quite slow, and it successfully lobbied for the establishment of a UNSC-controlled political body.\textsuperscript{33} The UNSC limited Iraq's role to presenting its views to the UNCC's Panels of Commissioners\textsuperscript{34} and receiving

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{27} Afsane Bassir, \textit{Un fonds de compensation créé par l'ONU; L'Irak devra indemniser les victimes de la guerre du Golfe}, \textit{LE MONDE} (Paris), May 22, 1991, available in LEXIS, News Library, Monde File. Mr. Abdulamir Al Anbari, Iraq's ambassador to the U.N., described the UNSC's creation of the UNCC as dictatorial and stated that nothing in the U.N. Charter allows the UNSC to enact such draconian measures. \textit{Id}.
\item \textsuperscript{28} 1991 Report, \textit{supra} note 26, ¶ 20.
\item \textsuperscript{29} Brower, \textit{supra} note 5, at 58.
\item \textsuperscript{30} Bachir Georges Affaki, \textit{The United Nations Compensation Commission: A New Era in Claims Settlements?}, 10 J. INT'L ARB. 21, 23 n.7 (1993). \textit{But see} Higgins, \textit{supra} note 7, at 521; Gerson, \textit{supra} note 15, at 525 (asserting that the Iraq claims process may represent the UNSC's assumption of quasi-judicial powers).
\item \textsuperscript{32} Affaki, \textit{supra} note 30, at 24 n.13.
\item \textsuperscript{34} Iraq recently boycotted a meeting at which a UNCC panel reviewed claims that Iraqi banks seized Egyptian guest workers' savings totaling $500 million. Robert Evans, \textit{Iraq Snubs U.N. Gulf War Commission}, Reuters World Service, Apr. 18, 1995, \textit{available in} LEXIS, News Library, Wires File. Iraq protested that the UNCC does not have jurisdiction over this issue, and submitted its views in writing. \textit{Id}. \textit{See infra} notes 76-80
\end{itemize}
\end{footnotesize}
information regarding all claims before the UNCC. The United States, Kuwait, and Saudi Arabia raised $57 million in seed money in 1991 to establish the UNCC. Because the UNSC created the UNCC as a political body, the UNCC operates relatively "swiftly and effectively." The UNSC, however, could eliminate the UNCC or reduce its mission at any time, if political will changed. If the five permanent members, plus four other members of the UNSC, so voted, the UNCC would cease to exist.

This potential for discontinuation could prove to be one of the UNCC's greatest weaknesses. Dissolving the UNCC would not only dash the hopes of many seeking compensation, but it would also frustrate the international community's endeavor to establish an important international legal precedent. Short of dismantling the UNCC, the UNSC might cut back Iraq's contribution to the compensation fund for political reasons. As one observer remarked, "If the government changes in Iraq to one regarded as favorable, the atmosphere may change and the percentage of contribution from Iraqi oil exports may be reduced." Such a reduction might threaten the UNCC's overall effectiveness. Another observer predicted that if a new, more acceptable Iraqi government comes to power before Iraq pays all the compensation due, "there will be an immediate plea to remove this tremendous burden from the Iraqi people."

Many members of the international community would like to see a change in Iraq's government or even the partition of Iraq and accompanying text (discussing the UNCC's Panels of Commissioners).

40. Ronald J. Bettauer, Remarks, in The UNCC and Other Remedies, supra note 2, at 482, 487.
into several smaller states, including a Kurdish one. 42 A new Iraqi government or subsequent successor state, however, still would be responsible for paying the claims against Iraq under international law. 43 Nevertheless, the UNSC, in a political decision, might halt the payment of these claims through the UNCC.

A. Funding Mechanism

On August 15, 1991, following the Persian Gulf War, the UNSC unanimously fixed the share of Iraqi oil proceeds to support the compensation fund and the UNCC. 44 The UNSC adopted the United Nations ("U.N.") Secretary-General's May 31, 1991 recommendation to dedicate "30 percent of the annual value of the exports of petroleum and petroleum products from Iraq" 45 to fund the compensation process. The UNSC arrived at the figure of thirty percent because that represented Iraq's estimated military expenditures before the Persian Gulf War. 46 One observer termed this funding mechanism a "reparations royalty." 47 The U.N. Secretary-General recommended, and the UNSC approved, the division of the remaining seventy percent of Iraq's oil revenues between "normal imports" and "debt repayment," receiving forty-eight percent and twenty-two percent, respectively. 48

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43. "When a state succeeds another state with respect to particular territory, the capacities, rights and duties of the predecessor state with respect to that territory terminate and are assumed by the successor state ...." THE RESTATEMENT OF THE LAW (THIRD), THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 208 (1986).
46. 1991 Report, supra note 26, ¶ 13 (in determining the appropriate level of compensation, the UNCC Governing Council should consider "the amounts of military spending and arms imports in the past."); Bassir, supra note 27.
47. Brower, Good Start, supra note 37, at 10. See also Charles Brower, United Nations Commission Applies the Lessons of Iran to Iraq, FIN. TIMES (London), Sept. 12, 1991, at 33.
48. Brower, supra note 45, at 13 n.3; S.G. Letter, supra note 45, ¶ 7.
In March 1995, Argentina, the United States, and the United Kingdom proposed a UNSC resolution that also earmarked thirty percent of Iraqi oil sales for the compensation fund, but allocated the remaining seventy percent differently. Of the remaining seventy percent of oil revenues, the resolution allocated twenty percent for "U.N. humanitarian work with Iraqi Kurds" and fifty percent for "food and medicine." Though this scheme does not devote funds to the repayment of Iraqi debt, the resolution expressly states that Iraq still must adhere scrupulously to its obligations to service and repay its foreign debt. This new plan would allow Iraq to sell $1 billion worth of oil every ninety days, subject to periodic UNSC review. The UNSC unanimously adopted this resolution on April 14, 1995. Iraqi Deputy Prime Minister Tariq Aziz criticized this resolution when the UNSC proposed it and after the UNSC adopted it, but he was "not dismissive." Iraq, despite its international responsibility, has not yet agreed to this new UNSC regime and may continue to "[hold] out for a broader lifting of the oil restriction." Thus, the UNCC retains the authority to garnish thirty percent of Iraqi oil sales for compensation, but Iraq refuses to cooperate, and the UNSC sanctions remain in place.


51. Polish Diplomat Urges Iraq to Free 2 Americans, L.A. TIMES, Mar. 27, 1995, at A8 [hereinafter Polish]. This resolution would provide $150 million (or 15% of oil sales) every 90 days to the U.N. Inter-Agency Humanitarian Programme for its work in the three northern governates of Dihouk, Arbil, and Sulaimaniyah. S.C. Res. 986, supra note 49, ¶ 8(b).

52. Polish, supra note 51, at A8.


54. Crossette, supra note 50, at L2.


56. Crossette, supra note 50, at L2; Polish, supra note 51, at A8.

57. Crossette, supra note 55, at 1.

58. Id. Iraqi Health Minister Omid Medhad recently repeated Iraq's rejection of UNSC Resolution 986, which authorized limited oil sales to earn money for humanitarian supplies, because "it compromised Iraq's sovereignty." Iraq Rejects Offer of Limited Oil Sales, PLAIN DEALER (Clev.), Oct. 5, 1995, at 8A, available in WL, ALLNEWS Database.
B. Structure of the UNCC

The UNCC consists of several entities: the Governing Council, the Committee on Administrative Matters, the Executive Secretary and Secretariat, and Commissioners and Three-Commissioner Panels. A description of how each entity functions follows.

1. Governing Council

The Governing Council is comprised of fifteen members, one from each state represented on the UNSC. This means the membership of the Governing Council changes in accordance with the rotating membership of the non-permanent members of the UNSC.\(^{59}\) One observer labeled the Governing Council, "the mini-Security Council."\(^60\) The Governing Council held its first meeting in Geneva on July 23, 1991,\(^61\) and it has issued twenty-three decisions.\(^62\)

The Governing Council is responsible for (1) guiding the compensation fund,\(^63\) and (2) establishing the procedure for processing claims.\(^64\) A decision of the Governing Council re-

\(^{59}\) Ten of the 15 members of the UNSC are non-permanent members. The U.N. General Assembly elects the non-permanent members for two-year terms. \textit{U.N. CHARTER} art. 23.

\(^{60}\) Brower, \textit{supra} note 5, at 57.

\(^{61}\) Affaki, \textit{supra} note 2, at 472.

\(^{62}\) Bettauer, \textit{supra} note 3, at 417.


quires nine votes,65 and no member enjoys veto power. Governing Council decisions are “final and are not subject to appeal or review on procedural, substantive or other grounds.”66

The United States has exercised a great deal of influence because “almost all substantive decisions of the Governing Council to date have been based on U.S. working papers.”67 This probably represents an extension of the U.S. leadership in the alliance against Iraq following Iraq’s invasion of Kuwait.

2. Committee on Administrative Matters

In December 1992, the Governing Council created the Committee on Administrative Matters (“CAM”), which is composed of Geneva representatives (or their designees) of interested member states of the Governing Council.68 The CAM, chaired by the President of the Governing Council, meets informally to advise the Executive Secretary and Governing Council on the annual budget and other administrative matters, and otherwise functions similarly to a subcommittee. Because the compensation fund, not U.N. members’ assessments, finances the UNCC’s administrative budget, the UNCC needed to create the CAM. The CAM performs the oversight functions that the U.N. Advisory Committee on Administrative and Budgetary Questions (“ACABQ”) carries out for assessment-funded U.N. organs.69

3. Executive Secretary and Secretariat

As the administering body of the UNCC, the Secretariat provides technical support for handling the vast number of claims. The Secretariat organizes the Governing Council’s sessions and advises both applicant governments and international organizations. The Secretariat also prepares the claims, views of govern-

65. One exception to the nine-vote rule requires that all fifteen members reach a consensus on decisions regarding the method of ensuring that payments are made to the fund. Affaki, supra note 30, at 22 n.5.
66. Decision 10, supra note 64, art. 40(4).
67. Bettauer, supra note 40, at 486.
69. Bettauer, supra note 3, at 420 n.21.
ments, and other documents for the panels.\textsuperscript{70} The Secretariat is located in the Villa La Pelouse, behind the \textit{Palais des Nations} U.N. headquarters in Geneva, Switzerland.\textsuperscript{71} The Secretariat’s appointed staff\textsuperscript{72} also includes several members of the so-called “Hague mafia,”\textsuperscript{73} those persons who worked together at the Iran-U.S. Claims Tribunal.

The Governing Council appointed former Peruvian ambassador Carlos Alzamora as UNCC Executive Secretary.\textsuperscript{74} The Executive Secretary administers the compensation fund “under the policy guidance of the Governing Council.”\textsuperscript{75}

\section*{4. Commissioners and Three-Commissioner Panels}

The Governing Council in 1993 appointed nine commissioners to evaluate the first three categories of claims.\textsuperscript{76} The commissioners “have a claims’ adjustment function,” and are not arbitrators.\textsuperscript{77} The Governing Council divided the nine commissioners into three panels, each comprised of a chairperson and two other commissioners.\textsuperscript{78} Each panel reviews one category of claims and

\begin{itemize}
\item \textsuperscript{70} \textit{Id.} at 418.
\item \textsuperscript{72} The secretariat staff includes: Michael F. Raboin (USA), Deputy Executive Secretary; Felipe Paolillo, Deputy Executive Secretary; Norbert Wühler (Germany), Chief of Legal Service; and Mojtaba Kazazi (Iran). Bettauer, \textit{supra} note 40, at 483; Jeffrey A. Jannuzzo, \textit{UN Clears Compensation for Gulf War Victims}, \textit{The Times} (London), Apr. 12, 1994, \textit{available in} WL, INT-NEWS-C Database.
\item \textsuperscript{73} Bettauer, \textit{supra} note 40, at 483.
\item \textsuperscript{77} Ulmer, \textit{supra} note 41, at 91.
\item \textsuperscript{78} \textit{UNCC Letter}, \textit{supra} note 76, at 1. The “A” claims panel includes: Mr. José María Ruda (Argentina) (chairman), Mr. Kamal Hossain (Bangladesh), Mr. Matti Praavó Pellonpää (Finland). The “B” claims panel includes: Mr. Mohammed Bennouna (Morocco) (chairman), Ms. Denise Bendschedler-Robert (Switzerland), Ms. Fang Ping (China). The “C” claims panel includes: Mr. Yves L. Fortier (Canada) (chairman), Mr. Sergei
issues reports to the Governing Council within 120 days, pursuant to Article 37 of the UNCC's Provisional Rules.\textsuperscript{79} The Governing Council plans to appoint commissioners to evaluate the remaining three categories of claims in 1995.\textsuperscript{80} Presumably, the UNCC will install new panels of commissioners by appointing nine new commissioners or shuffling existing ones.

C. Processing of Claims

On July 25, 1991, the Governing Council issued Decision 1, which provided the criteria for expedited processing of urgent claims.\textsuperscript{81} In Decision 1, the Governing Council determined the process under which the UNCC would handle claims and defined the “A” through “C” categories of claims. On March 17, 1992, the Governing Council issued the criteria for additional categories of claims to define the “D” through “F” categories of claims.\textsuperscript{82} The final deadline for filing individual (“A,” “B,” “C,” and “D”) claims was January 1, 1995.\textsuperscript{83} The Governing Council, however, has the authority to accept late claims,\textsuperscript{84} and it has exercised this power routinely.\textsuperscript{85} The UNCC has not yet set the final deadlines for late corporate and government (“E” and “F”) claims.\textsuperscript{86}

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Nikolaevich Lebedev (Russia), Mr. Philip Amoah (Ghana). \textit{Id.}


\textsuperscript{79} Decision 10, \textit{supra} note 64, art. 6.

\textsuperscript{80} Bettauer, \textit{supra} note 3, at 419.

\textsuperscript{81} Decision 1, \textit{supra} note 64, \S\ 18. The UNCC accepts claims for death, personal injury or other direct loss to individuals suffered as a result of:

(a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;

(b) Departure from or inability to leave Iraq or Kuwait (or a decision not to return) during that period;

(c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;

(d) The breakdown of civil order in Kuwait or Iraq during that period; or

(e) Hostage-taking or other illegal detention.

\textit{Id.}

\textsuperscript{82} Decision 7, \textit{supra} note 64.

\textsuperscript{83} Bettauer, \textit{supra} note 3, at 422.

\textsuperscript{84} Decision 10, \textit{supra} note 64, art. 12(2).

\textsuperscript{85} Bettauer, \textit{supra} note 3, at 422.

\textsuperscript{86} \textit{Id.}
The UNCC claims process vaguely resembles a default proceeding in an arbitration; the commissioners play the role of "devil's advocate and assess whether these claims are realistic or inflated." Because of the great number of claims, the UNCC has organized a mechanism to expedite the flow of compensation to victims. It also has created forms and computer software for each category of claims. One observer termed the UNCC mechanism "arbitrage par ordinateur," or computer arbitration. Submissions must be in English.

U.S. domestic law served as a model for the Iraq claims process. The UNCC, in deciding how to handle the large numbers of claims, "looked to U.S. mass tort claims administration which is absolutely applicable." The UNCC is "using some of the techniques and arts of sampling that were developed in those [asbestos and Dalkon Shield] cases." The UNCC selected the U.S. mass tort claims model because of its relative efficiency.

Others, however, have criticized the UNCC's processing of claims. A representative of a large international accounting firm submitting claims said, "The whole procedure is a clear invitation for everyone to overstate the claim by as much as possible." This statement indicates that the vast number of claims precludes the UNCC from scrutinizing each claim and ferreting out those that are inflated or spurious. Furthermore, critics assert that the claims forms are confusing and that the UNCC has not set sufficiently clear guidelines.

87. Ulmer, supra note 41, at 90. One observer likened the UNCC's processing of claims to the quick settlement of insurance claims. Schmitt, supra note 1, at B9.
88. Bettauer, supra note 3, at 419.
89. Ulmer, supra note 41, at 88.
90. Each government must translate its submissions, though it need not translate supporting documents for "A," "B," and "C" claims unless the UNCC so requests. Decision 10, supra note 64, art. 7.
91. Myers, supra note 8, at A17.
93. The UNCC hopes the mass tort claims model will be more efficient in handling millions of claims than arbitration. The Iran-U.S. Claims Tribunal has employed arbitration and settled only about 4,000 claims in over ten years. Steven Mufson, The Long Quest for Iraqi Compensation, WASH. POST, Apr. 7, 1991, at H7.
95. Id.
96. Id.
D. Types of Claims

The UNCC framework provides six categories of claims: "A" through "F." Claimants submit their claims forms to their governments, which in turn forward the claims to the UNCC. For several categories of claims, the UNCC will compensate victims for mental pain and anguish. The UNCC will grant interest on the principal amount of the awards.

1. "A" Claims: Departure Claims

"A" claims are for individuals who were forced to depart Kuwait or Iraq as a result of Iraq's invasion and occupation of Kuwait. A claimant may request a fixed lump sum of $2,500, with a limit of $5,000 per family. Claimants also may request higher amounts, $4,000 and $8,000, respectively, but they must waive all other claims before the UNCC. The "A" claim form is relatively simple and consists of only three pages. As of November 1994, eighty-two states submitted 907,357 "A" claims with an asserted value of $3.5 billion. The total number of "A" claims may exceed one million.

On September 15, 1994, the "A" claims Panel of Commissioners recommended to the Governing Council the payment of 53,845 claims submitted by sixty countries and the United Nations.

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98. Decision 1, supra note 64, ¶¶ 11, 14.

99. Pakistan, Bangladesh, Sri Lanka, the Philippines, and other Asian states viewed the lower amounts as "insufficient in relation to the damages typically suffered by their nationals." Crook, supra note 71, at 152. The Governing Council increased the amounts in "a subsequent action supplementing Decision 1." Id.

100. The UNCC required less evidence and processed "A" claims faster than other claims. This "waiver" created an incentive for claimants to "cash out" of the claims process and reduced the burden on the UNCC. Bettauer, supra note 3, at 422.


102. Bettauer, supra note 3, at 417 n.3.

Development Program ("UNDP"). The "A" claims Panel recommended compensation totalling over $185 million. Although the Governing Council approved the "A" claims Panel's recommendation, it can only make payments "when funds become available." The funding mechanism of the UNCC may prove to be inadequate to compensate departees. In fact, in 1994, the UNCC "conceded it does not have [on] hand the 200 million dollars in estimated payments needed to compensate victims in category A." This illustrates the present weakness of the UNCC's funding mechanism.

Iraq facilitated the verification of "A" claims by submitting to the UNCC its records of foreign workers and departures through its borders. This cooperation came as a surprise to some observers. Though Iraq presently remains resistant to the entire UNCC process, Iraq's submission of departure records should work to its advantage by impugning unsubstantiated claims. Iraq's cooperation only reflects a desire to limit its liability. The international community should not construe Iraq's actions as acquiescence to a process that it considers a violation of its sovereign equality under international law.

2. "B" Claims: Serious Personal Injury or Death

Individuals who suffered serious personal injury or whose spouse, child, or parent died as a result of Iraq's invasion and occupation of Kuwait may file "B" claims for $2,500, with a

104. "A" Claims Report, supra note 78, at 343. See infra note 201 and accompanying text (discussing the claims that the UNDP brought).
110. Id.
$10,000 maximum per family. Members of the allied coalition armed forces, or their survivors, generally are not eligible for compensation. The approximately 2,400 survivors and members of the U.S. armed forces who were killed or injured, therefore, must pursue other remedies such as bringing suits in national courts. As of November 1994, forty-seven states submitted 5,703 “B” claims with an asserted value of $18.9 million.

The UNCC gave “B” claims priority over all other claims for “humane” purposes. This prioritization is the opposite approach to that taken by the Iran-U.S. Claims Tribunal, which “paid banks and corporations first, and then considered the claims of individuals.” The UNCC is “processing claims of individuals first, then working its way up the scale.” On May 26, 1994, the Governing Council approved the payments of 670 “B” claims. The UNCC transferred funds to governments on June

111. Bettauer, supra note 40, at 484.
114. See infra note 247 and accompanying text (discussing domestic remedies available in the United States).
115. Bettauer, supra note 3, at 417 n.3.
118. Myers, supra note 8, at A17.
119. Id.
120. Decision Concerning the First Instalment of Claims for Serious Personal Injury or Death (Category “B” Claims) taken by the Governing Council of the United Nations
8, 1994, to pay these awards.\textsuperscript{121} After "B" claims (serious personal injury or death), "[t]he next batch of claims will be paid to departees ["A" claims] and individuals with losses under $100,000 ["C" claims]."\textsuperscript{122} In July 1995, however, the Governing Council decided that it could not pay the second installment of "B" claims, which totaled $875 million.\textsuperscript{123}

3. "C" Claims: Damages Up To $100,000

Individuals who suffered losses, or their survivors, may file for amounts up to $100,000 under the "C" claims category. "C" claims cover death, personal injury, or actual loss, and require "appropriate evidence."\textsuperscript{124} The "C" claim form is more complex than the "A" or "B" claim forms and consists of twelve pages. As of November 1994, eighty-seven states filed 1,573,009 "C" claims with an asserted value of $4.2 billion.\textsuperscript{125}

"C" claims differ from "B" claims in several ways. First, "C" claims, in addition to death and personal injury, cover actual losses, or losses of property and other interests.\textsuperscript{126} Second, the amount of the award is much greater: $2,500 per person is the maximum for "B" claims, whereas "C" claims may reach $100,000.

In processing "A" and "C" claims, the respective Panels of Commissioners observed that a number of claimants selecting the higher amount on their "A" claims\textsuperscript{127} also had filed claims in


\textsuperscript{121} Bettauer, \textit{supra} note 3, at 418.
\textsuperscript{124} Affaki, \textit{supra} note 30, at 27.
\textsuperscript{125} Bettauer, \textit{supra} note 3, at 417 n.3.
\textsuperscript{126} "C" claims cover: (1) damages arising from departure or inability to leave Iraq or Kuwait, hostage-taking or other illegal detentions; (2) damages arising from personal injury, including mental pain and anguish; (3) damages arising from the death of a spouse, child, or parent; (4) personal property losses; (5) loss of bank accounts, stocks and other securities; (6) loss of income, unpaid salaries or support; (7) real property losses; and (8) individual business losses. Affaki, \textit{supra} note 30, at 27. Accordingly, the UNCC created sub-categories "C1" through "C8." Affaki, \textit{supra} note 2, at 479.
\textsuperscript{127} The higher amount for an "A" claim is $4,000 for individual claims or $8,000 for family claims. Decision 21, \textit{supra} note 101, at 1.
category "C." The instructions on the "A" claim form, however, specify that claimants selecting a higher amount waive all claims under any other claim category. To correct this problem, the Governing Council decided that a claimant who selects a higher amount under category "A" and also files a "B," "C," or "D" claim, "will be deemed to have selected the corresponding lower amount" under category "A," and the UNCC will regularly process his other claim.

On March 17, 1992, the Governing Council issued the criteria for additional categories of claims to define "D," "E," and "F" claims categories for losses that the original UNCC framework did not address.

4. "D" Claims: Damages Above $100,000

Individuals who have losses over $100,000 may file "D" claims. The UNCC will pay "D" claims after "A," "B," and "C" claims, and "D" claims "are available with respect to individuals who claim losses in excess of those compensable under claim forms B or C." As of November 1994, fifty-two states and international organizations filed 9,377 "D" claims. The U.S. government has filed 3,000 individual claims ("A" through "D" claims), with a total asserted value of over $205 million, on behalf of its citizens.

5. "E" Claims: Corporate and Other Entities

The UNCC permitted corporations and other entities to file "E" claims until July 1, 1994. The UNCC, however, has not yet set a "final deadline" for the acceptance of late corporate

128. Id.
129. See supra note 100 (discussing the "A" claim waiver).
130. Decision 21, supra note 101, at 1.
131. Id.
132. Decision 7, supra note 64, at 1.
133. See Decision 17, supra note 116, ¶ 1(b).
134. Decision 7, supra note 64, ¶ 7.
135. Bettauer, supra note 3, at 417 n.3.
Compensation for corporations represents an innovation in international law as "[h]istorically, commercial claims have not been compensable after war." Contracts with Iraq may be the bases of claims against Iraq, but Iraq may not invoke *force majeure* clauses in these contracts as a defense.

States consolidate and present corporate "E" claims, which must include proof of incorporation or registration in that state. As of November 1994, sixty-four states filed a total of 7,175 corporate claims. As of June 1994, when the UNCC had received about sixty percent of these corporate claims, the total asserted value of "E" claims was $37 billion. Currently, the total asserted value of "E" claims should exceed $50 billion. The United States filed fifty corporate claims with an asserted value of about $1 billion, and it currently is reviewing another one hundred corporate claims totaling $600,000.

6. "F" Claims: Governments and International Organizations

Governments and international organizations may file "F" claims. Though the deadline for filing "F" claims was August 1, 1994, the UNCC has not yet fixed a "final deadline" for late submissions. A conservative estimate suggests that "F" claims

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140. "Such clause is common in construction contracts to protect the parties in the event that a part of the contract cannot be performed due to causes which are outside of the control of the parties and could not be avoided by exercise of due care." *BLACK'S LAW DICTIONARY* 645 (6th ed. 1990).
142. Ulmer, *supra* note 41, at 89.
145. *Id.*
147. Approximately 214 government agencies and political subdivisions filed "F" claims.
will exceed $50 billion. Several Kuwaiti ministries have filed separate claims, and observers estimate that the claim of the publicly owned Kuwait Petroleum Company alone will amount to as much as $45 billion. Iraqi sabotage destroyed "1 billion barrels of oil—or 1% of Kuwait's total capacity." Another large "F" claim is the Kuwaiti Investment Authority's $41 billion claim for reconstruction costs and lost investment opportunities.

The UNSC cease-fire resolution provided for compensation for environmental damage and depletion of natural resources. "F" claims cover environmental claims. Kuwait and other states may file "F" claims as late February 1, 1997. Awarding compensation for environmental damage and depletion of natural resources represents another UNCC innovation. The duty to pay compensation for environmental damage is a relatively new international norm. Never before has a state paid compensation for attacking another's natural resources.

7. Compensation for Mental Pain and Anguish

The UNCC also will accept claims for mental pain and anguish. The UNCC promulgated a schedule of payments for

156. Affaki, supra note 2, at 485.
157. Id. at 485 n.43.
mental pain and anguish for most situations in which individuals suffered during the invasion and occupation of Kuwait.\textsuperscript{159} For example, for the death of a spouse, child, or parent, an individual may claim a maximum of $15,000, and a family may claim a maximum of $30,000.\textsuperscript{160} Victims of aggravated assault, sexual assault, or torture may claim up to $5,000 per incident.\textsuperscript{161}

8. Interest

The UNCC will award interest on the principal amount of successful claims. Interest will accrue from the date the loss occurred until the date of payment, and the UNCC will grant interest after the principal amount of the award.\textsuperscript{162} The Governing Council has deferred determining the rate of interest, but it will select a rate of interest "sufficient to compensate successful claimants for the loss of use of the principal amount."\textsuperscript{163} The Governing Council postponed setting a rate of interest because the United States and other members of the Governing Council were split as to whether interest should be imposed at all.\textsuperscript{164} The language agreed upon represents a compromise.\textsuperscript{165}

On February 12, 1993, Iraq protested the awarding of interest because the cease-fire resolution\textsuperscript{166} did not declare that Iraq had

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\textsuperscript{159} Decision 8, supra note 158, ¶ 3.

\textsuperscript{160} Id.

\textsuperscript{161} Id. The UNCC also will award compensation for mental pain and anguish to individuals for dismemberment, disfigurement, loss of use of a body part, being taken hostage, being illegally detained, having a well-founded fear for one's life, and being deprived of all economic resources such as to threaten one's survival. Id.


\textsuperscript{163} Id.

\textsuperscript{164} Bettauer, supra note 3, at 420.

\textsuperscript{165} Id.

\textsuperscript{166} S.C. Res. 687, supra note 22.
an obligation to pay interest on compensation.\textsuperscript{167} Furthermore, Iraq asserted that the imposition of interest conflicted with international legal principles. Iraq contended that awarding interest went against "the trend followed in peace treaties after the Second World War and with the principles of justice and fairness."\textsuperscript{168}

The significance of awarding interest grows each day because the interest owed by Iraq accrues while the claims process remains stalled by Iraq's refusal to comply with the UNSC resolutions. If the Iraq claims process is delayed further, the interest due on billions of dollars of claims may become the straw that breaks the camel's back. This is particularly true if the existing funding mechanism cannot adequately cover the principal amount of the claims before the UNCC.

\textbf{E. Payment of Claims}

In paying claims, the UNCC disburses the funds to governments, which in turn compensate successful claimants directly. Only governments and other selected international agencies can file claims and distribute payments.\textsuperscript{169} As one observer described the payment process, governments act as trustees to the claimants.\textsuperscript{170} To assure that payments actually get to the claimants, the Governing Council has required governments to establish mechanisms for distributing payments "in a fair, efficient and timely manner."\textsuperscript{171} Generally, governments must distribute funds to successful claimants within six months.\textsuperscript{172} Governments also must report to the UNCC on the amounts of payments distrib-

\begin{itemize}
  \item \textsuperscript{168} Id. at 427.
  \item \textsuperscript{169} The Foreign Claims Settlement Commission ("FCSC") files claims for U.S. claimants, the Foreign and Commonwealth Office files claims for United Kingdom claimants, the Ministère des Affaires Étrangères files claims for French claimants, and the Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC") files claims for Kuwaiti claimants. Affaki, supra note 2, at 487.
  \item \textsuperscript{170} Id. at 486 n.48.
  \item \textsuperscript{172} Bettauer, supra note 3, at 421.
\end{itemize}
The Governing Council may suspend disbursements to governments that fail to comply with the UNCC requirements.\textsuperscript{174}

To offset their costs, governments may deduct a processing fee of up to one and one-half percent for "A," "B," and "C" claims and three percent for "D," "E," and "F" claims.\textsuperscript{175} The difference between the processing fees that the governments and other selected international agencies may deduct on different categories of claims reflects the UNCC's preference for individual claimants over corporate and governmental claimants. The larger amounts claimed under "D," "E," and "F" claims presumably only would allow governments to justify deducting a smaller percentage as a processing fee. The UNCC, however, favors reducing the processing costs borne by individuals, who typically make relatively smaller and less complicated claims. The UNCC has shifted these processing costs to the corporate and larger claimants, those arguably better able to bear them.

\textbf{F. \textit{Determining the Eligibility of Claims}}

One of the Panels of Commissioners evaluates each claim to determine its eligibility to receive compensation under criteria established by the Governing Council. The Panels of Commissioners issue reports and recommendations to the Governing Council, which then makes the final decisions on the payment of awards. The Governing Council has made several decisions regarding the eligibility of certain claims.

1. Decision on Embargo-Related Claims

The Governing Council's decision on claims for losses related to the embargo imposed on Iraq following its invasion of Kuwait represents one of the most contentious developments to date. The Governing Council decided\textsuperscript{176} to exclude these sizable embargo-related claims because they might "overwhelm the other claims."\textsuperscript{177} Critics, however, object to this decision on four

\begin{itemize}
\item \textsuperscript{173} Decision 18, \textit{supra} note 171, ¶ 1(d).
\item \textsuperscript{174} Bettaufer, \textit{supra} note 3, at 421.
\item \textsuperscript{175} Decision 18, \textit{supra} note 171, ¶ 1(a).
\item \textsuperscript{176} In Decision 1, the Governing Council decided that "[c]ompensation will not be provided for losses suffered as a result of the trade embargo and related measures." Decision 1, \textit{supra} note 64, ¶ 16.
\item \textsuperscript{177} Daniel B. Magraw, \textit{Claims Against Iraq, in The UNCC and Other Remedies, supra} note 2, at 487, 490.
\end{itemize}
The Iraq Claims Process

grounds. First, the decision unfairly treats embargo-related claims, which arose just as directly as did other legitimate claims. Second, the decision promotes an anti-business, pro-individual policy. Third, the decision lets the costs of the embargo remain where they fell. Fourth, the decision denies that embargo-related claims are legitimately recoverable under international law and that funding problems motivated the Governing Council’s decision.

A person with an embargo-related claim, however, is not deprived entirely of means of compensation because he remains “perfectly at liberty to take that claim elsewhere” (i.e., to bring it before a domestic legal system). Bringing a claim for embargo-related losses in a U.S. court, however, may prove unsatisfactory because of the lack of sufficient Iraqi assets to attach and satisfy the claim.

The Governing Council clarified its position on compensating business losses resulting from Iraq’s invasion and occupation of Kuwait where the trade embargo was also a cause. In such situations, the loss is eligible for compensation if it was caused directly by the invasion and occupation and would have been suffered irrespective of the trade embargo. The Governing Council maintained that businesses had a duty to mitigate damages. Therefore, a loss caused solely by the trade embargo and related measures is not eligible for compensation.

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178. Id.
179. But see Crook, supra note 71, at 154. The “decision not to compensate embargo losses reflected a legal judgment that the causal link . . . was not sufficiently direct.” Id.
180. Jeremy Carver, Discussion, in The UNCC and Other Remedies, supra note 2, at 494, 495.
181. See infra note 247 and accompanying text (discussing domestic remedies).
184. Id. at 5.
2. Decision on Military Costs

After a March 24, 1994 decision of the Governing Council,\textsuperscript{185} the Chairman of the Governing Council, Fernando Valenzuela Marzo (of Spain), and the UNCC's Executive Secretary, Carlos Alzamora, "confirmed that the [Governing] [C]ouncil had ruled that countries in the U.S.-led alliance that drove Iraqi forces out of Kuwait will not be reimbursed for their military costs."\textsuperscript{186} Though the costs of military operations implicitly were ineligible under an earlier decision regarding individual members of the allied forces,\textsuperscript{187} several states asked the UNCC for an explicit ruling to settle the issue.\textsuperscript{188}

Traditionally, reparations indirectly offset the victors' military costs.\textsuperscript{189} The decision not to compensate military costs may reflect the fact that Saudi Arabia, Kuwait, and non-combatant states such as Japan\textsuperscript{190} and Germany\textsuperscript{191} made significant financial contributions to the U.S.-led Persian Gulf War effort.\textsuperscript{192} In other words, combatant states, including the United States, did not solely bear the costs of their Persian Gulf War military expenditures, because donor states partially underwrote these costs. This probably contributed to the Governing Council's decision to let


\textsuperscript{187}Decision 11, supra note 112, ¶ 1.

\textsuperscript{188}Bettauer, supra note 3, at 422.

\textsuperscript{189}See generally THE RESTATEMENT OF THE LAW (THIRD), THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 901 (1986) (discussing the application of reparations).


\textsuperscript{192}Allied contributions to the Persian Gulf War effort included: $16.8 billion from Saudi Arabia; $16 billion from Kuwait; $10.7 billion from Japan; $6.5 billion from Germany; $3 billion from the United Arab Emirates; $300 million from South Korea; and $3 million from other states. Paying the Costs, L.A. TIMES, Mar. 1, 1991, at A10. Another source estimates that military costs of the Persian Gulf War totaled $65 billion. Robin Wright, Gulf War Victors, Losers No Longer Clear, L.A. TIMES, Aug. 6, 1995, at A9.
members of the Persian Gulf War alliance bear their own outstanding military costs.

IV. PRECEDENTS ESTABLISHED IN INTERNATIONAL LAW

The UNCC, itself, represents an important precedent in international law. The establishment of the UNCC follows a remarkable occurrence in recent history—the nearly universal condemnation of Iraq's invasion and occupation of Kuwait. Several observers, however, believe that the UNCC merely follows the traditions of the two-hundred-year history of international claims settlement.193 Nevertheless, the UNCC is significant because it represents the UNSC's first attempt to establish an international claims settlement agency194 against a state, without that state's complete capitulation.195

The UNCC must succeed in achieving its goals so that the members of the international community will continue to establish and fund effective international dispute resolution mechanisms, especially those that remedy acts of aggressor states and threats to peace and security.196

In addition to the innovation of establishing the UNCC, the UNCC has created other precedents and practice that may crystalize into new international law. The most noteworthy examples include: the UNCC's treatment of residents, stateless persons, and dual nationals; presumptions of state responsibility; recent awards; prioritization of individual claims; and measures preventing multiple recovery. At least one critic believes that because the UNCC operates under UNSC resolutions, or a lex specialis,197 its decisions and practice will lack precedential

194. Such a “multinational or international claims tribunal is without precedent.” Glod, supra note 19, at 719.
195. The UNSC's “action was historically unique in issuing what is tantamount to a summary judgment holding Iraq responsible for a whole series of breaches of international law.” Id. at 715.
196. But see Higgins, supra note 7, at 521. Although the illegality of Iraq's invasion of Kuwait was “apparent,” many observers “have been rather disturbed by the United Nations' [Security Council's] assumption of quasi-judicial powers even in the case of Iraq where the facts were extraordinarily clear . . . .” Id.
197. Lex specialis differs from public law in that the former is “designed for a particular purpose, or limited in range or confined to a prescribed field of action or operation.” BLACK'S LAW DICTIONARY 1398 (6th ed. 1990).
value. Should the UNSC create another international claims settlement organization, however, such an organization would draw upon UNCC precedent.

A. Claims of Residents, Stateless Persons, and Dual Nationals

The UNCC's innovations include its acceptance of claims by governments on behalf of their residents as well as their nationals, and its acceptance of claims brought by stateless persons. The UNCC has left behind the formalities of classic diplomatic espousal for a more flexible approach. This flexibility is particularly important to stateless persons bringing claims. For example, the UNDP may bring to the UNCC the claims of Palestinians who reside in Israel. The United Nations Relief and Works Agency ("UNRWA") may bring the claims of Palestinians who reside elsewhere in the Middle East.

The UNCC's flexible approach to diplomatic espousal does not go so far as to permit most Kurds to bring claims. One criticism of the UNCC is that "Kurdish claims are not covered by the system" because the UNCC provides no remedy to Kurds with exclusively Iraqi nationality. As the borders of Iraq stand today, allowing Kurds of exclusively Iraqi nationality to bring

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198. Bederman, supra note 2, at 39-40. But see BROWNLIE, supra note 6, at 699-700 (asserting that the practice of political organs of international organizations may be evidence of customary international law).

199. Diplomatic espousal refers to the bringing of a claim by a state on behalf of an individual. A state may pursue a claim on behalf of an individual, usually its citizen, against another state because the individual is not a subject of international law. BROWNLIE, supra note 6, at 581. The Permanent Court of International Justice defined espousal as a state asserting its own right by "taking up the case of one of its nationals, by resorting to diplomatic action or international judicial proceedings on his behalf." Bederman, supra note 2, at 25 n.114 (citing Panevezys-Saldutiskis Railway (Estonia v. Latvia), 1939 P.C.I.J. (ser. A/B) No. 76 (Feb. 28)).


203. Ronald J. Bettauer, Discussion, in The UNCC and Other Remedies, supra note 2, at 496, 498.
claims against Iraq at the UNCC would violate traditional rules of espousal. Nonetheless, some observers argue that the UNCC should relax its rules in light of the publicized plight of the Kurdish people, the UNSC's creation of a no-fly zone in Northern Iraq, and the wish of many Kurds for the reestablishment of a Kurdish state.

The issue of Kurdish claims relates to the more general problem of claims of dual nationals under international law. Claims of dual nationals proved to be a problem at the Iran-U.S. Claims Tribunal. Under traditional international law, "a State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses." This doctrine left many dual nationals without a remedy. To solve this problem, the Iran-U.S. Claims Tribunal finally agreed on a rule that defined the relevant nationality as the "dominant and effective" one. This holding allows a dual American-Iranian national of predominantly American nationality to make a claim against Iran. The UNCC, in contrast, goes further and accepts the claim of a dual national with dominant and effective Iraqi nationality as long as he possesses a "bona fide nationality of any other State." This represents another marked "departure from..."
conventional practice”\textsuperscript{210} by the UNCC. This liberal rule will allow more individuals to seek compensation.

\textbf{B. Presumption of State Responsibility}

The presumption of the state responsibility of Iraq is another UNCC innovation in international law. Under two UNSC resolutions,\textsuperscript{211} the unlawfulness of Iraq’s acts of aggression is the causal factor of Iraq’s responsibility. Therefore, attributing a wide array of wrongful acts to Iraq appears very likely. In particular, the UNCC will attribute to Iraq acts of persons acting in fact on behalf of Iraq, or otherwise, because liability “exists even in cases where the individual act of an Iraqi agent, taken in isolation, would not constitute a violation of international law.”\textsuperscript{212} The vast liability of Iraq under the UNSC resolutions probably reflects its flagrantly unlawful invasion of Kuwait and the fact that the UNSC—effectively the leader of the victorious thirty-two-state allied coalition\textsuperscript{213} of the Persian Gulf War—established the UNCC.

Furthermore, in Decision 1, the UNCC ruled that Iraq is responsible for “actions by officials, employees, or agents of the government of Iraq or its controlled entities during that period in connection with the invasion or occupation.”\textsuperscript{214} Because this decision does not mention de facto agents,\textsuperscript{215} it remains unclear whether the UNCC will interpret the word “agent” in Decision 1 as encompassing persons acting in fact for Iraq. The use of the subjective term “entities controlled,” however, may indicate that the UNCC will entertain the question of whether a person was factually linked to Iraq, or provide a basis on which a claimant also may argue that an offending person was an “entity controlled” by Iraq. Iraq’s international responsibility for all acts of persons

\textsuperscript{210} Crook, \textit{supra} note 71, at 150.

\textsuperscript{211} S.C. Res. 674, \textit{supra} note 16, ¶ 8; S.C. Res. 686, \textit{supra} note 17, ¶ 2(b).

\textsuperscript{212} Crook, \textit{supra} note 71, at 147.

\textsuperscript{213} Wright, \textit{supra} note 192, at A9.

\textsuperscript{214} Decision 1, \textit{supra} note 64, ¶ 18(c).

acting in fact on behalf of Iraq, or otherwise, establishes a precedent in international law.

As in the Iran-U.S. Claims Tribunal, the UNCC addresses issues of persons fleeing,\textsuperscript{216} persons expelled, and the related questions of attribution.\textsuperscript{217} The Iran-U.S. Claims Tribunal had difficulty attributing to Iran the wrongful expulsions occurring during its revolution.\textsuperscript{218} To overcome this legal obstacle, the Governing Council adopted a conclusive presumption that Iraq’s unlawful invasion and occupation caused the mass departures.\textsuperscript{219} Thus, Iraq is irrebuttably responsible for the fleeing and expulsions regardless of the status of the actor causing the persons to leave.\textsuperscript{220} This presumption also allows more than one million individuals to make claims.

\textbf{C. Recent Decisions Awarding “B” Claim Funds}

The UNCC’s recent decision awarding “B” claim funds to survivors and those who suffered serious personal injury represents another precedent. In May 1994, after the “B” claims Panel reviewed 1,119 “B” claims,\textsuperscript{221} the Governing Council approved\textsuperscript{222} its recommendation to compensate 670 claimants\textsuperscript{223} in sixteen countries\textsuperscript{224} for a total of $2,747,500.\textsuperscript{225} Kuwait received the highest number of “B” claim awards, followed by

\begin{itemize}
  \item \textsuperscript{216} The “A” claims Panel estimated that there were approximately 2 million departees. “A” Claims Report, supra note 78, at 329.
  \item \textsuperscript{217} Iraq is responsible for the “departure from or inability to leave Iraq or Kuwait (or a decision not to return).” Decision 1, supra note 64, ¶ 18(b). This represents the second type of five “causes of loss” that the UNCC defined. \textit{Id}.
  \item \textsuperscript{218} See Alfred L.W. Short v. Islamic Republic of Iran, 16 IRAN-U.S. CL. TRIB. REP. 76 (1988) (rejecting the establishment of a rebuttable presumption that Iran was responsible for acts of persons who forced U.S. claimants to flee Iran); Ruth L. Cove, \textit{State Responsibility for Constructive Wrongful Expulsion of Foreign Nationals}, 11 FORDHAM INT’L L.J. 802, 809 (1988).
  \item \textsuperscript{219} Crook, supra note 71, at 148.
  \item \textsuperscript{220} Brower, supra note 5, at 56.
  \item \textsuperscript{221} “B” Claims Report, supra note 209, at 304.
  \item \textsuperscript{222} Decision 20, supra note 120, ¶ 2.
  \item \textsuperscript{223} Kuwait Distributes Iraq Compensation, Reuters World Service, Aug. 2, 1994, available in LEXIS, News Library, Non-US File [hereinafter Kuwait Distributes].
  \item \textsuperscript{224} The 670 successful “B” claimants came from: Australia, China, Slovak Republic, France, Iran, Jordan, Kenya, Kuwait, Mauritius, Pakistan, Poland, Sri Lanka, Thailand, United Kingdom, United States, and Federal Republic of Yugoslavia (Serbia and Montenegro). Decision 20, supra note 120, at 2.
  \item \textsuperscript{225} \textit{Id}.
Ninety United Kingdom citizens were among the 670 claimants receiving "B" awards, and the "B" claims Panel of Commissioners recommended that eleven U.S. claimants receive compensation.

On August 2, 1994, two Kuwaiti ministries—the Finance Ministry and the Public Authority for the Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC")—distributed "B" claim awards totalling $1,397,500 to 303 persons. This represented the first payment of claims ever made under the UNCC framework. The money for this payment "represents the loan, made to the UN by the United States under [UNSC] Resolution 778, of frozen [Iraqi] funds." The UNCC dramatically scheduled this historic event on the fourth anniversary of Iraq's invasion. One Kuwaiti official stated that despite their limited amount, the payments had "considerable symbolic importance because they reinforced the principle of compensation for acts of international aggression."

This recent disbursement of "B" claim awards has helped rebut previous criticisms that the UNCC never would achieve its goals. Although those who suffered losses can only rarely be made whole, claimants generally welcomed some compensation. This disbursement also provided great symbolic value and reinforced the rule of international law. The payment of compensation to those who suffered losses due to Iraq's invasion and occupation of Kuwait reaffirmed the international community's commitment to punish acts of international aggression.

The payment of the "next batch of individual claims [originally expected in October 1994] . . . will require about $200 million

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228. "B" Claims Report, supra note 209, Annex VI.
231. Kuwait Distributes, supra note 223.
232. See generally deKieffer, supra note 5, at 8.
that the compensation fund currently does not possess.\textsuperscript{234} Besides an infusion of capital from flushing Iraqi oil pipelines\textsuperscript{235} and loans of frozen Iraqi assets from national governments,\textsuperscript{236} few, if any, other viable sources of short term funding exist to replenish the UNCC's accounts. If the UNCC is to continue its precedent of compensating claimants, the international community must ensure that Iraq complies with its obligation to fund the UNCC.

\textbf{D. Prioritization of Individuals' Claims}

The UNCC gives priority to claims of individuals.\textsuperscript{237} Many welcome this prioritization as a "democratic" innovation because if states follow this practice in future international claims settlement fora, the number of individual claimants will increase.\textsuperscript{238} An attorney representing the Kuwaiti government before the UNCC, however, believes that this prioritization has turned the process "on its head."\textsuperscript{239} As a practical matter, individuals file relatively few claims in international claims fora because of the prohibitive costs\textsuperscript{240} and burdens.\textsuperscript{241} This is unfortunate, as individuals often suffer losses that are significant in relation to their total financial worth. The UNCC's giving priority to individual claims over corporate and governmental claims will aid those traditionally deprived of just compensation.

A more cynical view sees this prioritization as a calculated public relations gesture by the UNCC to ensure the payment of.

\begin{itemize}
\item \textsuperscript{234} Stephanie Nebehay, \textit{Kuwait Seeks $41 Billion in Claims Against Iraq}, Reuter Newswire, June 28, 1994, \textit{available in} WL, INT-NEWS-C Database.
\item \textsuperscript{235} A potential one-time capital infusion that might help cover some of the UNCC's present shortfall may come from the "sale of crude oil that is to be flushed from an Iraqi-Turkish [Kirkuk to Yumurtalik] pipeline." \textit{U.N. Pays Victims of Iraqi Invasion}, WASH. POST, June 9, 1994, at A21.
\item \textsuperscript{236} \textit{See infra} Part VII.D. (discussing lending frozen Iraqi assets to the UNCC).
\item \textsuperscript{237} Decision 17, \textit{supra} note 116, \textit{¶} 1(b).
\item \textsuperscript{238} Brower, \textit{supra} note 5, at 55. The UNCC has overcome the Iran-U.S. Claims Tribunal's failure to give a remedy or some relief to "little people, the individuals." \textit{Id.}
\item \textsuperscript{239} Schmitt, \textit{supra} note 1, at B9. Mr. Robert J. Dwyer, a lawyer at the firm of Bryan Cave, complained that the prioritization of individual claims ignores Kuwait, "the principal victim." \textit{Id.} The United States initially opposed this prioritization. The United States asserted that it was premature to pay any claims before better projections of UNCC funding became available. Bettauer, \textit{supra} note 3, at 421.
\item \textsuperscript{240} Claimants seldom receive compensation for lawyers' fees. This is also true under the UNCC regime. Decision 1, \textit{supra} note 64, ¶ 16.
\item \textsuperscript{241} Under international law, the state must espouse an individual's claim. \textit{See supra} note 199 and accompanying text.
\end{itemize}
larger claims. That is, by publicizing the initial compensation of individuals, the UNCC hopes to garner international support for the claims process and ensure the eventual payment of the bulk of the compensation to the larger claimants, namely corporations and governments.\textsuperscript{242} A more likely explanation for the prioritization of individual claims over those of larger claimants is the fact that the individual claims are less complicated and for relatively small amounts. This prioritization means that the UNCC will compensate at least some claimants regardless of Iraq's cooperation.

\textbf{E. Measures to Avoid Multiple Recovery}

Measures to avoid multiple recovery represent another innovation of the UNCC. Because claimants might simultaneously seek compensation through both domestic courts (or other fora) and the UNCC, the Governing Council adopted measures to prevent claimants from recovering more than their actual damages.\textsuperscript{243} To achieve this goal, the Governing Council solicits information from Iraq and all governments about claims in domestic courts that also might be eligible for compensation from the UNCC.\textsuperscript{244} Based on this information, the UNCC may deduct from its payment the amount awarded by any other court.\textsuperscript{245}

The UNCC implemented these precautions against multiple recovery to provide some degree of fairness to Iraq, which objects to the entire process. The claims process under the UNCC is not intended to be adversarial.\textsuperscript{246} Only with the cooperation of national governments will the UNCC prevent claimants from taking more than their fair share from Iraq.

\textbf{V. DOMESTIC REMEDIES}

The U.N. policy on claims against Iraq makes clear that "individual nations are free to go their own way in disbursing

\textsuperscript{242} One observer predicts that "politics and a lot of horse-trading" will influence the prioritization of larger claims. Ulmer, \textit{supra} note 41, at 92.


\textsuperscript{244} Decision 13, \textit{supra} note 243, ¶¶ 1-2.

\textsuperscript{245} \textit{Id.} ¶ 3(b).

\textsuperscript{246} Affaki, \textit{supra} note 30, at 23.
domestically frozen Iraqi assets to domestic claimants." The prospects of a claimant seeking recovery domestically, however, are "dismal," primarily because there are insufficient Iraqi assets to attach and satisfy potential judgments.


The U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") carried out the Executive Order. OFAC and the Foreign Claims Settlement Commission ("FCSC") of the Department of Justice monitor the status of frozen assets and the cases of U.S. claimants. OFAC issued regulations implementing the Executive Orders. One regulation requires that "parties having a stake in property blocked by the Executive

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247. *State Department Stalls Private Suits Seeking to Recover Damages from Iraq*, BNA International Trade Daily, Aug. 7, 1991, available in WL, BNA-BTD Database [hereinafter *State Department Stalls*]. One observer, however, suggested that the world community quickly "internationalize" frozen Iraqi assets for claims that the UNCC does not cover before national claimants deplete such assets. Magraw, *supra* note 177, at 488. States holding frozen Iraqi assets could contribute them to the UNCC or another international administrative body to distribute on a world-wide, pro rata basis. *Id.*


251. *State Department Stalls, supra* note 247.

252. See Glod, *supra* note 19, at 715-18. OFAC took a census of blocked Iraqi government assets and a second census of domestic claims against Iraq. The submission of an OFAC census form did not constitute a filing of a formal claim for compensation with the U.S. government. OFAC noted, however, that the failure to file a form would be "prejudicial to the interests of the claimant and other U.S. claimants." *Id.* at 716.


Order . . . obtain a litigation license\textsuperscript{255} to bring a suit. OFAC grants litigation licenses "on a case-by-case basis to permit certain transactions otherwise prohibited by the regulations."\textsuperscript{256}

In at least two cases, U.S. plaintiffs succeeded in attaching frozen Iraqi assets.\textsuperscript{257} In these cases, the court determined that the assets did not belong to Iraq at the time President Bush froze them. The assets, therefore, actually belonged to the plaintiffs and fell outside the scope of the Executive Order.

Many claims against frozen Iraqi assets remain pending in U.S. courts. The United States has delayed\textsuperscript{258} and possibly stymied the settlement of these cases. This is because the United States has maintained most of the Iraqi assets frozen, and lent\textsuperscript{259} $124 million\textsuperscript{260} of the frozen assets to the UNCC to facilitate payments to individual claimants in the "A" and "B" claim categories. As a result, the U.S. government has placed most of the cases in its courts on hold, pending Iraq’s funding the UNCC process.

Frozen Iraqi assets total approximately $1.2 billion in the United States\textsuperscript{261} and $5.5 billion worldwide.\textsuperscript{262} Claimants, how-

\textsuperscript{255} A.C. Monk & Co. v. UBAF Arab American Bank, 875 F. Supp. 311, 312 (E.D.N.C. 1995).


\textsuperscript{258} The Executive Orders and Iraqi Sanctions Regulations effectively toll the statute of limitations in cases before U.S. courts because claims will not accrue until a plaintiff receives a litigation license or is otherwise entitled to bring an action. A.C. Monk & Co., 875 F. Supp. at 313.


\textsuperscript{260} Clinton Letter, supra note 136. The United States is "prepared to transfer to a U.N.-managed escrow account up to $200 million in frozen Iraqi oil assets held in U.S. financial institutions, provided that U.S. transfers do not exceed 50 percent of the total amount transferred or contributed by all countries." Id.


The Iraq Claims Process

ever, have filed with OFAC over 1,400 domestic claims against Iraq\textsuperscript{263} totalling approximately $5 billion\textsuperscript{264} and seek to attach these assets. One analyst suggests that the United States consolidate domestic claims, rather than try them among the different jurisdictions.\textsuperscript{265} Adding hearing officers to the FCSC would allow it to settle domestic claims relatively quickly and efficiently.\textsuperscript{266}

When the U.S. government lends frozen Iraqi assets to the UNCC,\textsuperscript{267} it favors the claimants before the UNCC, of whom only a small minority are U.S. citizens. As one observer stated, "[t]he U.S. contribution [to the UNCC] is legally controversial as it came from frozen Iraqi assets in the U.S."\textsuperscript{268} If the UNCC cannot repay the lent funds,\textsuperscript{269} plaintiffs in U.S. courts may: (1) wait longer to settle their cases; (2) receive less compensation; or (3) be denied a domestic remedy. U.S. executive agencies, under the President's authority, may lend frozen assets to achieve foreign policy goals,\textsuperscript{270} like securing adequate funding for the UNCC.\textsuperscript{271}

The United States, other states, and the UNCC are looking for other offshore Iraqi assets that evaded attachment, including

\begin{itemize}
  \item 263. Magraw, supra note 177, at 488; Humanitarian Situation in Iraq, Jackie Wolcott, Deputy Assistant Secretary for International Affairs, Statement before the International Task Force of the House Select Committee on Hunger, November 13, 1991, 3 DEP'T ST. DISPATCH 851 (Nov. 18, 1991).
  \item 264. Hearing, supra note 113, at 2.
  \item 265. Magraw, supra note 177, at 489.
  \item 266. \textit{Id}.
  \item 268. Ulmer & Chaudhri, supra note 259, at 16.
  \item 270. The President has the power to order all attachments of foreign sovereigns' assets null and void. The President's power to conduct foreign relations "includes the power to represent United States nationals in their claims against foreign governments and the President may settle the claims of United States nationals against the foreign state without the consent of such nationals." Security Pac. Nat'l Bank v. Gov't & St. of Iran, 513 F. Supp. 864, 872 (C.D. Cal. 1981). See Dames & Moore v. Regan, 453 U.S. 654, 679-81 (1981) (finding the President has the power to suspend the claims of American nationals against Iran).
  \item 271. UNSC Resolution 778 authorized lending frozen domestic assets to the UNCC. S.C. Res. 778, supra note 269, ¶ 1.
\end{itemize}
those personally belonging to Iraqi leader Saddam Hussein.\textsuperscript{272} According to some reports, "Saddam Hussein may well have at his disposal as much as $10-$30 billion in hidden assets."\textsuperscript{273} A state that finds hidden Iraqi funds would seize them to satisfy its courts' judgments against Iraq or lend such assets to the UNCC.

In sum, domestic remedies are stalled because the United States has kept Iraqi assets frozen and lent some of these assets to the UNCC. On April 28, 1994, the U.S. House of Representatives adopted the Iraq Claims Act (H.R. 3221)\textsuperscript{274} by a vote of 398 to 5.\textsuperscript{275} This bill authorizes the FCSC to pay U.S. plaintiffs from frozen Iraqi assets. Approval of this bill could be a potential watershed for U.S. plaintiffs,\textsuperscript{276} but Congress has not yet enacted the Iraq Claims Act.\textsuperscript{277} To some extent, U.S. actions tied the

\textsuperscript{273} \textit{Id.}
\textsuperscript{276} Among those vying for blocked Iraqi funds are
the U.S. government and major corporations whose contracts with Iraq were placed in limbo after the United States imposed economic sanctions on Baghdad in 1990. Relatives of servicemen killed in the Persian Gulf War and those killed or injured in the 1987 Iraqi missile attack on the U.S.S. Stark are also seeking funds.
\textit{House Approves, supra} note 274. Injured U.S. soldiers and survivors total 2,400 claimants. \textit{Hearing, supra} note 113, at 21. The Iraqi Claims Act would give priority to members of the armed forces, including those injured on the U.S.S. Stark. Bereuter Statement, \textit{supra} note 267, at H2853. One observer has suggested that Congress should appropriate funds to "provide compensation to U.S. servicemen maltreated by Iraq while held as prisoners of war." Glod, \textit{supra} note 19, at 718.


\textsuperscript{277} As of this writing, the U.S. Senate has not approved H.R. 3221, nor S. 1401—the Senate version of the Iraq Claims Act. Senator Claiborne Pell introduced S. 1401 on August 6, 1993. S. 1401, 103d Cong., 1st Sess. (Aug 6, 1993); S. 1401, Bill Tracking Report, \textit{available in LEXIS}, Legis Library, BLT103 File. The Senate has not acted on S.
fate of domestic claimants to that of the UNCC. In other words, for U.S. domestic claimants to recover successfully on their claims, the UNCC funding mechanism must work and repay the United States. In turn, the United States must coordinate the attachment and liquidation of frozen Iraqi assets with the settlement of domestic suits.

VI. IMPEDIMENTS TO THE CLAIMS PROCESS

The Iraq claims process, and particularly the UNCC, face many impediments. The first and most significant is Saddam Hussein's lack of cooperation. Iraq defies UNSC sanctions and has never fully agreed to sell Iraq's oil pursuant to UNSC resolutions. Iraq has declared that depriving it of its oil reve-


nues is an affront to its sovereignty. Because of Iraq's resistance, many argue that the compensation fund "remains a fund in name only."

If Iraq agrees to the oil sales under the UNSC resolutions, this would generate approximately $6.3 billion per year for the UNCC. This figure relies on two assumptions: (1) that Iraq's export capacity will return to its pre-Persian Gulf War level of 3.14 million barrels of oil per day, and (2) that the price will remain constant at $21 per barrel. Under these assumptions, "it would take at least 20 to 30 years to finance the estimated $100 billion to $200 billion in losses suffered as a result of Iraq's violations of international law." Critics further argue that the $6.3 billion per year revenue is only sufficient to pay the interest accruing on the principal amount of awards. Furthermore, whether Iraqi oil production can "regain the pre-[Persian] Gulf War level" remains questionable because of the deterioration in Iraq's oil-industry infrastructure. For example, as of October 1994, Iraq "pumps about 600,000 [barrels of oil a day], enough to meet its domestic needs."

The result of Iraq's defiance of the UNSC resolutions is that the UNCC is virtually penniless. The UNCC recently made the first tranche of payments to some successful "B" claimants from during a six-month period and maintained the setting aside of 30% of oil revenues to fund the UNCC. Id. ¶¶ 1, 4. UNSC resolution 712 provided more details of the arrangement. S.C. Res. 712, U.N. SCOR, 46th Sess., 3008th mtg., U.N. Doc. S/RES/712 (1991).


Brower, supra note 45, at 13.


Brower, supra note 45, at 12.

See deKieffer, supra note 5, at 8.


Kraft, supra note 152, at H2. Iraqi Oil Minister Safa Hadi Jawad projects that Iraq could export two million barrels of oil a day once the UNSC lifts the embargo. James Tanner, Russian to Develop Oil Fields In Iraq After Embargo Ends, WALL ST. J. EUR., June 27, 1995, at 3. See Kempster & Wright, supra note 276, at A13 (discussing Iraqi oil sales in violation of the U.N. embargo).
lent funds, but the UNCC "does not have the money to pay larger claims."288 The current liquidity problem and the overall funding impasse are significant impediments yet to be overcome.

The high cost of administering the entire process also impedes the efficient settlement of claims against Iraq. The final cost of housing, staffing, and running the UNCC will be enormous.289 Though governments garnish a small processing fee from claimants who are compensated by the UNCC in order to recover their administrative costs,290 Iraq must bear the burden of "heavy administrative and legal costs of [the UNCC's] processing the claims."291

Critics argue that Iraq cannot pay the principal amount of the awards, nor the interest accrued on the principal. Therefore, they question the usefulness of tacking on to Iraq the extra cost of administering a large, international bureaucracy.292 The UNCC's potentially high administrative costs might reduce the total compensation it awards to claimants. If the UNCC prorates awards, each dollar of administrative costs reduces the amount of the awards for successful claimants. Without the work of the UNCC, however, most claimants would not receive any awards.

Some observers believe that the UNCC will not fully compensate all injured persons and can only pay damages on a pro rata basis.293 These observers charge that the Governing Council's "biggest unresolved political issue is to determine the priority of claims payment, and what percentage of each claim will be paid."294 For those, however, who have little or no hope of recovering their losses or who have written them off, even recovering a few pennies on the dollar is worthwhile. Certainly

289. The UNCC's 1996 budget is $22.9 million, which represents an 18% reduction from its 1995 budget. Ma, *supra* note 123.
293. Ulmer, *supra* note 41, at 92. An analysis of "the history of international arbitration reveals awards are around 40% of the amounts claimed." Bahree, *supra* note 143, at 4.
some compensation, albeit prorated and belated, is better than none, and maximizing the level of pro rata compensation should be the default goal of the UNCC.\footnote{295}

Iraq took a significant step in 1994 that may have foretold its willingness to cooperate with the international community. On November 10, 1994, Saddam Hussein’s Revolutionary Command Council and the Iraqi National Assembly recognized “the sovereignty of the state of Kuwait, its territorial integrity and political independence.”\footnote{296} Observers described Iraq’s recognition of Kuwait as an “extremely positive development because it seemed logical for it to lead to a policy of full cooperation.”\footnote{297} Although this remains to be seen, Iraq’s recognition of Kuwait represented a significant stride toward the lifting of sanctions.

On November 14, 1994, Iraqi Deputy Prime Minister Tariq Aziz and U.S. Ambassador to the U.N. Madeleine Albright held “the highest-level Iraqi-American meeting since the [Persian] Gulf War.”\footnote{298} Although this meeting may have portended progress toward Iraqi compliance with UNSC resolutions, Ambassador Albright said she met with Deputy Prime Minister Aziz only in her capacity as President of the UNSC during the month of November 1994.\footnote{299}

The hard line stance taken by the United States and the United Kingdom—“insisting that Iraq must first comply fully with all U.N. Security Council resolutions”\footnote{300}—is a policy that is “at odds with that of [Russian Foreign Minister Andrei V.] Kozyrev and, to some extent, the French government.”\footnote{301} One observer alleged that U.S. officials privately admit that the United States will veto any resolution which lifts UNSC sanctions before the

\footnote{295. The UNCC, though not admitting that funds would be insufficient to pay the full asserted value of all claims, acknowledged in 1991 that if funds were insufficient it would make pro rata payments as “funds become available.” Decision 1, \textit{supra} note 64, ¶ 9.}


\footnote{297. Meisler, \textit{supra} note 296, at A7.}

\footnote{298. \textit{Id.}}

\footnote{299. \textit{Id.}}

\footnote{300. \textit{Polish, supra} note 51, at A8.}

\footnote{301. Meisler, \textit{supra} note 296, at A7.}
downfall of Saddam Hussein. U.S. officials, however, maintain that "[t]he leadership in Iraq is not itself a subject of U.N. sanctions." The United States also has conditioned easing sanctions to Iraq complying with human rights accords, releasing 600 prisoners and hostages, and returning stolen Kuwaiti property.

The Russian and French ambassadors to the U.N. suggested that UNSC members will consider lifting the sanctions on the Iraqi sale of oil if the Hussein government fully cooperates for six months. Russia and France, two permanent members of the UNSC, seem interested in restoring full trade with Iraq to exploit investment opportunities and to assure that Iraq repays

302. Nancy Gibbs, A Show of Strength: Clinton’s Charge Sends Saddam into Retreat, but Taming Him is Another Matter, TIME, Oct. 24, 1994, at 34. The U.S. position is that “Hussein cannot be trusted to keep his promises.” Robin Wright & Stanley Meisler, Baghdad Admits to Larger Program of Deadly Weapons, L.A. TIMES, Aug. 23, 1995, at A1, A27. UNSC sanctions on Iraq do not have an expiration date. To lift the sanctions, the UNSC must adopt a resolution. This allows any permanent member to veto such a resolution. In the future, UNSC sanctions might include an expiration date. Interview with Professor Hurst Hannum, Fletcher School of Law and Diplomacy, in Medford, Mass. (Aug. 25, 1995).

303. Wright, supra note 192, at A9.


308. James Tanner, Iraq, Russia Agree On Oil Projects For Embargo’s End, WALL ST. J., June 27, 1995, at A8. Russia signed a contract with Iraq allowing Lukoil, Russia’s largest oil company, to develop projects in Iraq’s West Qurna and North Rumalia oil fields once the UNSC lifts sanctions. Id. Iraq soon will enter into similar contracts with Société Nationale Elf Aquitaine and Total, two French oil companies, to develop several oil fields, including the Majnoon. Id. U.S. restrictions and Iraqi policy preclude U.S. companies from concluding oil contracts. Id.; Robyn Meredith, Oil Deals, USA TODAY, June 27, 1995, at 1B. China is interested in selling arms to Iraq. Richard Corliss, Suddenly, Saddam Again, TIME, Oct. 17, 1994, at 54.
to their creditors. To date, maintaining sanctions against Iraq may have cost Russia $43 billion. In regard to lifting the sanctions on Iraq, “France, China and Russia were working in that direction,” but this was dashed in early October 1994 when Iraq moved approximately 80,000 troops near the Kuwaiti border. Iraq’s presumed attempt to “bully” the UNSC into lifting sanctions backfired when the United States protested, deployed its military in Operation Vigilant Warrior, and solidified its position against prematurely lifting sanctions.

The international community cannot make progress in settling claims against Iraq until the UNSC lifts its sanctions. The United Nations Special Commission on Iraq (“UNSCOM”), headed by Swedish diplomat Rolf Ekeus, is supervising Iraq’s compliance with disarmament, monitoring, freeing detained Kuwaiti and third-country nationals, returning property, and stopping repression of the Kurds and Shiite Muslims. The principal obstacle now standing in the way of lifting economic sanctions is Iraq’s failure to comply with the U.N.-supervised destruction of Iraq’s biological weapons. As of February 1995, Ekeus was optimistic that Baghdad would be in full compliance in 1995. Analysts agreed

309. Thomas Sancton, No Longer Fenced In, TIME, May 23, 1994, at 36. Iraq owes the French government at least $8.7 billion (for loan guarantees) and Russia $7 billion. Gibbs, supra note 302, at 34.

310. Robin Wright & Carol J. Williams, Iraq Trying to Buy 4,000 Russian Tanks, Defector Tells U.S. Officials, L.A. TIMES, Sept. 23, 1995, at A5. This figure includes $20 billion from “unfulfilled trade and oil contracts.” Id.


312. Pine, supra note 311, at A12.

313. Gibbs, supra note 302, at 34.


316. The U.N. will have to spend substantial amounts to monitor Iraq and maintain peace, including the $60 million it allocated to the U.N. Iraq-Kuwait Observer Mission. Levy, supra note 13, at 547-48.


319. Id.
that the UNSC might lift sanctions by October 1995, "at the ear-
est." 320

On July 1, 1995, after four years of denial, senior Iraqi
officials admitted to Ekeus and UNSCOM officials that Iraq
developed a major offensive biological warfare program before the
Persian Gulf War. 321 Iraqi officials, who claimed that Iraq
burned the toxic materials before the outbreak of the Persian Gulf
War in 1991, agreed to provide UNSCOM a detailed report. 322
Because Iraq concealed its biological weapons program and
recently resisted destroying some ballistic missile producing equip-
ment, U.S. officials challenged Iraq's assertions that it had
complied with UNSC resolutions, and renewed their efforts to
maintain the UNSC sanctions regime. 324 U.S. officials doubted
that Iraqi compliance in regard to biological weapons would be

320. Kraft, supra note 152, at H2.
321. R. Jeffrey Smith, Iraq Had Program For Germ Warfare; Big Stockpiles Destroyed,
Minister Tariq Aziz and Oil Production Minister General Amer Rasheed confirmed allied
suspicions that Dr. Rihab Taha directed Iraq's biological weapons program at a secret
factory at Al Hakam. Since 1989, this factory produced two deadly bacteria: Clostridium
botulinum, which causes botulism, and Bacillus anthracis, which causes anthrax. UNSCOM
officials suspected that Iraq had such a program after Iraq failed to account for 17 tons of
imported biological growth medium. Stanley Meisler, Iraq Admits to Germ Weapons, L.A.
TIMES, July 6, 1995, at A1, A6; Barbara Crossette, Iraq Admits It Produced Germ Arsenal,
tested biological weapons on sheep, donkeys, monkeys, and dogs. Iraq May Still Have
Deadly Arsenal, ST. PETERSBURG TIMES, Oct. 12, 1995, at 2A. Iraq also produced
afloatoxin (which causes liver cancer), Clostridium perfringens (which causes gas gangrene),
trichothecene mycotoxins, ricin, and wheat cover smut. Id. U.S. officials stated that
Ekeus' recent report "shows Iraq's vast deception effort." Gary Borg, Iraq Contends UN
Inspector Lied About Arms Programs, CHI. TRIB., Oct 13, 1995, at 13. Iraqi Vice President
Taha Muhieddine Maarouf denied charges that Iraq misled U.N. inspectors regarding its
weapons programs. Id.
323. Iraq Refuses to Destroy Missile Machines, Sanctions to be Extended, Associated
Press, July 7, 1995, available in WL, ALLNEWS Database; Iraqi Admission, USA TODAY,
July 6, 1995, at 5A. But see Iraq Gives New Data on Ballistic Missile Program, L.A.
324. Smith, supra note 321, at A1. Recent reports of Iraq's bid to construct nuclear
weapons for use against the U.S.-led forces in the Persian Gulf War bolstered U.S.
efforts to maintain the UNSC sanctions regime. Robin Wright, Iraq's Rush to Get Nuclear Bomb
for Gulf War Disclosed, L.A. TIMES, Aug. 26, 1995, at A1; Barbara Crossette, Crash
Nuclear Program by Iraq is Disclosed, N.Y. TIMES, Aug. 26, 1995, at 3; Mark Hibbs, IAEA
According to other recent reports, Iraq is trying to rebuild a vast army by purchasing 4,000
sophisticated T-72 and T-80 tanks from Russia. Wright & Williams, supra note 310, at A5.
sufficient to warrant the lifting of sanctions in September 1995.\textsuperscript{325} U.S. Ambassador Albright said that to date, "no initial Iraqi weapons declaration has been truthful."\textsuperscript{326} Verification of the destruction of Iraq's biological weapon capabilities could take months.\textsuperscript{327} On August 5, 1995, Iraq submitted to Ekeus a 530-page report on its biological weapons program, which it termed "a full, final and complete declaration."\textsuperscript{328} Ekeus, however, initially said that "the document doesn't appear to be thoroughly complete."\textsuperscript{329} Ekeus asserted that he was unsure if he could "declare Iraq free of weapons of mass destruction by September [1995],"\textsuperscript{330} the next UN Security Council (UNSC) review of sanctions.\textsuperscript{331} Iraq, however, threatened to stop cooperating with the U.N. if UNSCOM did not complete its mission by the end of August 1995.\textsuperscript{332}

Some observers view Iraq's admission on biological weapons as marking the beginning of its full compliance with UNSC resolutions.\textsuperscript{333} On July 16, 1995, Saddam Hussein pardoned William Barloon and David Daliberti, the two U.S. citizens convicted of illegally entering Iraq,\textsuperscript{334} after each served 114 days


\textsuperscript{328} Report on Biological Arms, supra note 315, at A4.


\textsuperscript{331} The September 1995 meeting represented the UNSC's 27th review of Iraqi sanctions. \textit{UN Refuses to Lift Sanctions on Iraq}, VANCOUVER SUN, July 12, 1995, at A12, \textit{available in WL, ALLNEWS Database}.

\textsuperscript{332} Leon Barkho, \textit{Iraki Germ Data Important But May Be Lacking}, Reuters North American Wire, Aug. 6, 1995, \textit{available in LEXIS, News Library, Wires File}. As of this writing, Iraq has not followed up on this threat.

\textsuperscript{333} Crossette, supra note 321. UNSCOM's Charles Duelfer remarked that Iraq's disclosure was "a positive step." \textit{Id}.

of their eight-year sentences at the high security Abu Ghraib prison.\(^\text{335}\) On July 30, 1995, Hussein issued a decree granting amnesty to thousands of Iraqi political prisoners.\(^\text{336}\) Observers saw the release of the two U.S. citizens and the recent grants of amnesty as gestures comprising "part of a broad effort to win international support for the easing of those sanctions."\(^\text{337}\) Saddam Hussein’s efforts to win international favor and lift the UNSC sanctions also included firing both his half-brother, Watban Ibrahim, who served as interior minister,\(^\text{338}\) and his cousin, General Ali Hassan Majid, who served as Iraqi defense minister and "earned the sobriquet Butcher of the Kurds."\(^\text{339}\) These recent events may indicate that the international community may soon find a solution to the impediments facing the proper functioning of the UNCC, namely a more cooperative Iraq.\(^\text{340}\)

VII. POSSIBLE SOLUTIONS TO IMPEDIMENTS

Five possible solutions to the impediments facing the UNCC follow. This list is by no means exhaustive. These proposed solutions presuppose the continuation of the UNCC. Iraq, however, would like the UNSC to abolish the UNCC. Elimination of the UNCC, though making any proposed solution unnecessary, would deny victims just compensation and let a dictator off the hook. Dismantling the UNCC may be "akin to advocating a thesis that tyrants who squander their natural and human resources in

\(^{335}\) 2 Freed By Iraq Celebrate, CHI. TRIB., July 17, 1995, at 1.

\(^{336}\) All Iraq Political Prisoners Are Due to Be Freed, L.A. TIMES, July 31, 1995, at A12. On July 22, 1995, Hussein issued a decree granting amnesty to army deserters awaiting the severing of their ears or other body parts. \textit{Id.}

\(^{337}\) Wright, \textit{supra} note 334, at A6.


pursuit of military adventures gain immunity from any further accounting before international tribunals for their wrongs.\textsuperscript{341}

A. \textit{Wait for a Change in Government or Policy}

One possible solution is to wait for a change in government because Saddam Hussein will not retain power indefinitely in Iraq. Some observers believe that Hussein’s narrow political base and constant juggling suggest that his rule is vulnerable.\textsuperscript{342} The UNSC may play a waiting game until a successor government comes to power and assumes responsibility for Iraq’s obligations. Waiting for change in the position of the Iraqi government, or a change in the government itself, is certainly part of the present UNSC policy.\textsuperscript{343} Saddam Hussein, however, has shown remarkable tenacity in maintaining power.\textsuperscript{344} Despite Iraq’s weakened condition, a change in government or policy is probably not very likely in the immediate future.\textsuperscript{345} Waiting for a new, more

\begin{itemize}
\item \textsuperscript{341} Glod, supra note 19, at 719.
\item Gibbs, supra note 302, at 34.
\item Smith & Goshko, supra note 42, at A1; Wright, supra note 192, at A10. \textit{But see} Shibley Telhami, \textit{A Baghdad Family Feud With International Effect}, L.A. TIMES, Aug. 20, 1995, at M1, M6 (asserting that some “Arab states [suspect] that the United States has secretly conspired to keep Hussein in power” to maintain the U.S. military presence in the Persian Gulf, assure the destruction of Iraq’s weapons of mass destruction, and isolate Baghdad).
\item On June 14, 1995, Saddam Hussein’s Republican Guard forces quickly defeated an attempted coup led by Brigadier General Turki Ismael al-Dulaimi. \textit{Anti-Saddam Coup Fails Near Baghdad, Sources Say}, SACRAMENTO BEE, June 16, 1995, at A30; Ed Blanche, \textit{Iraqi Rebels Claim Sunni Clans Gathering Against Saddam}, Associated Press, June 18,
The Iraq Claims Process

cooperative government also amplifies the problem of interest accruing on the principal amount of the awards. The international community must remain patient for this solution to work and continue to exert diplomatic pressure.

Iraq also may decide to change its policy and comply with UNSC resolutions. Presently, this appears to be a more likely scenario. Once Iraq fully complies with all of the UNSC resolutions, the UNSC should lift the sanctions. At that point, U.S. policy opposing the lifting of sanctions "may look isolated." Once the UNSC lifts the sanctions, the international community will have two priorities. First, the UNSC should promote democracy in Iraq. The international community cannot implement a regional security plan until Iraq escapes Hussein's tyranny. Second, the global community should provide assistance for the reconstruction of Iraq. One observer suggested that the international community provide Iraq with financial assistance modeled after the Marshall Plan. Such a reconstruction plan also would ensure the long term stability of the UNCC framework.

B. Enact More Drastic UNSC Sanctions

To force Iraq to comply, the UNSC could impose or threaten to impose more drastic sanctions. Actually imposing more drastic sanctions, however, does not appear to have UNSC support. Reluctance to impose harsher sanctions mainly stems from economic self-interest and humanitarian reasons. Many states are eager to do business again with Iraq. More severe sanctions might increase the already well publicized human suffering in Iraq. In fact, before early October 1994, several members of


346. Wright, supra note 192, at A9.
347. Glod, supra note 19, at 720.
348. Sancton, supra note 309, at 36; Tanner, supra note 308, at A8.
349. Kuwait arrests 60 Iraqi boat people, United Press International, July 5, 1995, available in LEXIS, MDEAFR Library, CURNWS File. UNSC sanctions have led to severe shortages of food and medical supplies. Id. One fourth of the Iraqi population, or five million people, is either without food or dependent on food handouts. Id.; Millions Need Food in Iraq, U.N. Agency Says, Associated Press, July 4, 1995, available in WL, ALLNEWS Database. Iraq "has been reduced to a nation of beggars and bandits." Mary Curtius, Iraq on Road to Nowhere?, L.A. TIMES, Aug. 17, 1995, at A1. Iraq's rate of
the UNSC indicated their support for lifting the sanctions, but this discussion ceased following a large movement of Iraqi troops toward Kuwait.\textsuperscript{350}

The UNSC is aware of the human suffering in Iraq since its imposition of the sanctions, but it does not accept any responsibility for the suffering.\textsuperscript{351} U.S. officials state that Iraqi authorities bear full responsibility for any suffering in Iraq that results from their refusal to implement UNSC resolutions.\textsuperscript{352} It remains unclear whether Iraq would also be responsible for any additional human suffering that the imposition of new, more drastic sanctions would cause.

The UNSC faces the problem of its threats being ineffectual when insufficient support exists for actually imposing more drastic sanctions. Iraq is all too aware of this dilemma. The only way to put real teeth into the UNSC's threats of imposing more drastic sanctions is to foster a change in political will. The United States, as the leader of the Persian Gulf War alliance against Iraq, probably would have to lead such an initiative to toughen the UNSC's stance on Iraq.

\subsection*{C. Impose U.N. Control of Iraqi Oil Production}

The most drastic sanction that the UNSC could authorize is an action to seize Iraqi oil fields and control oil production. A UNSC resolution, finding that the failure to compensate constitutes a further breach of the peace or a threat to peace, would facilitate such an action. This would enable the UNSC to act again under its Chapter VII powers.\textsuperscript{353} The UNSC also might justify such a resolution as a humanitarian intervention. Seizing Iraqi oil fields

\begin{footnotesize}

\textsuperscript{350} Inflation has risen above 5,000\%. \textit{Id.} at A6. Iraq has issued food ration cards. Kraft, supra note 45, at A10.

\textsuperscript{351} The Iraqi "regime has little regard for the needs of even its own populace." Bettauer, supra note 3, at 423. Allied planes dropped humanitarian relief supplies over Iraq after the Persian Gulf War. Iraq protested that these flights violated its sovereignty. \textit{Identical Letters Dated 8 April 1991 from the Permanent Representative of Iraq to the United Nations Addressed Respectively to the Secretary-General and the President of the Security Council, U.N. SCOR, 46th Sess., at 2, U.N. Doc. S/22459 (1991).}

\textsuperscript{352} \textit{Letter to Congress on Iraqi Compliance with UN Security Council Resolutions, President Clinton, 4 DEP'T ST. DISPATCH 675, 675 (Oct. 4, 1993).}

\textsuperscript{353} U.N. \textsc{Charter} ch. VII. \textit{See supra} note 14 (discussing the UNSC's Chapter VII powers).
\end{footnotesize}
and controlling production would require the UNSC to send both U.N. blue-helmet peacekeepers\textsuperscript{354} and oil workers into Iraq.

This possible solution certainly would face strong opposition. Iraq and other members of the international community would challenge it as an egregious breach of Iraq’s territorial sovereignty and a violation of the principle of the sovereign equality of states. It also most likely would lead to direct military conflict and result in more loss of life. The UNSC probably would have difficulty finding states willing to contribute troops, especially after its recent experiences in Somalia and Bosnia.\textsuperscript{355} This option probably would fail a cost-benefit analysis because military operations are very expensive.

\textbf{D. Lend Frozen Iraqi Assets to UNCC}

The United States already lent to the UNCC some Iraqi assets previously frozen in the United States.\textsuperscript{356} Following the U.N. Secretary-General’s suggestion,\textsuperscript{357} more countries may follow suit. Japan remains one notable holdout; it stated that it will not lend

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As at [sic] 30 April 1993, 62 countries had replied to the Secretary-General's request for information on steps taken to implement resolution 778 (1992). Of these four indicated holding amounts, as follows: Greece, $276,000 in proceeds from the sale of Iraqi oil products; Japan, $48.88 million, subject to third-party rights so that none of it could be transferred to the escrow account; Tunisia, $15.8 million, already partially used to settle Iraq's debt to Tunisia; the United States, $637.4 million, $200 million of which it would transfer to the escrow account provided that amount at no time exceeded 50 per cent of total funds contributed or transferred to the account. The remaining 58 countries stated that they had no petroleum or petroleum products or frozen assets subject to the provisions of resolution 778 (1992).

\textit{Iraq-Kuwait Situation, supra} note 167, at 430.
to the UNCC Iraqi assets frozen in Japanese banks. These loans have been crucial to the survival of the compensation process. Lending frozen Iraqi assets to the UNCC, however, is only a short term solution because the sum of all of the frozen Iraqi assets throughout the world will not cover the more than $162 billion worth of claims submitted to the UNCC. The UNCC will also have to repay the loans of frozen Iraqi assets, which can only happen after Iraq complies with the UNSC resolutions, the UNSC lifts sanctions, and Iraq exports oil.

E. Issue Bonds on Iraqi Debt to Pay Claims

To date, no one has proposed that the UNCC or some private international financial institution issue bonds on Iraqi debt. Future oil export revenues would secure such bonds. This arrangement would allow the UNCC to collect capital to pay claimants by issuing bonds. The issuer would pay off the investors (bond purchasers) with the expected revenue from Iraqi oil exports. If the risk of non-repayment becomes too high, however, this might drive the bonds’ interest rate up beyond the point where any issuance of bonds is economically feasible. The issuance of bonds on Iraqi debt presently does not appear to be a viable option because of the high risk of non-repayment, but once Iraqi oil revenue is forthcoming, as many hope it will be soon, the issuance of Iraqi debt bonds could well serve the needs of the international community.

VIII. CONCLUSION

The international community cannot proceed in settling the claims against Iraq until the UNSC lifts its sanctions. Although many observers expected that the real battle over sanctions within the UNSC would take place in May 1995, as of this writing, sanctions remain in place. Iraq refuses to cooperate fully with UNSC resolutions, most notably the UNSC program to eliminate


360. See *supra* note 269 (discussing the UNCC's obligation to repay loans).

361. *But see* S.C. Res. 986, *supra* note 49, ¶ 10 (discussing the limited use of letters of credit drawn against future oil sales to finance certain U.N. activities and purchase oil pipeline equipment).

The Iraq Claims Process

weapons of mass destruction. Iraq has asserted that it will not cooperate until the UNSC lifts the sanctions.\(^\text{363}\) Iraq apparently is playing a game of diplomatic brinkmanship and attempting to put the onus on the UNSC to lift the sanctions before it will cooperate further. Iraq’s strategy, however, may have created a new impasse in its dealings with the UNSC.

The initial outlook for the UNCC was grim. As one international lawyer prognosticated, “I’ll bet you this [UNCC] thing is not going to get more than two cents on the dollar . . . [and] the machine isn’t going to produce anything except jobs for international bureaucrats.”\(^\text{364}\) One observer predicted that Iraqi opposition to the UNCC system would provoke “the mother of all international arbitration battles.”\(^\text{365}\) Iraq’s diplomatic overtures, including its recognition of Kuwait’s sovereignty and independence, developments in the Iraqi opposition, along with the UNCC’s significant progress in processing the claims, however, indicate that the future of the claims process might be brighter than it was a year ago. The political and economic pressures currently in place soon may oblige Iraq to comply with the UNSC resolutions and fund the UNCC.\(^\text{366}\)

The UNSC renewed sanctions on Iraq on September 8, 1995,\(^\text{367}\) and will review sanctions every sixty days thereafter.\(^\text{368}\) Based on recent political and military developments,\(^\text{369}\) the


\(^{364}\) \textit{State Department Stalls}, \textit{supra} note 247.

\(^{365}\) Glod, \textit{supra} note 19, at 721.


\(^{368}\) Wright, \textit{supra} note 334, at A6.

UNSC probably will not lift its sanctions on Iraq in November 1995, nor January 1996. If the UNSC does not lift sanctions by early 1996, it is not likely that it will do so until after the U.S. elections in November 1996. Because almost no constituency in the United States supports lifting the sanctions, and with no potential for political gain, candidates are not likely to campaign on a platform favorable to Iraq. A change in Iraq’s government, however, might alter this timeline. Thus, the UNSC probably will not lift sanctions until early 1997, approximately six years after the Persian Gulf War.

If UNSCOM soon reports that Iraq has destroyed its biological weapons arsenal, however, France and Russia should take advantage of this narrow window of opportunity to push for the lifting of sanctions. Once funding is available, the UNCC will prove itself a successful and innovative international institution.

After the UNSC lifts sanctions, it could reimpose them if Iraq fails to comply with the UNCC regime. The UNSC already has


370. See Redden, supra note 304; Anne Reifenberg, Analysts Say Stability in Oil Prices Appears a Good Bet for Rest of Year, WALL ST. J. EUR., June 19, 1995, at 13.


stated that it has the authority to implement another prohibition against Iraqi oil and related financial transactions if Iraq disregards Governing Council decisions in the future. This means that the UNSC will remain seized of the issue of compensation for many years to ensure that Iraq's efforts to lift the sanctions were not merely part of a masquerade.

The UNCC already has achieved significant accomplishments, regardless of what the future holds. The UNCC's progressive rules allow more individuals, who have been traditionally underrepresented in international claims fora, to bring claims. To many individuals who suffered losses, the recent payment of some "B" claims brings relief in more than just a monetary sense. Claimants feel compensated by the fact that the international community has made Iraq pay for its acts of aggression and international wrongs. The UNSC has established a process that has begun to work, albeit imperfectly.

The UNCC has developed into a fruitful endeavor. The UNCC has established numerous precedents, with more undoubtedly still to come. Through time and practice, the UNCC's precedents might crystalize into new international law. The international community may redress the UNCC's shortcomings in the future, much as the UNCC represents an effort to improve upon previous international claims settlements. The UNCC serves as a model on which the international community can build future international claims settlement mechanisms.

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