

1998

Between Iraq and a Hard Place: The U.N. Compensation Commission and Its Treatment of Gulf War Claims

Lea C. Owen

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Lea C. Owen, *Between Iraq and a Hard Place: The U.N. Compensation Commission and Its Treatment of Gulf War Claims*, 31 *Vanderbilt Law Review* 499 (2021)

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Between Iraq and a Hard Place: The U.N. Compensation Commission and Its Treatment of Gulf War Claims

ABSTRACT

The United Nations Compensation Commission (UNCC) was formed in 1991 to address claims against Iraq arising out of the Gulf War. In its seven years of operation, the UNCC has received 2.6 million claims, with an asserted value of more than \$244 billion. It has processed 2.4 million of these claims, for a total of \$6 billion, and it has paid to victims more than \$730 million. Despite these accomplishments, the UNCC has much left to do, and its efforts have been burdened by Iraq's post-war refusal to meet its treaty obligations. The UNCC now faces waning political support from U.N. members, who themselves face increasing pressure from the international business community to reintegrate Iraq into the world economy.

This Note discusses the response of the United Nations to Iraq's invasion of Kuwait, including the formation of the UNCC. It describes the structure and composition of the UNCC and the procedures it has developed for addressing claims. This Note also evaluates the UNCC's progress since 1991, with particular attention to the political and commercial forces that now threaten its mission. Finally, this Note concludes that, despite international political sentiments ranging from apathy to hostility, the United Nations must reaffirm its commitment to international accountability generally, and to the victims of the Gulf War in particular, by continuing to support the UNCC.

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A mind that is diseased and feverish, being at the same time corrupt and an agent of corruption, must be held in check by remedies as severe as the vices from which it suffers.

Tacitus, *Annals*, III, liv¹

I. INTRODUCTION

Though the techniques of warfare have changed through the ages, the results of war have not: every campaign leaves victims in its wake. Although in practice many of these victims are never compensated, it is well settled that proponents of unjust wars owe their victims restitution.² When these proponents lose, they can be made to pay.

For two hundred years, international claims tribunals have enforced such obligations.³ The philosophical authority for their existence lies in the work of Hugo Grotius.⁴ In *De Jure ac Pacis*,

1. HUGO GROTIUS, *DE JURE BELLI AC PACIS LIBRI TRES*, Vol. II, at 470 (Francis W. Kelsey trans., Oxford Univ. Press 1925) (1625) [hereinafter GROTIUS, Kelsey trans.] (quoting Tacitus).

2. See, e.g., HUGO GROTIUS, *ON THE RIGHTS OF WAR AND PEACE* 368-69 (William Whewell trans., Cambridge Univ. Press 1853) (1625) [hereinafter GROTIUS, Whewell trans.] (citing Cicero). See generally COLEMAN PHILLIPSON, *THE INTERNATIONAL LAW AND CUSTOM OF ANCIENT GREECE AND ROME* (1911) (discussing in two volumes such topics as treaties, international arbitration, and the laws of war) (citing Grotius).

Grotius notes that restitution is a familiar concept in the Judeo-Christian and Islamic traditions. GROTIUS, Whewell trans., *supra*, at 369. The earliest writings on this subject express this proposition. See, e.g., GROTIUS, Kelsey trans., *supra* note 1, at 469-70 (quoting Apuleius: "It is a more serious and unpleasant matter than any punishment if impunity is extended to the guilty and he is not in the meantime harassed by the censure of his fellow men.") (quoting Plutarch: "The punishments which immediately follow the crime not only restrain boldness in sinning for the future but also give the greatest comfort to those affected by the wrong.") (citing Aristotle).

3. For a discussion of the history of international claims settlements, see E. K. NANTWI, *THE ENFORCEMENT OF INTERNATIONAL JUDICIAL DECISIONS AND ARBITRAL AWARDS IN PUBLIC INTERNATIONAL LAW* 3-19 (1966); MANLEY O. HUDSON, *INTERNATIONAL TRIBUNALS, PAST AND FUTURE* 3-14 (1944); JACKSON H. RALSTON, *A Brief History of International Arbitration*, in *THE LAW AND PROCEDURES OF INTERNATIONAL TRIBUNALS*, xxv-xl (rev. ed. 1926).

4. Grotius's eminence as a legal scholar is well-established:

Hugo Grotius, justly regarded as the founder of modern international law, was the most remarkable man of the age in which he lived—an age distinguished for men of genius and learning. . . . His great work, 'De Jure Belli ac Pacis,' was published at Paris in 1625. . . . This work has been translated into all languages, and has elicited the admiration of all nations and of all succeeding ages. Its author is universally regarded as the great master-builder of the science of international jurisprudence.

Grotius writes that "restitution is due, from the authors of the war, for all evils inflicted: and for anything unusual which they have done, or not prevented when they could."⁵

Restitution may be exacted for any of three purposes: correction, example, or retribution.⁶ "Correction" is punishment applied "for the good of the wrong-doer;"⁷ it has as its object "making better the man who has sinned."⁸ "Example" is punishment applied to deter others from similar conduct, or "so that the punishment of one may cause many to fear;"⁹ it is inflicted for the good of the whole, "to prevent others from being induced by a feeling of security to annoy any persons whatsoever."¹⁰ "Retribution" is punishment intended to satisfy the person wronged.¹¹ Although many U.N. member states would likely approve all three purposes as justification for requiring Iraq to compensate Gulf War victims, the U.N.'s primary goal in the wake of the Gulf War was to provide a type of retributive punishment—that is, to compensate victims for their losses. It was this motivation which led the United Nations to establish the United Nations Compensation Commission (UNCC).¹²

HENRY WAGER HALLECK, 1 HALLECK'S INTERNATIONAL LAW 12 (Sherston Baker ed., Kegan, Paul, Trench, Turner, & Co., 3d ed. 1893) (1861). His works are still cited for the precepts they establish. See, e.g., FREDERICK O. BONKOVSKY, INTERNATIONAL NORMS AND NATIONAL POLICY 65-80 (1980) (discussing Grotius's contributions to the just-war theory); MARJORIE M. WHITEMAN, 2 DAMAGES IN INTERNATIONAL LAW 829 (1937) (citing *De Jure Belli ac Pacis* for the proposition that "fault creates the obligation to make good the loss"). For biographical information and analyses of Grotius's major works, including *De Jure Praedae*, *De Jure Belli ac Pacis*, and *Apologeticus*, see EDWARD DUMBAULD, THE LIFE AND LEGAL WRITINGS OF HUGO GROTIUS (1969).

5. GROTIUS, Whewell trans., *supra* note 2, at 369.

6. GROTIUS, Kelsey trans., *supra* note 1, at 469.

7. *Id.* at 470.

8. *Id.* Grotius cites, among others, Paul the jurist, Plato, Plutarch, and Xenophon as approving this motivation for punishment. *Id.* at 470-71. He quotes Seneca as additional support for this notion: "Just as we heat some twisted spear-points to straighten them, and lay[] them on the anvil hammer. . . , not to break them, but to perfect them, so we correct serious depravities by bodily and mental pain; . . . [such punishments are to be] received like a surgeon's knife, abstinence, and other things that cause pain for our good.'" *Id.* at 470, n.1.

9. *Id.* at 475. Grotius notes that the Greeks called this *παραδείγματα*, the Romans *exempla*. *Id.* He cites Pliny and Demosthenes as approving this theory of punishment. *Id.* at 475-76.

10. *Id.*

11. *Id.* at 469. Grotius cites Taurus, Clement of Alexandria, Aristotle, and Plutarch as sources for this theory. *Id.*

12. Some scholars characterize the UNCC as within an established tradition of international post-war tribunals. See, e.g., David J. Bederman, *Historical Analogues of the United Nations Compensation Commission*, in THE UNITED NATIONS COMPENSATION COMMISSION 257 (Richard B. Lillich ed., 1995)

Formed in 1991 to address claims against Iraq arising out of the Gulf War, the UNCC has received 2.6 million claims, with an asserted value of over \$244 billion.¹³ It has processed 2.4 million of these claims.¹⁴ Despite this impressive accomplishment, the UNCC has much left to do, and its efforts have been burdened by Iraq's post-war refusal to meet its treaty obligations. The UNCC now faces waning political support from U.N. members, who themselves face increasing pressure from the international business community to reintegrate Iraq into the world economy.

These problems raise significant questions: Considering that the UNCC is expensive, time-consuming, and divisive, is it worth the cost if it cannot substantially compensate victims? If partial compensation is the ultimate result, what fraction of damages will suffice to satisfy victims' needs and the world's sense of justice? If the UNCC is to continue, what should it expect from the

[hereinafter Bederman, 1995]; David J. Bederman, *The United Nations Compensation Commission and the Tradition of International Claims Settlement*, 27 N.Y.U. J. INT'L L. & POL. 1 (1994) [hereinafter Bederman, 1994]; David J. Bederman, *The Glorious Past and Uncertain Future of International Claims Tribunals*, in INTERNATIONAL COURTS FOR THE TWENTY-FIRST CENTURY 161, 189-93 (Mark W. Janis ed., 1992); Elyse J. Garmise, Note, *The Iraqi Claims Process and the Ghost of Versailles*, 67 N.Y.U. L. REV. 840 (1992) (comparing the Iraqi claims process to the Versailles claims process).

Others argue the Commission is a significant departure. See, e.g., Francis E. McGovern, *The Intellectual Heritage of Claims Processing at the United Nations Compensation Commission*, in THE UNITED NATIONS COMPENSATION COMMISSION 45, 46-55 (Richard B. Lillich, ed. 1995) ("The structure and role of the UNCC does not have a well-defined historical antecedent"); Bachir Georges Affaki, *The United Nations Compensation Commission: A New Era in Claims Settlement?*, 10 J. INT'L ARB. 21 (1993); Carlos Alzamora, *Reflections on the United Nations Compensation Commission*, 9 ARB. INT'L 349 (1993); John R. Crook, *The United Nations Compensation Commission—A New Structure to Enforce State Responsibility*, 87 AM. J. INT'L LAW 144 (1993); David H. Caron, *The Gulf War, the U.N. Compensation Commission and the Search for Practical Justice*, TRANSCRIPT 26 (Fall 1991); Stanley J. Glod, *International Claims Arising from Iraq's Invasion of Kuwait*, 25 INT'L LAW. 713 (1991).

13. "A" Claims total \$3.2 billion. *Future of U.N.C.C. Hinges on Funding, Says its Chief of Legal Services*, 11 No. 10 MEALEY'S INT'L ARB. REP. 19 (1996) [hereinafter *Future of U.N.C.C.*]. See *infra* note 194. "B" claims total \$13.45 million. Gustavo Capdevila, *Gulf War: Compensation for Iraq Invasion Raised to \$6 Billion*, Inter Press Serv., June 24, 1997, available in 1997 WL 7076118. See *infra* notes 192-93 and accompanying text. "C" claims total \$2.1 billion. Capdevila, *supra*. See *infra* note 195. "D" claims total approximately \$15 billion. Keith Highet et al., *International Courts and Tribunals*, 31 INT'L LAW. 599, 603 (1997). "E" claims total at least \$82 billion. Neil King, Jr., *Battle Plan: Firms Seek Billions of Dollars to Cover Gulf War Losses*, WALL ST. J. (Eur.), Aug. 19, 1997, at 1, available in 1997 WL-WSJE 12210226. "F" claims total at least \$142 billion. *Id.* Some estimates place the "F" claims as high as \$200 billion. Highet et al., *supra*.

14. *U.N. to Compensate Egyptian Workers 84 Million Dollars*, Xinhua Eng. Newswire, Oct. 2, 1997, available in 1997 WL 11202588 [hereinafter *U.N. to Compensate Egyptian Workers*].

political and commercial entities that are increasingly sympathetic to Iraq? This Note addresses these issues.

Part II of this Note discusses the response of the United Nations to Iraq's invasion of Kuwait, including the formation of the UNCC. Part III describes the structure and composition of the UNCC and the procedures it developed to address claims. Part IV evaluates the UNCC's progress since 1991, with particular attention to the political and commercial forces that now threaten the UNCC's mission. This Note concludes that, despite international political sentiments ranging from apathy to hostility, the United Nations must reaffirm its commitment to international accountability generally, and to the victims of the Gulf War in particular, by continuing to support the UNCC.

II. THE U.N. RESPONSE TO IRAQ'S INVASION OF KUWAIT

The United Nations responded in two phases to Iraq's invasion of Kuwait. In its pre-Gulf War phase, the United Nations issued a series of increasingly condemnatory resolutions against Iraq, ultimately authorizing military action and warning Iraq of its liability for invasion-related damages. In the post-Gulf War phase of its response, the United Nations defined the terms of Iraq's surrender and outlined the compensation procedures to be implemented.

A. *Response During Iraq's Occupation of Kuwait*

The U.N.'s initial response to Iraq's invasion was to condemn Iraq's actions, demand its immediate withdrawal, and impose economic sanctions. When these strategies failed, the United Nations authorized military action and announced Iraq's liability for damages arising from the invasion and occupation.

1. Condemnation and Economic Sanctions, August 2 to September 25, 1990

The Iraqi army invaded Kuwait on August 2, 1990. The response of the United Nations was immediate. That very day, the U.N. Security Council adopted Resolution 660, condemning the invasion and demanding Iraq's withdrawal from Kuwait.¹⁵

15. S.C. Res. 660, U.N. SCOR, 45th Sess., 2932d mtg., ¶¶ 1-2, U.N. Doc. S/RES/660 (1990), reprinted in 29 I.L.M. 1323, 1325 (1990). Resolution 660, adopted 14-0 with Yemen abstaining, also called on Iraq and Kuwait to begin immediate, intensive negotiations to resolve their differences. *Id.* For a discussion of various countries' views regarding sanctions, see Christopher C.

When Iraq did not immediately withdraw, the Security Council took additional measures. On August 6, the Council adopted Resolution 661, which embargoed Iraq and Kuwait, froze their assets, and urged states to support the legitimate government of Kuwait.¹⁶

Neither the disapprobation of Resolution 660 nor the economic sanctions of Resolution 661 deterred Iraq's aggression. In fact, Iraq declared its "comprehensive and eternal merger" with Kuwait.¹⁷ The Security Council's response to Iraq's entrenchment was two-fold: First, the Council passed resolutions directed to Iraq that reiterated the Council's condemnation.¹⁸ Second, it called on member states to deploy maritime forces to enforce the Resolution 660 embargo and to document their support of the economic sanctions imposed by Resolution 661.¹⁹ Iraq still showed no sign of capitulation.

In mid-September, the Council expressed its growing concern over living conditions in Iraq and Kuwait²⁰ and its outrage over

Joyner, *Sanctions, Compliance and International Law: Reflections on the United Nations' Experience Against Iraq*, 32 VA. J. INT'L L. 1, 17-26 (1991).

16. S.C. Res. 661, U.N. SCOR, 45th Sess., 2933d mtg., ¶¶ 3-4, U.N. Doc. S/RES/661 (1990), reprinted in 29 I.L.M. 1325 (1990). Resolution 661 was adopted 13-0, with Cuba and Yemen abstaining. *Id.* Although the resolution barred most exports from or imports to Iraq and Kuwait, the Council excepted medical supplies and, in humanitarian circumstances, foodstuffs. *Id.* Additionally, Jordan continued to import oil from Iraq with the knowledge of the U.N. Security Council Committee established by Resolution 661. Paul Conlon, *How Legal Are Jordan's Oil Imports from Iraq?*, 6 J. TRANSNAT'L L. & POL'Y 109, 109-10 (1996).

17. S.C. Res. 661, *supra* note 16.

18. S.C. Res. 662, U.N. SCOR, 45th Sess., 2934th mtg., U.N. Doc. S/RES/662 (1990), reprinted in 29 I.L.M. 1327, 1328 (1990); S.C. Res. 664, U.N. SCOR, 45th Sess., 2937th mtg., U.N. Doc. S/RES/664 (1990), reprinted in 29 I.L.M. 1328, 1329 (1990). The Council adopted Resolution 662 on August 9, 1990 (15-0), again demanding Iraq's withdrawal and declaring the annexation "null and void." S.C. Res. 662, *supra*. In Resolution 664, adopted August 18, 1990 (15-0), the Council demanded that Iraq allow third state nationals to leave Iraq and Kuwait and reinstate diplomatic immunity to diplomatic and consular personnel. S.C. Res. 664, *supra*.

19. S.C. Res. 665, U.N. SCOR, 45th Sess., 2938th mtg., U.N. Doc. S/RES/665 (1990), reprinted in 29 I.L.M. 1329, 1330 (1990). Resolution 665, passed August 25, 1990 (13-0 with Cuba and Yemen abstaining), activated the Military Staff Committee (MSC), a body created by the U.N. Charter to advise the Security Council on military matters. Although the MSC had lain dormant for 40 years, it held informal meetings in September 1990 concerning the Gulf crisis. Ultimately, however, the MSC played no significant role in resolving the situation. Joyner, *supra* note 15, at 17.

20. S.C. Res. 666, U.N. SCOR, 45th Sess., 2939th mtg., U.N. Doc. S/RES/666 (1990), reprinted in 29 I.L.M. 1330, 1331 (1990). In Resolution 666, adopted September 13, 1990 (13-2, Cuba and Yemen opposed), the Council noted its concern over food shortages in those countries and requested that the Secretary General seek information regarding food supplies and the treatment of

Iraq's treatment of diplomatic personnel in Kuwait.²¹ The Council particularly objected to abductions from diplomatic premises in Kuwait and stated that Iraq's escalating violations of international law constituted "a flagrant violation of its international obligations which strike at the root of the conduct of international relations."²² The Council noted its decision to "take further concrete measures [as soon as possible] to ensure Iraq's compliance with the Council's resolutions" and reminded member states of their obligation to observe strictly the Council's prior resolutions regarding Iraq.²³

A week later, the Council took measures to begin relief efforts in Iraq and Kuwait,²⁴ while noting its determination to "ensure compliance with Security Council resolutions by maximum use of political and diplomatic means."²⁵ The Council reminded member states of their obligations under Resolution 661²⁶ and warned Iraq that continued failure to comply with the Council's resolutions "could lead to further serious action by the Council under the Charter of the United Nations. . . ."²⁷ With those

children, pregnant women, the sick, and the elderly. The Council anticipated that food and medical supplies would be provided through the U.N. and humanitarian agencies such as the Red Cross. *Id.*

21. S.C. Res. 667, U.N. SCOR, 45th Sess., 2940th mtg., U.N. Doc. S/RES/667 (1990), *reprinted in* 29 I.L.M. 1332, 1333 (1990). Resolution 667 was adopted September 16, 1990 (15-0).

22. *Id.* For a discussion of the brutality of the Iraqi invasion of Kuwait, see Adel Omar Asem, *Establishment of the U.N. Compensation Commission: The Kuwaiti Government Perspective*, in THE UNITED NATIONS COMPENSATION COMMISSION, *supra* note 12, at 45, 46-55.

23. S.C. Res. 667, *supra* note 21.

24. S.C. Res. 669, U.N. SCOR, 45th Sess., 2942d mtg., U.N. Doc. S/RES/669 (1990), *reprinted in* 29 I.L.M. 1333 (1990). Resolution 669 was adopted September 24, 1990 (15-0).

25. S.C. Res. 670, U.N. SCOR, 45th Sess., 2943d mtg., U.N. Doc. S/RES/670 (1990), *reprinted in* 29 I.L.M. 1334, 1334-36 (1990). Resolution 670, adopted September 25, 1990 (14-1, Cuba opposed), emphasized that flights into or out of Kuwait and Iraq were forbidden under Resolution 661 and that states were to ensure that their aircraft complied. *Id.* at 1335; *see also* Lisa Beyer, *The Battle Beckons: With Sanctions Serving Only to Increase Saddam's Belligerence and the West Struggling to Fathom His Thinking, War Looks More and More Inevitable*, TIME, Oct. 8, 1990, at 26 (observing that Hussein's belligerence had not deterred the U.N. Security Council from strengthening its opposition to him, and concluding that, therefore, Resolution 670 was more symbolic than practical in its significance).

26. S.C. Res. 670, *supra* note 25, at 1336. Resolution 670 reminded states to deny entry to Iraq-registered ships and to maintain their freeze on Iraqi assets, both required by Resolution 661. The Council noted it would take measures "directed at the State in question" to prevent any breach of these resolutions. *Id.*

27. *Id.* at 1335.

warnings in place, the Council ended its August-September session.²⁸

2. Security Council Resolutions, October 29 to November 29, 1990

Despite the disapprobation of the international community, as expressed by the Security Council, and despite the economic sanctions imposed by the Council, Iraq continued its subjugation of Kuwait during October 1990. Living conditions deteriorated as the occupying forces took hostages, destroyed demographic records, seized public and private property, and threatened third-state nationals, including diplomatic personnel.²⁹ The Kuwaitis and third-state nationals lacked food, water, and basic services.³⁰ Upon reconvening to respond to this situation, the Security Council reminded Iraq of its August and September resolutions and stressed in Resolution 674 "the urgent need for the immediate and unconditional withdrawal of all Iraqi forces from Kuwait, [and] for the restoration of Kuwait's sovereignty, independence and territorial integrity"³¹

Resolution 674 focused primarily on Iraq's duties under international law, rather than on other states' obligations to uphold economic sanctions. It listed many actions the Council wanted Iraq to take. In light of Iraq's three-month-long refusal to capitulate, however, this list primarily served to document the Council's warning rather than to outline actions Iraq might

28. See, e.g., George J. Church, *Saddam's Strategies: With Most of the World Arrayed Against Him, Could the Iraqi Leader Break the Embargo—or Even Achieve His Goals in War?*, TIME, Oct. 1, 1990, at 50. By the end of September, Iraq reportedly had increased its forces in and around Kuwait to 360,000 men and 2800 tanks. *Id.* Iraqi troops within striking distance of Saudi Arabia totalled 430,000. Beyer, *supra* note 25. For a discussion of specific atrocities, see Louise Lief & Peter Cary, *Rebuilding a Ruined Nation*, U.S. NEWS & WORLD REP., Mar. 11, 1991, at 2628; David Gergen, *The Barbarities of Hussein*, U.S. NEWS & WORLD REP., Oct. 1, 1990, at 96 (reporting allegations that Iraqi troops looted hospitals of supplies and equipment; evicted hundreds of patients from critical care facilities and mental hospitals; tortured and killed animals at Kuwait's national zoo; and conducted rapes and executions in a campaign intended to depopulate Kuwait). Mortimer B. Zuckerman echoed Gergen's report of genocide: "The Kuwaiti population has been decimated[;] it's now less than 200,000 while there are 300,000 hostile Palestinians still in Kuwait." *Why Hussein Smells Victory*, U.S. NEWS & WORLD REP., Dec. 24, 1990, at 67. Zuckerman doubted the Kuwaitis' ability to repulse Iraq's "million-man Army." *Id.*

29. See S.C. Res. 674, U.N. SCOR, 45th Sess., 2951st mtg., ¶ 8, U.N. Doc. S/RES/674 (1990), reprinted in 29 I.L.M. 1561, 1562 (1990). The preamble to Resolution 674 cites these and other examples of unlawful activity. Resolution 674 was adopted October 29, 1990 (13-0, Cuba and Yemen abstaining).

30. *Id.* at 1563.

31. *Id.* at 1561.

actually take. Yet, it preceded a more potent warning that was the most important innovation of Resolution 674. This warning specified that, under international law, Iraq was liable "for any loss, damage or injury arising in regard to Kuwait and third States, and their nationals and corporations, as a result of the invasion and illegal occupation of Kuwait by Iraq"32 It further provided that states should collect information regarding their claims and those of their nationals and corporations to obtain restitution or financial compensation from Iraq.³³ The Council concluded it would remain "actively and permanently seized of the matter until Kuwait has regained its independence and peace has been restored. . . ."34

Despite the nine resolutions the Security Council adopted between August 3 and October 29, 1990, Iraq continued to occupy Kuwait. By enacting Resolution 670, the Council had exhausted all peaceful strategies within its power to deter this aggression. Both humanitarian and economic appeals had failed, and Kuwait's situation continued to deteriorate. In late November, the Council adopted its final resolutions directed at a non-interventionist approach to the occupation.

The first of these, Resolution 677,³⁵ focused on Iraq's genocidal activities against the Kuwaiti people.³⁶ It condemned both the genocide and the attendant destruction of civil records³⁷ and requested that the Secretary-General take custody of a certified copy of Kuwait's population register.³⁸ The second, Resolution 678,³⁹ reflected the Security Council's growing impatience with Iraq and provided it with a last warning. In Resolution 678, the Council demanded "that Iraq comply fully with resolution 660 (1990) and all subsequent relevant resolutions" . . . and provided Iraq "one final opportunity, as a pause of goodwill [sic], to do so"40 Furthermore, it authorized member states cooperating with Kuwait "to use all

32. *Id.* at 1563.

33. *Id.*

34. *Id.*

35. S.C. Res. 677, U.N. SCOR, 45th Sess., 2962d mtg., U.N. Doc. S/RES/677 (1990), reprinted in 29 I.L.M. 1564 (1990). Resolution 677 was adopted November 28, 1990 (15-0).

36. *Id.* The Council stated it was "[g]ravely concerned at the ongoing attempt by Iraq to alter the demographic composition of the population of Kuwait. . . ." *Id.*

37. *Id.*

38. *Id.*

39. S.C. Res. 678, U.N. SCOR, 45th Sess., 2963d mtg., ¶ 1, U.N. Doc. S/RES/678 (1990), reprinted in 29 I.L.M. 1565, 1565 (1990). Resolution 678 was adopted November 29, 1990 (12-2-1, Cuba and Yemen opposed, China abstaining).

40. *Id.*

necessary means to uphold and implement . . . [these] resolutions and to restore international peace and security in the area"⁴¹

The Iraq-related Security Council resolutions of fall 1990 are remembered popularly as the resolutions authorizing international military action against Iraq. The Persian Gulf War that followed these resolutions was the brief and decisive result of Resolution 678. Among international arbitrators, however, these resolutions are best remembered for providing the basis for Iraq's liability to those victimized by the invasion and occupation.⁴² The claims process that began in 1991 and continues today is the legacy of Resolution 674.

B. Post-Cease-Fire Response

In this second phase of its response to Iraq's invasion, the United Nations set forth the terms required for peace and outlined the procedures through which it planned to compensate Iraq's victims.

1. Defining the Terms of Peace, March 2 to April 3, 1991

On January 16, 1991, a thirty-nation coalition launched its military initiative to liberate Kuwait.⁴³ By February 27, President Bush declared the coalition had achieved this goal,⁴⁴ and the Persian Gulf War was over.⁴⁵

41. *Id.*

42. The arbitrators are not alone in this assessment:

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 [sic] a very important part of this. It is a very important part of what the United Nations has done."

Gregory Townsend, Comment, *The Iraq Claims Process: A Progress Report on the United Nations Compensation Commission & U.S. Remedies*, 17 LOY. L.A. INT'L & COMP. L.J. 973, 977 (1995) (citations omitted). Saddam Hussein sneered at such announcements, calling President Bush "the Satan in the White House." Strobe Talbott, *A Storm Erupts: As the Bombs Fell and Missiles Flew, Hopes for a New World Order Gave Way to Familiar Disorder*, TIME, Jan. 28, 1991, at 14, 15.

43. See generally, e.g., *The Six-Week War*, U.S. NEWS & WORLD REP., Mar. 11, 1991, at 5873 (providing a week-by-week summary of Gulf War events); George J. Church, *So Far, So Good: The Air War Gets Off to an Impressive Start*, TIME, Jan. 28, 1991, at 18, 20; Bill Javetski et al., *The Gulf: A Special Report*, BUS. WK., Jan. 28, 1991, at 26.

44. Bill Javetski et al., *Winning the Peace: A Stable Mideast Will Be Harder to Achieve than Military Victory*, BUS. WK., Mar. 11, 1991, at 24.

45. See, e.g., George J. Church, *The 100 Hours: In a Battle for the History Books, The Allies Break the Iraqi Army—Quickly, Totally, and at Unbelievably Low Cost*, TIME, Mar. 11, 1991, at 22, 31.

On March 2, 1991, the U.N. Security Council formally acknowledged the end of the Persian Gulf War by adopting Resolution 686.⁴⁶ Resolution 686 reaffirmed the twelve 1990 resolutions supporting Kuwaiti sovereignty and condemning Iraq's invasion and occupation of Kuwait. Thus, in Resolution 686, the Security Council demanded that Iraq rescind its actions purporting to annex Kuwait; release the Kuwaiti and third-state nationals it had detained; return all Kuwaiti property; and, most significantly with regard to the claims tribunal, "[a]ccept in principle its liability under international law for any loss, damage, or injury arising in regard to Kuwait and third States, and their nationals and corporations, as a result of the invasion and illegal occupation of Kuwait by Iraq."⁴⁷ In addition to these recapitulations, the Council demanded that Iraq cease all hostile or provocative actions against member states; arrange a military cease-fire post haste; release all prisoners of war and return the remains of deceased military personnel; and assist in identifying Iraqi explosive, chemical, and biological weapons remaining in Kuwait, its adjacent waters, and occupied areas of Iraq.⁴⁸

Initially, Iraq seemed prepared to comply with these terms and conditions. In a letter of March 3, 1991, Iraqi Deputy Prime Minister Tariq Aziz informed the President of the Security Council that Iraq agreed to fulfill its obligations under Resolution 686.⁴⁹

46. S.C. Res. 686, U.N. SCOR, 46th Sess., 2978th mtg., ¶ 2(b), U.N. Doc. S/RES/686 (1991), reprinted in 30 I.L.M. 567 (1991). Resolution 686 was adopted 11-1, with Cuba dissenting and China, India, and Yemen abstaining. *Id.* (Background/Content Summary). For a discussion of damage, see Lief & Carey, *supra* note 28. Lief & Carey note, for example, that when the Iraqis left Kuwait, they retreated in

an orgy of murder and senseless destruction. . . . More than 600 oil fires the Iraqis had ignited belched clouds of toxic smoke. . . . [Retreating soldiers] turned the National Museum into a pile of rubble and burned libraries and palaces. . . . [T]hey dumped the horribly mutilated corpses of tortured Kuwaitis in the streets and abducted thousands more citizens.

Id.

Among Lief & Carey's graphic descriptions of atrocities is that of Iraqi medics draining blood from Kuwaiti citizens and transfusing it into wounded Iraqi soldiers. *Id.*

47. S.C. Res. 686, *supra* note 46. Professor David J. Bederman describes this demand, and Iraq's accession to it, as "[o]ne of the least-noticed aspects of the U.N. offer of armistice terms to prostrate Iraq . . ." Bederman, 1994, *supra* note 12, at 1.

48. S.C. Res. 686, *supra* note 46.

49. *United Nations: Security Council Resolution on Requirements to End Hostilities in Iraq*, 30 I.L.M. 567 (1991) (citing U.N. Doc. S/22320 (1991)) [hereinafter *Requirements to End Hostilities*]. See generally *Peacefire: United Nations Imposes Harsh Peace Settlement on Iraq*, *ECONOMIST*, Mar. 30, 1991, at 39 [hereinafter *Peacefire*].

On March 5, the Iraq Revolution Command Council formally reversed its position that Iraq had effectively annexed Kuwait.⁵⁰ Two weeks later, the Iraqi permanent representative to the United Nations informed the Secretary-General that Iraq was prepared to return all Kuwaiti property it had seized and was awaiting instructions as to how this should be accomplished.⁵¹

Notwithstanding these promising indications, it was soon apparent that Iraq's seeming capitulation was mere pretense. Despite Iraq's promises regarding the return of prisoners, bodies, and property, Iraq neither accounted for missing persons nor returned stolen property.⁵² Furthermore, although Iraqi troops were no longer attacking Kuwait, they were now directing their aggressions against domestic insurgents. Iraqi forces reportedly prevented food and medical supplies from reaching Kurdish and Shiite populations, bombed oilfields in rebel-held regions, and attacked civilian protesters.⁵³ Although these acts were not specifically prohibited by the Security Council's resolutions regarding Iraq's invasion of Kuwait, they were not consistent with the good faith adoption of the cease-fire agreement, and they posed disturbing questions about Iraq's intentions. Additionally, Iraq's use of chemical weapons against its own civilians violated international agreements to which Iraq had been a party.⁵⁴

50. *Requirements to End Hostilities*, *supra* note 49 (citing U.N. Doc. S/22342 (1991)). The decision, forwarded to the President of the Security Council and the Secretary-General, stated that the Command Council thereby "nullified all . . . decisions regarding Kuwait made subsequent to August 2, 1990, and abrogated and nullified all measures made thereunder."

51. *Id.* (citing U.N. Doc. S/22355 (1991)).

52. S.C. Res. 687, U.N. SCOR, 46th Sess., 2981st mtg., ¶ 16, U.N. Doc. S/RES/687 (1991), *reprinted in* 30 I.L.M. 846, 848 (1991).

53. *Rebels Accuse Saddam of Using Napalm*, FT. WORTH STAR TELEGRAM, Mar. 22, 1991, at 1, *available in* 1991 WL 3827333 [hereinafter *Rebels*]. The Supreme Assembly of the Islamic Revolution in Iraq, a coalition of groups opposing Saddam Hussein, reported various abuses committed by Iraqi troops, including the use of artillery, napalm, and chemical weapons against civilians. *Id.* The Assembly stated, for example, that Iraqi troops attacked the Shiites' most sacred city, Najaf, killing 15,000, and that troops killed large numbers in Kirkuk by using helicopters to drop acid on demonstrators. *Id.* The Assembly also stated that Iraqi special forces kidnapped Grand Ayatollah Abul-Hassan al-Khoei, the world's highest Shiite authority. *Id.*

54. S.C. Res. 687, *supra* note 52. Iraq had previously agreed to follow the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, 94 L.N.T.S. 2138 (1929), 14 I.L.M. 49 (1975); the Treaty on the Non-Proliferation of Nuclear Weapons, G.A. Res. 2373, 7 I.L.M. 809 (1968); and the Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, G.A. Res. 2826, Annex, 11 I.L.M. 309 (1972). The Security Council knew that, during the Gulf War, Iraq had repeatedly used, attempted to use, and threatened to use weapons in

Disturbing as they were, these concerns were only part of the impetus behind Security Council Resolution 687.⁵⁵ The U.N.'s concern for the Iraqi people provided the rest. The U.N. Secretary-General had sent a special envoy to assess conditions in Iraq immediately after the Security Council passed Resolution 686.⁵⁶ The report based on that week-long visit stated that the allied forces had "battered Iraq back into 'a pre-industrial age'"⁵⁷ and that allied bombing had "reduced Iraq to 'near apocalyptic conditions.'"⁵⁸ Leader of the U.N. team Secretary General Martti Ahtisaari reported, "It is unmistakable that the Iraqi people may soon face a further imminent catastrophe, which could include epidemic and famine, if massive life-supporting needs are not rapidly met."⁵⁹

Addressing both Iraq's recalcitrance toward its Resolution 686 commitments and its failure to address its population's

violation of these agreements. The Council was concerned about certain post-war activities that suggested that future violations were probable and imminent.

55. S.C. Res. 687, *supra* note 52. Resolution 687 was adopted 12-1 on April 3, 1991, with Cuba dissenting and Ecuador and Yemen abstaining.

56. *U.N. to Lift Iraqi Food Embargo*, CALGARY HERALD, Mar. 22, 1991, at A3, available in 1991 WL 755977 [hereinafter *Food Embargo*]. U.N. sources confirmed that the envoy's unreleased report noted:

[A]ll internal and external telephone systems have been destroyed and . . . communication in Iraq is on a "person-to-person" basis. Government food allocations are at 39 percent of the pre-sanctions level and the flow of food through the private sector has been reduced to a "trickle." Bombardment paralysed oil and electricity sectors almost entirely and transportation is severely affected by lack of spare parts, tires and fuel.

Id.

57. *Rebels*, *supra* note 53.

58. *U.N. Panel Takes Restrictions Off Food Imports for Iraq: 'Pre-Industrial Age' Assessment of Nation Prompts the Action*, KAN. CITY STAR, Mar. 23, 1991, at A11, available in 1991 WL 3762899.

59. *Food Embargo*, *supra* note 56. Ahtisaari's report warned of possible epidemics of cholera, typhoid, meningitis, and diarrhea, as well as of the possibility of widespread famine. By the time the U.N. envoy visited Iraq, food prices had increased by 1000 percent, incomes had collapsed, reserves of food staples were depleted, and the grain harvest was threatened by a lack of irrigation, pesticides, and fertilizers. *Id.*

Ahtisaari reported that the necessities of modern life

have been destroyed or rendered tenuous; . . . [that] [i]t will be difficult, if not impossible to remedy these immediate humanitarian needs without dealing with the underlying need for energy. . . . Otherwise, food that is imported cannot be preserved and distributed; water cannot be purified; sewage cannot be pumped away and cleansed, crops cannot be irrigated; medicaments cannot be conveyed where they are required.

Id.

humanitarian needs, the Security Council passed Resolution 687.⁶⁰

Regarding the Iraqis' humanitarian ideals, the Council acknowledged the gravity of the special envoy's reports on Iraq and noted its desire to "meet urgently the humanitarian needs in Kuwait and Iraq."⁶¹ To that end, the Council lifted the sanctions against the sale or supply to Iraq of foodstuffs and simplified the procedure through which Iraq could obtain materials and supplies for essential civilian needs.⁶² The Council also provided for allowing Iraq to resume exporting commodities and products under Council supervision.⁶³

Regarding Iraq's commitments under Resolution 686, the Council made explicit its concerns about Iraq's unprovoked missile attacks,⁶⁴ its nuclear weapons program,⁶⁵ and its other "manifestations of international terrorism."⁶⁶ Accordingly, the Council reaffirmed the importance of the preceding thirteen resolutions concerning Iraq and Kuwait,⁶⁷ demanded that Iraq respect its previous agreements concerning Kuwait's

60. See *A Tough U.N. Vote to Disarm Iraqis: Security Council Agrees to Impound Some Oil Revenue to Pay Reparations for War's Damage*, S.F. EXAMINER, Apr. 3, 1991, at A1, available in 1991 WL 8929155 [hereinafter *Tough U.N. Vote*]. This 3700-word cease-fire agreement was the longest and most detailed resolution of this nature in Security Council history. Iraq's acceptance of it would lead to an automatic cease-fire and a lifting of the U.N.-imposed embargo. Rejection would result in the embargo's remaining in effect. Kuwaiti ambassador Mohammad Abulhasan commented, "[Saddam had] better (accept it) if he wants to save his people from further catastrophe," but Iraqi ambassador Abdul Amir al-Anbari called it "very bad" and "unfair." *Id.* Anbari complained the resolutions went "beyond the mandate of the Security Council" and stated, "America and its allies should bear the full responsibility for their excesses. The new world order is the order of the American authority over all the world." *Id.*

61. S.C. Res. 687, *supra* note 52, at 849 (citing the Secretary-General's reports of March 20, 1991, U.N. Doc. S/22366, and March 28, 1991, U.N. Doc. S/22409).

62. *Id.* at 852-53.

63. *Id.*

64. *Id.* at 848. The Council noted its awareness of "the use by Iraq of ballistic missiles in unprovoked attacks and therefore of the need to take specific measures in regard to such missiles located in Iraq." *Id.*

65. *Id.* The Council was concerned by reports "in the hands of Member States that Iraq has attempted to acquire materials for a nuclear-weapons programme contrary to its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968." *Id.*

66. *Id.* at 849. The Council noted that the International Convention Against the Taking of Hostages categorizes all hostage-taking as a "manifestation[] of international terrorism," and chastised Iraq for taking hostages and threatening international terrorism during the Gulf War. *Id.*

67. *Id.*

boundaries,⁶⁸ approved the deployment of a U.N. observer unit to the Iraq-Kuwait border,⁶⁹ and demanded that Iraq surrender its chemical, biological, and nuclear weapons, as well as its long-range ballistic missiles.⁷⁰

Further, the Council reaffirmed 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 [its] unlawful invasion and occupation of Kuwait," and created a fund to pay compensation for the resultant claims, to be administered by a U.N. commission established for that purpose.⁷¹

68. *Id.* The Council referred Iraq to the Agreed Minutes Between the State of Kuwait and the Republic of Iraq Regarding the Restoration of Friendly Relations, Recognition, and Related Matters which both countries signed in 1963 and registered with the United Nations. In that document, Iraq and Kuwait agreed on their mutual boundary, which had been previously memorialized in correspondence between Iraq's prime minister and the ruler of Kuwait in 1932.

Id.

69. *Id.* at 850.

70. *Id.*

71. *Id.* at 852. Two significant influences on the compensation system were the Iran-U.S. Claims Tribunal and American mass tort claims administration. Ken Myers, *Gulf War Continuing for U.S. Lawyers*, NAT'L L.J., June 20, 1994, at A1; see also Curt M. Dombek, *The Twilight Zone of International Arbitration*, 21 No. 4 LITIG. 42 (1995).

The UNCC is to a certain degree influenced by the Iran-U.S. Claims Tribunal (IUCT). See Carlos Alzamora, *The U.N. Compensation Commission: An Overview*, in THE UNITED NATIONS COMPENSATION COMMISSION, *supra* note 12, at 3, 4-5 (noting its creators included people who had worked on the IUCT); Charles N. Brower, *The Lessons of the Iran-United States Claims Tribunal: How May They Be Applied in the Case of Iraq?*, 32 VA. J. INT'L L. 421 (1992); Gregory D. DiMeglio, *Claims Against Iraq: The U.N. Compensation Commission and Other Remedies*, 86 AM. SOC'Y INT'L L. PROC. 477, 478 (1992) (recording the remarks of Richard B. Lillich and Charles N. Brower concerning the UNCC, as compared to the IUCT).

The IUCT, created in 1981 by agreement between Iran and the United States, is a bilateral commission charged with adjudicating private claims against Iran arising out of the Iranian revolution of 1979-80. Myers, *supra*. Plaintiffs include businesses that closed and individuals who fled when the Ayatollah Khomeini acceded to power. At that time, 45,000 Americans in Iran felt pressured to leave. *Id.* As of 1994, Iran had agreed to pay approximately 4000 claimants several billion dollars. *Id.* For a more extensive comparison of the two systems, see Charles N. Brower, *The Lessons of the Iran-U.S. Claims Tribunal Applied to Claims Against Iraq*, in THE UNITED NATIONS COMPENSATION COMMISSION, *supra* note 12, at 15 (comparing the two systems regarding right of confrontation, susceptibility to political influences, working relationships of jurists, prioritization of claims, and funding).

In addition to relying on the model of the IUCT, the UNCC also adopted some features of American mass tort claims administration, including the notion that environmental damage is recoverable. Professor Francis E. McGovern, a leading authority on mass tort claims, advised the UNCC on these matters. Myers, *supra*; see also McGovern, *supra* note 12, at 191-203.

2. Instituting Compensation Procedures, May 20 to August 15, 1991

In May 1991, the U.N. Security Council began to shape the formal mechanisms through which compensation claims would be addressed.⁷² In Resolution 692,⁷³ the Council recalled Resolutions 674,⁷⁴ 686,⁷⁵ and 687,⁷⁶ and again restated its position that Iraq would be held liable for losses, damage, and injuries arising out of its invasion and occupation of Kuwait.⁷⁷ The Council reaffirmed that the Secretary-General would undertake steps to formulate a recommendation to the Council regarding the level of Iraq's contribution to the fund and directed the Governing Council to proceed to implement Resolution 687.⁷⁸ Specifically, the Security Council provided that the proceeds from all Iraqi petroleum exports after April 3, 1991, as well as the proceeds from certain prior exports, would be subject to attachment with regard to the compensation fund.⁷⁹ Finally, the Security Council decided that, if the Governing Council notified them that Iraq had failed to carry out its obligations, the Security Council would reimpose the ban on Iraq's oil exportation and any related transactions.⁸⁰

In the weeks following the adoption of Resolution 692, a variety of proposals were made concerning the percentage of Iraq's oil revenue to be contributed to the compensation fund. The United States initially demanded a fifty percent contribution, but U.N. Secretary-General Perez de Cuellar advocated thirty

72. See, e.g., *The Dunning of Saddam Begins*, TIME, May 6, 1991, at 49 [hereinafter *Dunning Begins*]. By early May 1991, the United Nations had concluded that Iraq's oil revenues would be used to compensate the thousands of companies and individuals who had lost billions of dollars during Iraq's war on Kuwait. It remained unsettled what percentage of these future revenues would be used. The United States had frozen Iraqi assets totalling \$1-1.5 billion, but neither Iraq nor its creditors could access those assets. *Id.*

As of May 6, 1991, the U.S. Treasury Department had registered approximately 1000 claims against Iraq. *Id.* These included a judgment of \$64 million awarded by a U.S. district court to Consarc Corporation, a New Jersey furnace manufacturer. *Id.*

73. S.C. Res. 692, U.N. SCOR, 46th Sess., 2987th mtg., U.N. Doc. S/RES/692 (1991), reprinted in 30 I.L.M. 864 (1991). Resolution 692 was adopted May 20, 1991, 14-0, with Cuba abstaining.

74. See *supra* note 29 and accompanying text.

75. See *supra* note 46 and accompanying text.

76. See *supra* note 52 and accompanying text.

77. S.C. Res. 692, *supra* note 73.

78. *Id.*

79. *Id.*

80. *Id.*

percent.⁸¹ Some members of the UNCC proposed beginning with a figure below thirty percent but raising the percentage as conditions improved in Iraq. The United States countered that proposal by suggesting that a thirty percent contribution would be an acceptable starting figure, but that it should be increased as Iraq's economic status improved.⁸² Ultimately, the United States joined its allies in supporting a proposal precluding Iraq from selling oil until its weapons of mass destruction were destroyed and requiring a thirty percent contribution of the proceeds.⁸³

These proposals were formalized in Resolution 705, which the Security Council adopted unanimously in August 1991.⁸⁴ Resolution 705 adopted the Secretary-General's proposed figure of a thirty percent maximum for the annual value of petroleum and petroleum product exports from Iraq and provided that this percentage would be reviewed periodically in light of relevant developments.⁸⁵

III. THE COMPENSATION SYSTEM IN THEORY

In his May 2, 1991 report to the Security Council, the Secretary-General outlined a proposal for implementing paragraph 18 of Resolution 687,⁸⁶ *i.e.*, for compensating victims

81. David Mangan, Jr., *U.S. May Ease Stand on Iraq Sanctions*, OIL DAILY, June 25, 1991, at 1, available in 1991 WL 4862321; see also John M. Goshko, *U.S. Seeks Fast Payment from Iraq*, WASH. POST, June 4, 1991, at A10 (reporting that the United States and Kuwait advocated a 50% contribution).

82. Mangan, *supra* note 81. As these negotiations continued, Iraq began its own quest to obtain access to its frozen assets. For example, Iraq asked Japan to unfreeze \$140 million in oil payments blocked since the previous August. *Id.* The Iraqi ambassador to Japan announced in a press conference, "A tragedy is going on in my country. Ten[s] of thousands of children are in great danger of death and urgently need food and medicine." *Id.*

83. See *U.S. Eases Stand on Iraqi Payments from Oil Revenues*, OIL DAILY, June 26, 1991, at 1, available in 1991 WL 4862322. Although the proposal provided for this percentage to be adjusted downward if market conditions warranted, U.S. State Department spokesperson Margaret Tutwiler said 30% "is the minimum level to ensure there will be sufficient resources available to begin the claims process." *Id.*

84. See S.C. Res. 705, U.N. SCOR, 46th Sess., 3004th mtg., ¶¶ 1-2, U.N. Doc. S/RES/705 (1991), reprinted in 30 I.L.M. 1703, 1715 (1991). Resolution 705 was adopted August 15, 1991.

85. See *id.* (citing the May 30, 1991, letter from the Secretary-General to the President of the Security Council, S/22661).

86. See *Report of the Secretary-General on Claims Procedures Pursuant to Paragraph 19 of Security Council Resolution 687*, U.N. SCOR, 46th Sess., 3004th mtg., U.N. Doc. S/22559 (1991), reprinted in 30 I.L.M. 1703, 1706 (1991) [hereinafter *Report*].

of the Gulf War. In that report, the Secretary-General detailed the institutional framework of the UNCC, which would consist of a Governing Council, a secretariat, and commissioners.⁸⁷ He also outlined the claims procedure and determined the method for ensuring Iraq's contributions to a compensation fund would be administered by the UNCC.⁸⁸ These specifics are pursuant to the overarching goal of the UNCC: it "is not a court or an arbitral tribunal before which the parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying their validity, evaluating losses, assessing payments and resolving disputed claims."⁸⁹

In August 1991, the Governing Council adopted Annex II to the Secretary-General's report, which categorized claims and set the criteria for processing them.⁹⁰

These documents formed the basis for the Security Council's adoption of Resolution 705. They continue to define the claims process, in conjunction with subsequent decisions issued by the Governing Council.

A. Structure and Composition of the UNCC

87. See *id.* at 1706-07.

88. See *id.* at 1707-10.

89. *Id.* at 1708. The Secretary-General noted that, because claimants generally will not appear before the UNCC and because Iraq will not be allowed to present defenses against claims, the UNCC must ensure that there is some element of due process in the system. See *id.* The commissioners, described below, are intended to provide this element.

This structure contrasts with the IUCT, at which plaintiffs' lawyers presented their cases to panels consisting of an American jurist, an Iranian jurist, and a chairperson from a third country. Dombek, *supra* note 71, at 42. Dombek notes that "[w]ild stories abound" from these proceedings, "including rumors that sometimes successful cross-examinations were followed not by a redirect, but instead by threats of violence against the cross-examiner." *Id.*; see also Townsend, *supra* note 42, at 978-79. Dombek states that the United States' 10 years of experience with the IUCT led it to lobby for a U.N.S.C.-controlled administrative commission, rather than a judicial body that Iraq could derail. Dombek, *supra*. He notes also that the United States, Kuwait, and Saudi Arabia raised \$57 million in seed money to establish the UNCC. *Id.*

90. U.N. Compensation Comm'n Governing Council, 10th mtg., Annex 2, U.N. Doc. S/22885 (1991), reprinted in 30 I.L.M. 1703, 1712 (1991) (annex to August 2, 1991, letter from the President of the Governing Council to the President of the Security Council) [hereinafter *Annex 2*]. The system adopted departed from major elements of conventional international claims law and practice. Critics argued the system was flawed because it was "imposed," was a political rather than a judicial body, and exceeded the legitimate power of the Security Council. For a discussion of these concerns, see John R. Crook, *The U.N.C.C. and its Critics: Is Iraq Entitled to Judicial Due Process*, in THE UNITED NATIONS COMPENSATION COMMISSION, *supra* note 12, at 77. For a discussion of the origin and structure of the UNCC, see DiMeglio, *supra* note 71, at 482 (recording the remarks of Ronald J. Bettauer, Assistant Legal Adviser, U.S. Dept. of State).

The Secretary-General's May 2 report succinctly sets forth the UNCC's institutional framework. It proposes, as the UNCC's principal organ, a fifteen-member Governing Council comprising the representatives of the current Security Council.⁹¹ The Governing Council is the policy-making arm of the UNCC, charged with establishing guidelines for the claims procedure and making final determinations with regard to commissioners' findings.⁹²

The Governing Council is assisted by commissioners who are experts in fields such as finance, law, accountancy, insurance, and environmental damage assessment.⁹³ The commissioners are nominated by the Secretary-General and appointed by the Governing Council for specific tasks and terms.⁹⁴ The particular duties of the commissioners are to implement the guidelines of the claims process, to resolve disputed claims, and to make recommendations to the Governing Council, which will make final determinations as required.⁹⁵

A secretariat, comprising an Executive Secretary and necessary staff, provides administrative support for the UNCC. In particular, it administers the compensation fund.⁹⁶

B. *Categories of Claims and Procedures for Submission*

An important consideration in constructing the claims process was the desire to make rapid payment of the most urgent claims.⁹⁷ To this end, the Governing Council concluded that small individual claims should be processed first.⁹⁸ Furthermore,

91. See Report, *supra* note 86, at 1706.

92. *Id.* at 1707.

93. *Id.* at 1706-07.

94. *Id.* at 1707.

95. See *id.*

96. *Id.*

97. International claims commissions have been notoriously slow in settling claims. See, e.g., Bederman, 1994, *supra* note 12, at 15. For example, one World War Two commission accepted U.S. internment claims until February 24, 1997 (sic). *ABC Evening News* (television broadcast, Jack Smith reporting, Feb. 23, 1997).

In designing the UNCC, the U.N. Secretary-General was concerned with improving the model provided by the IUCT, formed in 1981. *Dunning Begins*, *supra* note 72. There, large institutional claims had been processed first, and after 10 years many claims remained outstanding, although \$5 billion had been paid. *Id.*

Iran generated lengthy delays by defending against the claims asserted. See, e.g., Myers, *supra* note 71. The UNCC's streamlined procedures do not afford Iraq a comparable right. See *supra* note 89.

98. The "priority of payment" question was contentious from the Governing Council's first session. See Ronald J. Bettauer, *The United Nations Compensation Commission—Developments Since October, 1992*, 89 AM. J. INT'L L. 416, 420

individuals could not submit claims themselves. Rather, the governments whose nationals had claims were instructed to compile the claims and make one or more consolidated submissions of all such claims in each category described by the Council.⁹⁹ Governments were also allowed, at their discretion, to submit claims on behalf of other persons resident in their territories.¹⁰⁰

The Council charged the UNCC Executive Secretary with circulating claims forms to governments, and each government was urged to return the completed forms within six months from the date they were provided.¹⁰¹ In the interest of efficiency, the claims forms were as simple as possible: they required only that individual claimants identify themselves; give the amount, type, and reason for each loss; provide any relevant available documentation; and affirm the submission was correct.¹⁰² Governments submitting claims were required only to affirm that, on the basis of information available, the individual claimants were their nationals or residents, and that they had no reason to believe the claimants' information was incorrect.¹⁰³

(1995). The decision to pay individuals first contrasts with the IUCT's prioritization. That tribunal paid banks and corporations first, then considered the claims of individuals. Myers, *supra* note 71.

Some observers applaud the UNCC approach. For example, Professor Bederman, former Legal Assistant at the IUCT, has called the UNCC approach to categorizing claims "extraordinarily sophisticated" and noted that "some commentators have put much stock in this process of sorting claims, and I am inclined to concur that it is a notable effort . . ." Bederman, 1994, *supra* note 12, at 22-23 (citations omitted). Professor Richard B. Lillich of the University of Virginia commented: "[The UNCC] obviously decided they weren't going to make that same mistake and turned it around. . . . That's the way it should be. [Businesses and banks] took the risk. That's the cost of doing business." Myers, *supra* note 71.

Others, however, criticize it. Some see it as a "calculated public relations gesture," Townsend, *supra* note 42, at 1005, whereas others view it as denying justice for the primary victims: "[Processing individual claims first] has delayed the processing of government claims representing a large part of the damage suffered by the Kuwaiti people, the principal victims of Iraqi aggression for whose benefit the U.N.C.C. presumably was constituted." Dombek, *supra* note 71, at 62.

99. See Annex 2, *supra* note 90, at 1713-14.

100. See *id.* at 1713. For a discussion of claimants' eligibility and concerns about "double-dipping," see Bederman, 1995, *supra* note 12, at 296-304.

101. See Annex 2, *supra* note 90, at 1714. The U.S. process is outlined by Marian Nash, Office of the Legal Adviser, Department of State, in *Claims Against Iraq: United Nations Compensation Commission*, 86 AM. J. INT'L L. 346 (1992).

102. See Annex 2, *supra* note 90, at 1714. Some observers have criticized the relaxed evidentiary standard applied to the expedited claims. See, e.g., Bederman, 1994, *supra* note 12, at 23; Dombek, *supra* note 71, at 62.

103. See Annex 2, *supra* note 90, at 1714. The UNCC had to decide whether countries could submit claims on behalf of non-nationals to whom they had extended protection. See Bederman, 1994, *supra* note 12, at 30-31. It

Another concession to efficiency was the decision not to scrutinize each individual claim. Instead, because of the large volume of claims anticipated, commissioners were to verify individual claims on a sample basis, inquiring further only if circumstances warranted.¹⁰⁴ The commissioners would report to the Governing Council on the claims received and the amount recommended for the claims submitted by each government. The Council then would decide the total amount to be allocated to each government, which in turn would be responsible for distributing the funds to its nationals or residents.¹⁰⁵

Acknowledging that funds to pay these claims might not be available as needed, the UNCC anticipated making pro rata payments to governments as funds became available. The Governing Council was to allocate funds among the various categories of claims and to decide on the priority of payments.¹⁰⁶

Having decided to address small individual claims first, the Governing Council created four categories of such claims. Category "A" or "departure" claims purported to compensate those who had departed Iraq or Kuwait between August 2, 1990, and March 2, 1991. Category "A" claimants who could provide simple documentation of the fact and the date of departure from Iraq or Kuwait would receive \$2500, with no documentation of actual loss required.¹⁰⁷

Category "B" was designed to cover losses suffered from serious personal injury or from the death of a spouse, child, or parent. In the case of serious personal injury, \$2500 would be provided where the claimant provided simple documentation of the fact and the date of the injury. In the case of death, \$2500 would be provided if there was simple documentation of the death and of the family relationship. As with Category "A" claims, no documentation of the actual amount of loss would be required.¹⁰⁸

allowed these submissions at each government's discretion. *See, e.g.,* DiMeglio, *supra* note 71, at 485 (quoting Bettauer); Nash, *supra* note 101, at 346. It also had to decide whether Iraqis with dual citizenship could submit claims, and it ultimately allowed them to do so. Townsend, *supra* note 42, at 1000-03.

104. *See Annex 2, supra* note 90, at 1713.

105. *See id.* The UNCC limited the "processing fees" governments could deduct from award payments and required governments to distribute funds to claimants within six months of receiving them. The UNCC also required governments to report their methods for allocating the funds and their progress in doing so. *See Bettauer, supra* note 98, at 421.

106. *See Annex 2, supra* note 90, at 1713.

107. *See id.* Claims submitted under Category "A" could not be resubmitted for a greater amount in any category. If the loss in question was greater than \$2500 and could be documented, it could be submitted under Category "C" or other appropriate categories. *See id.*

108. *See id.* If the actual loss resulting from the death or injury was greater than \$2500, payments under Category "B" are to be considered interim relief, and

Categories "C" and "D" addressed larger individual losses with respect to death or personal injury; loss of income, support, housing, or personal property; medical expenses; and costs of departure.¹⁰⁹ Category "C" is appropriate for losses of up to \$100,000, and Category "D" for losses over \$100,000. To recover, claimants must provide appropriate evidence of the circumstances and amount of the alleged loss.¹¹⁰

Ultimately, the Governing Council added two additional categories to the four individual categories:¹¹¹ "E" for corporate claims and "F" for government claims.

Guiding decisions in all categories was the Council's list of "Applicable Requirements." These requirements were generous toward Iraq's victims, compensating "death, personal injury, or other direct loss" as a result of: (1) "military operations or threat of military action by either side between" August 2, 1990, and March 2, 1991; (2) "departure from or inability to leave Iraq or Kuwait (or a decision not to return) during that period;" (3) actions taken by officials, employees, or agents of Iraq in connection with the invasion or occupation during the specified period; (4) "the breakdown of civil order in Kuwait or Iraq" at that time; or (5) "hostage-taking or other illegal detention."¹¹² With this expansive view of the compensable, a carefully wrought structure, and operating funds provided by the United Nations, the UNCC was ready to begin its work.

claims for additional relief may be submitted under Category "C" or other appropriate categories. *Id.*

Additionally, Category "A" and "B" payments may be made cumulatively, where more than one situation applies to a particular person, but no more than \$10,000 will be paid for death and no more than \$5000 for departure with respect to any one family (consisting of any person and his or her spouse, children, and parents). *Id.*

109. *Id.* For an extended discussion of the "C" claim process, see Christopher S. Gibson, *Mass Claims Processing: Techniques for Processing Over 400,000 Claims for Individual Loss at the United Nations Compensation Commission*, in THE UNITED NATIONS COMPENSATION COMMISSION, *supra* note 12, at 155, 167-84.

110. See Annex 2, *supra* note 90, at 1713. Evidence required is the reasonable minimum appropriate under the circumstances, and a lesser degree of evidence is ordinarily required for smaller claims, such as those less than \$20,000. *Id.*

111. See *Criteria for Additional Categories of Claims*, U.N. Compensation Comm'n, 3d Sess., 18th mtg., Annex, U.N. Doc. S/23765 (1992), reprinted in 31 I.L.M. 1045 (1992).

112. Annex 2, *supra* note 90, at 1713; see also Marion Leich, *Claims Against Iraq: United Nations Compensation Commission*, 86 AM. J. INT'L L. 113 (1992) (reciting claims criteria and discussing various Security Council resolutions through October 1991).

IV. THE COMPENSATION SYSTEM IN PRACTICE

Despite its careful design, the UNCC has had only limited success. To its credit, the Commission has elicited and processed millions of claims in its seven-year history. Regrettably, however, it has compensated relatively few of Iraq's victims.

A. 1991-93: Millions Filed, None Paid

From the outset, the structure of the UNCC and the decisions of its Governing Council were influenced greatly by two factors: the enormous number of potential claims and the likelihood that funds would never be sufficient to satisfy these claims fully.¹¹³ Despite these hurdles, the UNCC made substantial administrative progress in its first two years. From July 1991 through June 1992, the Governing Council issued a series of decisions that defined compensable losses, outlined the claims procedure, and specified qualifications for commissioners.¹¹⁴ In July 1992, the UNCC began accepting claims.

During its first year, the UNCC had worked hard to create simple procedures that would readily allow victims to file claims. Its success was immediately apparent: In the first seven months of the filing period, 380,000 claims were filed;¹¹⁵ a month later, that number had risen to 400,000.¹¹⁶ Two problems had arisen, however: as of February 1993, no commissioners had been appointed to process these claims, and, more significantly, Iraq refused to comply with the terms under which it would be allowed to resume oil sales.¹¹⁷ As President Clinton described the situation, "[T]he availability of funds to pay claims . . . depends upon Iraq's resumption of oil sales under conditions acceptable to the U.N.S.C. Iraq's failure to comply with the relevant aspects of U.N.S.C. resolutions and U.N.S.C.R. 687 has precluded the lifting

113. See David D. Caron, *Introductory Note, United Nations Compensation Commission: Report with Decisions of the Governing Council*, 31 I.L.M. 1009 (1992); see also Crook, *supra* note 12, at 146 (reviewing the development of the UNCC and its early decisions, with an emphasis on funding problems).

114. See Caron, *supra* note 113, at 1010-12.

115. See *U.N. Compensation Commission: 380,000 Claims Filed So Far*, 8 No. 2 MEALEY'S INT'L ARB. REP. 22 (1993) [hereinafter *380,000 Claims*].

116. See *\$264.3 Million Corp. Claim Filed with Compensation Commission*, 8 No. 3 MEALEY'S INT'L ARB. REP. 21 (1993). This included the UNCC's first corporate claim, filed by Turkey's Enka Construction for \$264.3 million. *Id.* Enka was in the process of constructing the world's seventh largest hydroelectric dam in Kurdistan when the Gulf War began. At the end of the war, the Kurds seized and sold tens of millions of dollars of Enka's equipment. *Id.*

117. See *380,000 Claims*, *supra* note 115, at 22.

of sanctions on the sale of Iraqi oil.”¹¹⁸ Although the first problem was rectified at the Governing Council’s March 1993 meeting, the second would become a definitive blight on the Council’s success.

Undeterred by the apparent lack of funds, victims continued to file claims. By August 1993, the UNCC had received approximately 920,000 claims.¹¹⁹ Although initially the UNCC had set a July 1993 filing deadline, the unstanched flood of claims persuaded the UNCC to extend the deadline until October 1, 1993.¹²⁰ The UNCC hoped to submit claims to commissioners the following December or January, with the hope that payments would begin during the second half of 1994.¹²¹

By the revised October deadline, claims totalled 1,019,373, with an asserted value of \$15 billion.¹²² Again, because of the volume of claims, the Governing Council granted a three-month extension to thirty countries filing “A,” “B,” and “C” claims.¹²³ By the end of that period, December 31, 1993, 2.3 million claims¹²⁴ had been filed.¹²⁵

118. *Status Report on Iraq’s Non-Compliance with U.N. Resolutions*, Apr. 5, 1993, U.S. DEP’T ST. DISPATCH 194, available in 1993 WL 2977363. President Clinton wrote to Congress that

[t]he Iraqi government. . . has for months maintained a full embargo against its northern provinces, in violation of U.N. Security Council Resolution 688, and has acted to distribute humanitarian supplies only to its supporters and to the military. It has also refused to utilize the opportunity under Resolutions 706 and 712 to sell up to \$1.6 billion in oil, proceeds from which could be used by Iraq to purchase [humanitarian] supplies for essential civilian needs.

Id.

119. *See Claims to U.N. Compensation Commission Hit 920,000*, 8 No. 8 MEALEY’S INT’L ARB. REP. 12 (1993) [hereinafter *Claims Hit 920,000*]. Most claims were on behalf of individuals; a majority were Class “A.” *Id.*

120. *Id.* At this time, the UNCC was preparing a special computer program to process the “A” claims and was resolving problems caused by some governments’ failure to follow correct claims procedures. For example, “A” claims were to be submitted on computer diskettes, but some governments had submitted them on paper. *Id.*

121. *Id.*

122. *See Claims to U.N. Compensation Commission Top One Million*, 8 No. 10 MEALEY’S INT’L ARB. REP. 10 (1993).

123. *Id.* The extension to January 1, 1994 applied only to countries that had already requested it. “D” claims were also due on January 1, 1994, with “E” and “F” claims due on April 1, 1994 and May 1, 1994, respectively. *Id.*

124. These 2.3 million claims totalled \$50 billion in damages, with total claims of \$100 billion expected. *See Jeffrey A. Jannuzzo, U.N. Clears Compensation for Gulf War Victims*, TIMES (London), Apr. 12, 1994, available in 1994 WL 9164007.

125. *See Compensation Commission: 2.3 Million Claims Filed*, 9 No. 1 MEALEY’S INT’L ARB. REP. 8 (1994) [hereinafter *2.3 Million Claims*]. Although the

B. 1993-95: *Embargo Continues, International Resolve Weakens*

With the filing periods ended for "A," "B," "C," and "D" claims, the commissioners lost no time beginning the next phase.¹²⁶ Commissioners who received claims in December 1993 had processed them by April 1994.¹²⁷ The commissioners' recommendations regarding the first batch of claims were approved in May,¹²⁸ and the first awards were paid in June.¹²⁹

Despite this impressive beginning, the UNCC made no more payments until October 1995.¹³⁰ It had run into an obstacle that its hard work and good intentions could not surmount: lack of money to pay claimants. This problem derived from two sources: first, Iraq's refusal to comply with its cease-fire obligations, which

filing deadlines had passed for "A," "B," "C," and "D" claims, claims continued to be filed. *See id.* By January, claims in each category were as follows: 850,000 "A" claims; 403,000 "B" claims; 230,000 "C" claims; 7000 "D" claims; 2000 "E" claims; and 20 "F" claims. *Id.* One of the "C" claims was filed by Egypt on behalf of 1.2 million displaced Egyptian workers. *Id.* The "Egyptian Workers' Claim," as it came to be known, is sometimes counted as one claim, as in Mealey's categorical breakdown, and sometimes counted as 1.2 million claims, as in Mealey's headline. *Id.*

126. One reporter observed: "It is 10 p.m. on a Sunday in Geneva. At a building out near the airport, the lights are still on. The staff of the United Nation's [sic] Gulf War claims commission is still at work. The overtime budget has been exhausted, but the staff are working late anyway. Their sense of urgency, even pleasure, resembles a political campaign rather than an international bureaucracy. People will be there at 1 o'clock in the morning." Jannuzzo, *supra* note 124.

127. *See id.* The UNCC set an internal deadline of 120 days within which it was to decide each submission. *Id.*

128. *See U.N. Commission Makes First Payments for Serious Injuries*, 9 No. 6 MEALEY'S INT'L ARB. REP. 11 (1994) [hereinafter *First Payments*]. At its May 26 meeting, the Governing Council approved 670 awards recommended in the commissioners' April 14 report. *Id.* The Council also approved the commissioners' recommendations that 307 claims be denied and 88 claims be transferred to Category "C." *Id.*

129. *See id.* The UNCC paid \$2,747,500 via electronic transfer to receiving agencies in 16 countries. Payments by country were as follows: Australia—\$2500; China—\$5000; Slovak Republic—\$2500; France—\$52,500; Iran—\$2500; Jordan—\$982,500; Kenya—\$2500; Kuwait—\$1,397,500; Mauritius—\$2500; Pakistan—\$22,500; Poland—\$10,000; Sri Lanka—\$110,000; Thailand—\$10,000; U.K.—\$107,500; U.S.—\$35,000; Yugoslavia—\$2500. *Id.*; *see also U.N. Compensates First Victims of Iraqi Invasion*, 40 No. 24 Arab. Press Serv. Diplomat Rec. (1994), available in 1994 WL 2226248 [hereinafter *First Victims*]. Beneficiaries were all Category "B" victims who had been wounded by Iraqi actions or had lost a close relative. Payments ranged from as much as \$2500 per individual to as much as \$10,000 per family. *See First Victims, supra.*

130. *See UNCC Approves Payment of Serious Injury Claims*, 10 No. 10 MEALEY'S INT'L ARB. REP. 15 (1995) [hereinafter *UNCC Approves Payment*]. On October 12, the Governing Council approved payment of \$8,252,500 to satisfy 2577 previously approved Category "B" claims.

precluded lifting the embargo; second, the refusal of all nations except the United States to loan money to the UNCC.

1. Iraq's Recalcitrance

As noted above,¹³¹ the U.N. Security Council in Resolution 661 had embargoed Iraq and frozen its extraterritorial assets in August 1990. Initially, this resolution was intended to pressure the Iraqis to withdraw from Kuwait. With Iraq's defeat in the Gulf War, Resolution 661 obtained ambitious new purposes: to force Iraq to comply with its cease-fire agreement to release hostages,¹³² to surrender its weapons of mass destruction,¹³³ to identify dangerous weaponry abandoned in Kuwait,¹³⁴ and to assume liability for losses resulting from the Gulf War.¹³⁵

In the immediate post-war jubilation over the allied forces' success, observers were optimistic that the embargo would fulfill this purpose.¹³⁶ Commentators opined Iraq could not function without oil revenues, and most of them believed Iraqi oil would soon be sold in the world market again. Under U.N. Security

131. See *supra* text accompanying note 16.

132. See *supra* text accompanying note 48.

133. See *supra* text accompanying notes 65, 70.

134. See *supra* text accompanying note 48.

135. See *supra* text accompanying notes 47, 71, 77.

136. Some observers were critical of the U.N. post-war treatment of Iraq, analogizing it with the Allies' treatment of Germany after World War One. See, e.g., Garmise, *supra* note 12, at 842-43. *Tough U.N. Vote*, *supra* note 60 ("The resolution places an unprecedented economic and military stranglehold on Iraq, prompting some critics to compare it with the draconian provisions of the Treaty of Versailles . . .").

Others, however, insisted the situations were not analogous. As Jannuzzo, an international lawyer who has practiced in the Middle East argued:

Though a parallel is often drawn with the German people's burdens after World War I, Iraq should be considered differently. The allies imposed obligations on the Germans that could be met only by taxing their labor. But Iraq has a huge pool of literally liquid assets under its deserts that can be garnished to pay the injured.

Garnishing oil reserves is morally different from taxing the labor of a nation; it is more closely analogous to seizing money in bank accounts.

Jeffrey A. Jannuzzo, *War Reparations Need Not Bleed Iraq's People Dry*, WALL ST. J., Mar. 12, 1991, at A18.

Jannuzzo advocated a system much like the one ultimately adopted. He suggested garnishing a percentage of oil revenues that would balance Iraq's need to rebuild with the needs of the injured. Specifically, Jannuzzo suggested garnishing approximately 50% of each shipment of oil reserves, because that figure approximated the percentage Iraq had been spending on its military in the past decade and would leave Iraq the same percentage of oil revenue historically available for civilian uses. *Id.*

Council Resolution 692,¹³⁷ these revenues would fund both Iraq's substantial domestic needs and the UNCC's damage awards.

Unfortunately for the success of the UNCC, the commentators and the Security Council had underestimated Saddam Hussein's determination¹³⁸ and Iraq's resultant position

137. See *supra* text accompanying notes 72-80.

138. The embargo might have been an effective strategy against a rational leader, but Hussein was not such a man. The founder of the CIA's center for analyzing the psychology of world leaders argued that Hussein "exhibits a well-documented syndrome known as malignant narcissism . . .," a syndrome that includes "overarching arrogance and ambition." Beyer, *supra* note 25 (citing Dr. Jerrold Post). One psychologist observed, "Saddam is not going to give up The No. 1 thing for him is to maintain his grand sense of self . . ." *Id.* (quoting Dr. Vanik Volkan, director of the Center for the Study of the Mind and Human Interaction at the University of Virginia Medical School).

Hussein's spending habits and legal decrees align with a diagnosis of malignant narcissism. When Hussein rose to power in 1979, Iraq was one of the Middle East's most prosperous economies; during the 1980s he plunged it into bankruptcy. Peter Furchman, *Robbin' Hood: If the World is at Last Rid of Saddam Hussein, Iraqi Will Be Among Chief Beneficiaries*, FORBES, Mar. 18, 1991, at 43. While the gross domestic product fell by 75% and Iraq became a net importer of food, Hussein spent more than \$200 billion on the military. *Id.* In addition, Hussein spent large sums celebrating himself:

[I]n the early 1980s, Saddam Hussein ordered all but the highest layer of the ruins [of Nebuchadnezzar's hanging gardens] covered over again [after the Germans and British had excavated them]. He built his own replica of the king's palace atop the old one, laying bricks engraved with his name alongside those with ancient inscriptions. Then he built a modern palace overlooking the site. In case anyone still missed the point, the title of a recent festival spelled it out: "Babylon: From Nebuchadnezzar to Saddam." . . .

Modern Iraq truly is the Kingdom of Saddam: from the cramped homes of Saddam City, to the spinning restaurant atop Saddam Tower, to exhibits at Saddam Center for the Arts. Saddam has raised up a universe of monuments to himself, from towering bronze statues to thousands of billboard portraits.

Mark Dennis, *Saddam's Nightmare*, NEWSWEEK, Mar. 16, 1998 at 40, 41.

In 1986, Hussein announced that the death penalty would be imposed on those who insulted him. *U.N. Investigator Says Iraq Holds Own People Hostage; Hussein Won't Sell Oil as Long as U.N. Insists on Monitoring Trade*, BALTIMORE SUN, Nov. 25, 1995, at 7A [hereinafter *U.N. Investigator*]. In 1994, he announced that amputations and brandings would be imposed for petty theft and desertion. *Id.*

Despite the destruction of his country's infrastructure and the suffering of his people, Hussein built 15 palaces in the five years following the war. Nicholas Burns, U.S. State Department Briefing (June 5, 1996), Fed. News Serv. Wash. Package, June 5, 1996, available in 1996 WL 5794299. When a reporter suggested at a State Department briefing that Hussein was "just a wimp" compared to other palace-builders, a spokesperson Burns replied, "He's not really a wimp. . . . [but] he's certainly evil." *Id.* (The palace-building may be more practical than it long appeared; recent commentators suggest the "palaces" are in fact factories for making biological weapons. See, e.g., Richard Haas, Interview with Katie Couric, *Today Show* (NBC television broadcast, Jan. 15, 1998).

regarding oil exportation. After six and a half years, and despite critical domestic needs,¹³⁹ Hussein has refused to comply with Security Council criteria;¹⁴⁰ thus, the embargo remains in effect. With minor exceptions, no oil has been legally sold¹⁴¹ and no oil revenues have accrued to the Compensation Fund.¹⁴²

In retrospect, those who doubted the effectiveness of nonviolent economic sanctions have been proven correct. As one advocate of military action noted before the war:

Those who say we should wait for sanctions to work are taking an enormous gamble. They are betting that the sanctions will be effective, that Hussein's response eventually will be reasonable or that he will be deposed, that the international coalition can hold together against the appeasers. The odds are not good. . . .¹⁴³

Similarly, the *Economist's* 1990 prognostication appears well taken: Expecting Iraq to pay war reparations was "perfectly just and wholly unrealistic."¹⁴⁴

2. Iraq's Frozen Assets and their Nominal Seizure

When it became clear that Iraq would not re-enter the oil market quickly and generate funds for the UNCC, the Security Council implemented a second plan through which it hoped to

139. See, e.g., *Turning the Screw: The Effect of Trade Sanctions on Iraqi Society*, MIDDLE E., May 1, 1995, at 6 [hereinafter *Turning the Screw*] (noting the humanitarian situation is "disastrous" while the embargo seems to have achieved little regarding Iraqi disarmament or recognition of Kuwait, and urging the Security Council "to reflect seriously on whether the price paid by ordinary people is not too high for what has been achieved").

140. See, e.g., Richard C. Reuben, *Model Tribunal Plagued by Cash Woes: Body Hearing Claims Against Iraq Ambitious but Underfunded*, 81 A.B.A. J., Feb. 1995, at 30; Letter from Pres. William J. Clinton to the Speaker of the House of Reps. & the Pres. pro tempore of the Senate, M2 Presswire, Jan. 5, 1996, available in 1996 WL 7890823; Letter from Pres. Bill Clinton to the Speaker of the House of Reps. & the Pres. pro tempore of the Senate, M2 Presswire, May 7, 1996, available in 1996 WL 10341847.

141. The United Nations never completely barred oil sales from Iraq to Jordan. See Conlon, *supra* note 16, at 109.

142. By mid-1993, even the commodities market had stopped reacting to periodic speculation that Iraqi oil sales might resume. *UN/Iraqi Oil Sales Talks to Resume Next Week*, 71 No. 126 PLATT'S OILGRAM PRICE REP. 1 (1993) ("It's just the same old song and dance," said a New York trader, adding that the market was weary of studying the protracted and detailed UN/Iraq dispute over terms for interim oil sales.).

143. Zuckerman, *supra* note 28.

144. *Is War Receding?*, ECONOMIST, Dec. 8, 1990, at 45 (Iraq-Kuwait Crisis, 1990). When the UNCC made its first payments in 1994, a press report noted without further comment: "The compensation fund draws its money from Iraqi capital abroad frozen under the U.N. embargo imposed at the end of the war." *First Victims*, *supra* note 129. The notion of garnishing oil revenues to pay these claims had faded from popular consciousness.

obtain funds: seizing Iraqi assets frozen abroad when Iraq invaded Kuwait. Billions of dollars were frozen in such accounts. Seizing them would not only generate funds for the UNCC, but would also prevent funds from reaching Iraq,¹⁴⁵ thus increasing pressure on that country to comply with the terms prerequisite to lifting the embargo.¹⁴⁶

This strategy seemed promising. Iraq had already approached Japan about obtaining assets frozen in Japanese banks,¹⁴⁷ and when the U.N. Security Council began to formalize its plan to seize the assets, Iraq signaled its discomfiture. Attempting to negotiate an alternative, Iraq proposed that the Security Council allow Iraq to sell \$4 billion worth of oil and give a portion to the UNCC.¹⁴⁸

The Council rejected this offer and adopted Resolution 778 in October 1992.¹⁴⁹ Resolution 778 enabled the United Nations to confiscate frozen Iraqi funds and deposit them in an escrow account authorized by Resolutions 706 and 712. Thirty percent of proceeds from oil paid for after August 5, 1990, and proceeds of oil belonging to Iraq would go to the Compensation Fund.¹⁵⁰

145. *Dunning Begins*, *supra* note 72. By one count, Iraq had had three to four billion dollars in foreign banks when the funds were frozen in August 1990. Most of those funds were in U.S. banks. *United Nations: Part of Iraq's Frozen Assets Appropriated*, Inter Press Serv. Oct. 2, 1992, available in 1992 WL 2488762 [hereinafter *Frozen Assets*]. Another source estimated the frozen assets at \$4-5 billion, with \$2 billion of that frozen in the United States and the United Kingdom and a substantial additional amount in Switzerland's Bank of International Settlements. DiMeglio, *supra* note 71, at 480 (recording Judge Brower's presentation, *International Law: On the Edge of Credibility in the Wake of Iraq's Invasion and Occupation of Kuwait*).

146. The United States led the effort to develop the asset-seizure plan that resulted in Resolution 778. Ronald J. Bettauer, *Establishment of the United Nations Compensation Commission: The U.S. Government Perspective*, in THE UNITED NATIONS COMPENSATION COMMISSION, *supra* note 12, at 29, 35. Additionally, the United States pledged to match all contributions into the escrow account up to \$200 million and transferred \$200 million in frozen Iraqi assets to a holding account at the New York Federal Reserve Bank for that purpose. *Id.*

147. Iraq's desire to reach these assets led it to ask Japan, in June 1991, to unfreeze \$140 million in oil payments blocked since the August invasion of Kuwait. Mangan, *supra* note 81.

148. *The Bill Comes Due*, TIME, Oct. 12, 1992, at 29. Iraq became unwilling to pursue this option when the United Nations said it would have to handle all the money such sales would earn. *Id.*

149. This resolution, sponsored by Britain, France, Russia, the United States, Hungary, and Japan, was approved 14-0, with China abstaining. *Frozen Assets*, *supra* note 145. Jeffrey Jannuzzo had advocated seizing those assets since the end of the war. See Jannuzzo, *supra* note 136.

150. See 380,000 Claims, *supra* note 115; see also *Frozen Assets*, *supra* note 145 (noting the United States considered the Resolution "a reasonable and proportionate response to Iraq's intransigence" and quoting U.S. Ambassador Edward Perkins as saying, "Iraq's refusal to accept resolutions 706 and 712 has

The Commission had obtained \$100 million from these funds by February 1993, with \$21 million going to the Compensation Fund to allow it to reimburse loans from the United Nations and cover its budget for the following year.¹⁵¹ Nevertheless, the billion dollars the Council hoped to seize never materialized, and by August it was clear the UNCC would glean only enough money to continue operating—not enough to pay any claims.¹⁵² As of January 1994, the UNCC's financial health had “not changed much,”¹⁵³ and an April 1995 report announced, “In contrast to the UNCC's obvious accomplishments in processing claims, the UN has made practically no progress in finding money with which to pay claimants.”¹⁵⁴

The source of this problem was pragmatic, not philosophical. While nominally supporting the seizure strategy of the United Nations, most countries holding Iraqi assets preferred to continue doing so and to pay claims being adjudicated in their domestic courts.¹⁵⁵ Although the frozen funds were to be repaid when Iraq

prevented its own population from receiving humanitarian relief. . . [We] believe that the Security Council was right in waiting no longer for Iraq to implement these resolutions”; also noting China viewed the measure as extraordinary and unnecessary, considering Iraq's willingness to negotiate, and quoting Chinese Ambassador Li Daoyu as stating that “we should also like to point out that the seizing of a country's frozen assets abroad is a matter that concerns the sovereignty of that country and involves complicated legal implications.”).

151. See *380,000 Claims*, *supra* note 115. The UNCC's budget included staffing and the purchase of computer equipment. See also Townsend *supra* note 42, at 1013, n.289 (citing Ma Xiaolin, *Compensation Troublesome Issue Left Over by Gulf War*, Xinhua News Agency, July 28, 1995, available in LEXIS, News Library, WIRES File) (noting the UNCC's 1996 budget was \$22.9 million, an 18% reduction from its 1995 budget); *UNCC Beginning to Receive Proceeds from Iraqi Oil Sales*, 12 No. 1 MEALEY'S INT'L ARB. REP. 16 (1997) (noting the annual UNCC budget is between \$20-25 million). By 1997, the annual budget had risen again, to \$30 million. *Future Award Payments from UNCC Compensation Fund are in Doubt*, 12 No. 7 MEALEY'S INT'L ARB. REP. 20 (1997).

152. See *Claims Hit 920,000*, *supra* note 119.

153. See *2.3 Million Claims*, *supra* note 125.

154. *U.N. Compensation Commission Approves Awards, Tackles Difficult Claims*, 6 WORLD ARB. & MEDIATION REP. 74, 75 (1995) [hereinafter *Difficult Claims*].

155. Many such claims were filed around the world. For example, in the United States, the Treasury Department had registered 1000 U.S. claims against Iraq by May 1991. *Dunning Begins*, *supra* note 72. One year later, that number had risen to 1400 claims totalling “billions of dollars’ (the Treasury Department [would] not be more specific).” DiMeglio, *supra* note 71, at 488 (quoting Daniel B. Magraw, Associate General Counsel for International Activities at the U.S. Environmental Protection Agency).

These claims were making their way through civil courts as the UNCC continued its work. In the most famous U.S. case, Consarc Corporation, a New Jersey manufacturer, sued Iraq for fraud and breach of contract. In this case, Iraq had ordered furnaces, stating they would be used to make artificial limbs; they were actually intended to make nuclear weapons and missiles. When the

began selling oil, Iraq's continued unwillingness to re-enter the oil market worried these countries. They did not want to disadvantage their own citizens in favor of claimants chosen by the United Nations,¹⁵⁶ and by 1995 only the United States had loaned Iraqi assets to the UNCC.¹⁵⁷

This lack of support posed a continuing problem for the UNCC—one that required alternative solutions to be developed in the face of an increasingly fragmented and unsupportive international community.

3. Political Resolve Weakens

By May 1994, it was clear that neither imminent oil sales nor the seizure of frozen assets would solve the UNCC's funding problem.¹⁵⁸ U.N. Secretary-General Boutros Boutros-Ghali proposed a third solution. Boutros-Ghali observed that Iraq had exported a substantial volume of oil just before the Security Council imposed sanctions, and that payment would not have been completed when the sanctions took effect on August 6, 1990.

intended use was discovered by U.S. authorities, President Bush stopped shipment of the furnaces. DiMeglio, *supra* note 71, at 482 (quoting Brower).

In that case, Consarc was awarded \$64.1 million in damages. *Id.* The Treasury Department refused to release funds to pay this award, stating, "We prefer to freeze, not seize," *Dunning Begins, supra* note 72. The government moved to have this judgment vacated. DiMeglio, *supra* note 71, at 482. The judge did not vacate the judgment, but declined to decide whether Consarc could recover the judgment from funds frozen at the Bank of New York. *Id.* at 482 (quoting Brower), at 488 (quoting Magraw). Similarly, in *First City Texas-Houston v. Rafidain Bank*, the judgment provided that there could be no attachment without further action by the court. *Id.* at 488.

In contrast, the United Kingdom has begun distributing Iraqi funds to pay U.K. judgments on a first-come, first-serve basis. *Id.*

156. *Dunning Begins, supra* note 72. The U.S. contribution of \$92 million was the only substantial exception. *See also* Jannuzzo, *supra* note 124 (noting that countries holding Iraqi money have declined to loan it to the United Nations, and quoting Ambassador Carlos Alzamora, Executive Secretary of the UNCC, as saying: "We trust that the governments holding the funds to which the compensation fund is entitled will allow the commission to honour on time its first commitments to claimants all over the world.").

157. *Difficult Claims, supra* note 154, at 75. The United States loaned the United Nations \$200 million in Iraqi assets, from which the UNCC paid \$2.7 million in awards. *Id.* Most governments had refused to comply or had failed to respond to the voluntary U.N. resolution calling for the release of Iraqi assets. *Id.*; *see also* Townsend, *supra* note 42, at 1023, n.357 (noting that 62 countries had responded to the Secretary-General's request by April 30, 1993, 58 of which denied having frozen Iraqi assets).

158. Although the UNCC anticipated being able to pay \$4 million in claims in May 1994, it was still short more than \$150 million of the \$200 million it hoped to award the following fall. Patrick Crow, *Tracking Iraq's Oil Money*, OIL & GAS J., May 23, 1994, at 33.

Boutros-Ghali suggested that the oil industry could locate the hundreds of millions of dollars involved.¹⁵⁹ This plan, too, failed to generate funds, and that failure was accompanied by a disturbing trend: international resolve to maintain the embargo seemed to be weakening.

More than half the fifteen countries on the Security Council had indicated they thought Iraq had taken actions that would result in the lifting of the embargo.¹⁶⁰ Russia and France argued that Hussein had made progress and that lifting the embargo would encourage further reform.¹⁶¹ Furthermore, Turkey requested it be allowed to sell Iraqi oil trapped in a Turkish pipeline and to pay the Iraqis with food and medical supplies.¹⁶²

It became increasingly clear that, as the immediate threat to Kuwait had passed, few countries would champion international restitution at the expense of their own citizens whose claims could be paid from frozen assets under those countries' control. Although the United States remained supportive of the UNCC, it too began considering how to satisfy domestic claims. At the request of the Clinton Administration, legislation was introduced in the Senate and the House to provide a procedure for liquidating

159. *Id.*

160. *Id.* Wavering resolve had also been a problem immediately before the Gulf War. The British, like the Americans, advocated strict adherence to the fall 1990 sanctions. See *Back to the Bulldog Stuff: Britain's Disproportionate Contribution to the Allied Forces in the Gulf is a Reminder of Much that Sets the Country Apart from its European Neighbors*, *ECONOMIST*, Jan. 19, 1991, at 51; *Into the Breach*, *ECONOMIST*, Jan. 19, 1991, at 52 (recounting the House of Commons debate on the Iraq-Kuwait situation). France, Italy, Spain, Germany, Greece, and the Arab alliance seemed less committed to the anti-Iraq coalition. Michael S. Serrill, *Closing Ranks Behind the Yanks: When the Bombs Started Flying, the British, French, and Italians were there*, *TIME*, Jan. 28, 1991, at 67.

161. Serrill, *supra* note 160; see also Beyer, *supra* note 25. France's questionable commitment to U.N. efforts against Iraq had surfaced in 1990. Less than two months after the U.N. embargo was imposed, French President Francois Mitterrand suggested offering Hussein a face-saving resolution, stating that if Iraq were to promise withdrawal from Kuwait, "everything would be possible. . . ." Beyer, *supra* note 25. One U.S. official was astounded at Mitterrand's comments, which contradicted the U.S. position that Iraq must leave Kuwait without preconditions. *Id.*

Then, in January 1991, as allied forces prepared to attack Iraq, Mitterrand proposed to Iraq another compromise, which would protect French interests in the Arab world. Serrill, *supra* note 160. Mitterrand's continued pursuit of a separate peace plan irked the United States and Britain, but ultimately it mattered little, as Iraq rejected it. *Id.*

As soon as the war ended, France voiced self-interested concern over "who would be paid first, Iraq's pre-war creditors or those damaged by the war." *Peacefire*, *supra* note 49. It was soon proposed that pre-war creditors should be paid from oil sales and war damage claimants from Iraq's frozen assets. *Id.*

162. Crow, *supra* note 158.

Iraq's assets in the United States and allocating those assets among domestic claimants.¹⁶³

This legislation did not conflict with the U.N. claims process as originally envisioned. The original U.N. process assumed funding would come from Iraqi oil sales and did not involve seizing frozen assets. As noted, however, oil revenues had not materialized, and the UNCC was in fact dependent on the loans of frozen assets it had requested governments to make. By pursuing legislation to reallocate these assets, even if at some future date, the Clinton Administration signaled its frustration with the claims process and with the international community's refusal to loan frozen assets as the United States had.¹⁶⁴

163. See, e.g., *Iraq Claims Legislation: Hearings on H.R. 3221 & S. 1401 Before the Int'l Econ. Policy, Trade, Oceans, and Envtl. Subcomm. of the Senate Foreign Relations Comm.*, Fed. News Serv. Wash. Package, Sept. 21, 1994, available in 1994 WL 8371276. The Clinton plan, embodied in a House-passed bill, provided that the U.S. government had first priority in recovering a portion of its losses; Gulf War veterans had second priority; and U.S. businesses and individuals had third priority. Under this plan, no claimant would be fully reimbursed, as only \$1 billion in frozen assets existed to pay more than \$3 billion in claims. *Id.*

164. This relatively mild message, however, did not satisfy U.S. politicians who wanted domestic claims satisfied even if this undermined the international claims system. Senatorial discontent was evident from the first subcommittee hearing on the Clinton legislation. See *id.*

Senator Paul Sarbanes opened that hearing by announcing, "[I]t's imperative that a fair and workable system be devised for adjudicating claims and compensating claimants." *Id.* Rather than allowing testimony from the scheduled speakers, Senator Sarbanes yielded the floor to Senator Jesse Helms, whose remarks embodied hostile U.S. sentiment directed toward the U.N. efforts:

The committee, represented by Senator Sarbanes and me on this occasion, is meeting to try to gain an understanding as to why the administration has moved forward on a policy that by its own admission will not provide 100 percent reimbursements to the U.S. government, to U.S. businesses and to the U.S. veterans of the Persian civil war. . . , and, to put it bluntly, why the administration is unfairly competing against the veterans of America who served in the Gulf War and against U.S. businesses, especially when the United States government, unlike the veterans and the business people, . . . has the capability to collect 100 percent on Iraqi debts in a variety of ways from now until eternity. . . .

Saddam Hussein owes us 100 cents on the dollar, not less, and we should play into his hands by any legislation that would provide otherwise. I'm going to do the best I can . . . to prevent the U.S. veterans and U.S. business people and the U.S. taxpayers from being shortchanged. And if President Clinton wants to get tough with a demonstrable reprobate, Saddam Hussein is his man.

Id.

4. Business Pressures Mount

By the end of 1994, waning political support had become a disturbing and unrelenting influence on the UNCC's progress. Two other factors added to its distress: first, Saddam Hussein's indomitability, which had affected the UNCC since its inception, and second, the workings of the world's business community, which were a growing concern.

As discussed, Compensation Fund revenues were dependent on a series of events: Iraq must comply with its cease-fire agreements, re-enter the world oil market, and generate cash. Four years after the war, this process had not begun, and Hussein gave no indication that it soon would.¹⁶⁵ Not only did Hussein refuse to disarm, but he was also smuggling oil onto the world market, in defiance of the embargo.¹⁶⁶

165. As one report noted, "A crushing military defeat . . . and protracted sanctions have produced no apparent reverses to [Hussein's] survivability." *Dealing with Saddam*, MIDDLE E., May 1, 1995, at 5.

166. *Kuwait to Sell Intercepted Iraqi Fuel*, 41 No. 20 Arab Press Serv. Diplomat Rec. (1994), available in 1994 WL 2796138. In October 1994, the U.S. Navy intercepted a Honduran tanker loaded with 3162 tons of Iraqi fuel bound for the international black market. The United States diverted the tanker to Kuwait, which, with U.N. approval, sold the fuel and contributed the proceeds to the Compensation Fund.

Despite this incident and reports that Iraqi oil was flowing again, Iraq insisted it was not defying the embargo. Iraq's oil minister, Safa Hadi Jawad, dismissed allegations that Iraq was transporting oil in road tankers to neighboring countries as "propaganda and fabrication by the Americans and Britons." Peter Feuilherade, *Opening Up the Oilfields*, MIDDLE E., May 1, 1995, at 15.

The White House later reported that 14 sanction-defying vessels carrying cargoes worth more than \$1 million had been diverted to various Gulf ports between October 1994 and October 1995. Letter from Pres. William J. Clinton to the Speaker of the House of Reps. & the Pres. pro tempore of the Senate, M2 Presswire, Oct. 25, 1995, available in 1995 WL 10869598; see also Townsend, *supra* note 42, at 1011, n.278; *UNCC Approves Payment*, *supra* note 130, at 15 (suggesting Iraq had been smuggling oil since 1991).

Smuggling activity continued to thrive during 1997. In March of that year, President Clinton informed Congress that the three previous months had seen "the highest volume of smuggler traffic . . . since maritime sanctions enforcement began." Letter from Pres. William J. Clinton to the Speaker of the House of Reps. & the Pres. pro tempore of the Senate, U.S. Newswire, Mar. 7, 1997, available in 1997 WL 5711279. Smugglers exported between 40,000 and 65,000 metric tons of Iraqi oil through the Gulf each month. *Id.* By May, this volume had risen to over 70,000 metric tons per month. Letter from Pres. William J. Clinton to the Speaker of the House of Reps. & the Pres. pro tempore of the Senate, U.S. Newswire, May 8, 1997, available in 1997 WL 5712698. By July, it had increased to 81,000 metric tons per month, despite interception efforts by the United States, the Netherlands, Canada, New Zealand, and the United Kingdom. Letter from Pres. William J. Clinton to the Speaker of the House of Reps. & the Pres. pro

Observing the ineffectiveness of the United Nations and Hussein's intractable spirit, the international business community began operating as though Iraq would soon re-enter the world market.¹⁶⁷ The early months of 1995 saw "a shift in both the rumour mill, and in Western nations' open policy" regarding contact with Hussein's regime.¹⁶⁸

In January, France announced it would open an interest section in Baghdad, posting diplomatic personnel there.¹⁶⁹ Although Britain and the United States expressed disapproval of this decision, asserting it was tantamount to telling Hussein that sanctions would soon be removed, the United States was already operating such a section through the Polish embassy, and British interests had been served by Russia since 1991.¹⁷⁰

Furthermore, observers reported a "steady stream of briefcase-toting businessmen" making contact with Iraq.¹⁷¹ British¹⁷² and Italian trade delegations¹⁷³ visited Iraq in early 1991, as did a group of Americans without State Department approval.¹⁷⁴ French and Russian companies signed contracts for

tempore of the Senate, M2 Presswire, July 14, 1997, available in 1997 WL 11938899.

Since July 1997, the volume of smuggled Iraqi oil has doubled, reaching 150,000 metric tons per month in September 1997, Letter from Pres. William J. Clinton to the Speaker of the House of Reps. & the Pres. pro tempore of the Senate, U.S. Newswire, Sept. 23, 1997, available in 1997 WL 13913075, and 180,000 metric tons in December, Letter from Pres. William J. Clinton to the Speaker of the House of Reps. & the President pro tempore of the Senate, M2 Presswire, Dec. 3, 1997, available in 1997 WL 16293997. For a description of Iraq's oil-smuggling mechanisms and an appraisal of the political situation surrounding this activity, see Dennis, *supra* note 138, at 40 (reporting Hussein makes approximately \$10 million per month from oil-smuggling, but that Iran and the United Arab Emirates may soon stop their involvement in Iraqi smuggling).

167. See, e.g., *Dealing with Saddam*, *supra* note 165 (discussing the "eagerness of Western and Russian partners to resume trade" and observing "if there is money to be made, a lot of people do not want to rock the boat").

168. Kirk Albrecht, *Passing Through on Business*, MIDDLE E., Mar. 1, 1995, at 28. Albrecht reported that most of the business travelers probably represented relatively small companies. Larger firms, with contracts underway in the Gulf or Saudi Arabia, would not jeopardize those deals for speculative Iraqi business. *Id.* Small firms that had supplied Iraq before the war, however, had less to lose. Contractors, pharmaceutical firms, and oil companies may have had the most to gain in renewing old contacts or forging new ones. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. Alan George, *What to Do with Saddam?*, MIDDLE E., Mar. 1, 1995, at 25.

173. Albrecht, *supra* note 168.

174. *Id.*

oilfield development work.¹⁷⁵ German businessmen complained about having to refrain from doing business with Iraq while others were making lucrative deals.¹⁷⁶

In March 1991, Baghdad hosted an oil conference at which it promised lucrative contracts to companies willing to help it develop new oil fields after sanctions were lifted.¹⁷⁷ The oil company executives who attended came from twenty-nine countries, including Australia, Britain, Canada, Finland, Germany, Greece, Ireland, South Korea, Spain, Turkey, and the United Arab Emirates.¹⁷⁸ Conference attendees did not hide their enthusiasm about the \$30 billion project proposed by Iraq. As a Finnish oil executive told Reuters, "The potential here must be the best in the world for increased production and exploration. I am here to find out what opportunities there are."¹⁷⁹

International political leaders became increasingly aware that the business community was reintegrating Iraq whether or not diplomats approved. France, Russia, and China pressured the Security Council to lift sanctions against Iraq.¹⁸⁰ Britain still supported the U.S. position that the resolutions should be followed to the letter but began urging the United States to prepare for the day when the Security Council would lift sanctions despite a lack of compliance.¹⁸¹

175. George, *supra* note 172; see also Feuilherade, *supra* note 166 (reporting that French companies Total and Elf Aquitaine had made tentative deals to develop giant oil fields in Iraq, and that Total's multi-billion dollar deal would provide it with crude oil for 20 years). These contracts continue to influence Russian and French attitudes toward Iraq. See Alan Cooperman et al., *Timeout in the Gulf: Saddam and His Foes Live to Fight Another Day*, U.S. NEWS & WORLD REP., Dec. 1, 1997, 42 ("France and Russia want sanctions to be lifted so Iraq can sell enough oil to repay old debts, more than \$8 billion to Moscow and nearly \$6 billion to Paris. Russian and French firms have also negotiated huge oil deals that will go ahead as soon as the sanctions end."); David Gergen, *A Hollow U.S. 'Victory' After Iraq Crisis and Congressional Failures*, U.S. NEWS & WORLD REP., Dec. 1, 1997, at 98 (arguing the Russians "desperately want to lift the U.N. sanctions against Baghdad so they can collect on some \$10 billion in Iraqi debts and sign lucrative oil contracts. Their hunger for money and clout runs counter to our own interests in security.").

176. Albrecht, *supra* note 168.

177. Feuilherade, *supra* note 166.

178. The Clinton Administration asked U.S. oil companies to abstain from the conference, and all did. A U.S. consultant attended, however, and he commented, "We are potentially losing out to our competitors. It is too late for the [U.S.]. This is something that we should worry about." *Id.*

179. *Id.*; see also *Dealing with Saddam*, *supra* note 165 ("[B]usiness contracts are being undertaken in a concerted manner by Britain, France and Italy. Others are not going to be left far behind.").

180. George, *supra* note 172.

181. *Id.* Iraq still maintained its ballistic missile and nonconventional weapons, in defiance of Resolution 687. Additionally, it continued to detain 600

5. Iraq's Weaponry Proves Decisive

Indeed, the business world seemed to have joined forces with Hussein so decisively that the sanctions seemed doomed. Theoretically, this might have been good news for the UNCC: if Iraq sold oil, the UNCC was to receive thirty percent of the revenues. In reality, however, the possibility of receiving these funds was threatened, not bolstered, by this trend.

If Hussein convinced the United Nations to lift the embargo despite Iraq's noncompliance, he likely would make a subsequent demand: that the United Nations not garnish the proceeds.¹⁸² With the corporate world increasingly hungry for lucrative Iraqi contracts, ungarnished sales were no longer unthinkable.

The first step down this path was lifting the embargo, and France and Russia were blazing the trail. Those countries prepared to present a resolution to the Security Council calling for an immediate suspension of the embargo.¹⁸³ By March 1995, the resolution's success seemed assured. Then, in April, the United Nations Special Commission (UNSCOM) investigating Iraq's weapons of mass destruction issued a report that dramatically altered diplomatic intent.

Iraq and its new-found business allies had eagerly awaited this report. UNSCOM had overseen the destruction of Iraq's nonconventional weaponry and established a monitoring system to prevent their reactivation.¹⁸⁴ Observers believed UNSCOM's report would state that the commission had done all it could and that Iraq was in substantial compliance with Resolution 687 despite Iraq's hampering of UNSCOM.¹⁸⁵

Instead, UNSCOM reported that, although Iraq's nuclear and chemical weapons programs had been "curtailed[,] . . . serious doubts remained about the country's biological warfare capability."¹⁸⁶ Rolf Ekeus, the Swedish diplomat who headed

Kuwaiti prisoners, as well as Kuwaiti property, and to oppress its own civilian population while refusing to compensate victims. *Id.*

182. Indeed, this is what happened when the United Nations finally offered to partially lift sanctions in 1995. Hussein first demanded total lifting of sanctions, then insisted Iraq should not have to contribute to the Compensation Fund. *See infra* text accompanying notes 211-21, 230-35.

183. *No Lifting of Sanctions*, MIDDLE E., May 1, 1995, at 8 [hereinafter *No Lifting*].

184. George, *supra* note 172.

185. *Id.*

186. *No Lifting*, *supra* note 183; *see also* Alan George, *British Contribution to Saddam's Germ Warfare*, MIDDLE E., Nov. 1, 1995, at 16 (describing Iraqi research on hemorrhagic conjunctivitis, lethal viral diarrhea, camel pox, and other biological weapons, as well as delivery methods including warplanes with modified "drop tanks" and gangrene-inducing shrapnel).

UNSCOM at the time, expressed such dramatic reservations about Iraq's compliance that France and Russia reversed their position against an immediate suspension of the embargo.¹⁸⁷

The United States seized the opportunity to revive support for the embargo, warning the U.N. monitoring program could be shut down within weeks of any unconditional lifting of sanctions.¹⁸⁸ The State Department estimated that, without sanctions and monitoring, Iraq's ballistic missile projects would be operational within one year, its chemical weapons within two, and its atomic bomb within five.¹⁸⁹

C. 1995-97: Stalemate

In its seven-year history, the UNCC has processed 2.4 million claims, for a total of six billion dollars. It has paid claimants, however, only \$726 million, leaving over five billion processed claims unpaid and \$238 billion in claims unprocessed. Iraq's refusal to re-enter the oil market has created an obstacle to paying these claims which remains insuperable. The "Oil-for-Food" Deal presented a partial solution to the UNCC's financial problems, but it ultimately failed to resolve the crisis.

1. Processing Continues, Payment Stalls

By late 1994, the UNCC's inability to fund damage awards, either through garnishing Iraqi oil revenues or seizing frozen assets, had become clear. Nevertheless, both claimants and the UNCC persevered. By November of that year, approximately 2.6 million claims had been filed, with an asserted value of \$162 billion.¹⁹⁰ The UNCC doggedly began to process them, and, by

187. *No Lifting*, *supra* note 183; see also *Turning the Screw*, *supra* note 139 (quoting the UNSCOM report). Ekeus headed UNSCOM until last summer and is now Sweden's ambassador to the United States. Bruce W. Nelan et al., *The Palace of Mirrors: Saddam Hussein Tries a Few More Tricks to Get Out of His Sanctions Box, but the U.S. Can't Escape Its Policy Quandary*, TIME, Dec. 8, 1997, at 68.

188. *No Lifting*, *supra* note 183.

189. *Id.*

190. *U.N. Commission Approves Payment of Departure Claims*, 9 No. 11 MEALEY'S INT'L ARB. REP. 12 (1994) [hereinafter *Commission Approves Payment*]. "The following number of claims had been filed in each category: 900,000 "A" claims; 5600 "B" claims; 330,000 "C" claims; 9350 "D" claims; 7200 "E" claims; 200 "F" claims. Additionally, Egypt had filed a consolidated claim under Category C on behalf of 1.24 million Egyptians working in Iraq. See also *Serious Injury Claims Relating to Kuwait Invasion Approved*, 10 No. 1 MEALEY'S INT'L ARB. REP. 16 (1995) [hereinafter *Injury Claims Approved*] (providing a revised count of claims as of November 1, 1994).

July 1996, it had approved 2.2 million claims worth \$3.7 billion.¹⁹¹

The UNCC's most substantial progress concerned "A," "B," and "C" claims. The commissioners and the Governing Council began processing Category "B" claims first, having deemed them the most urgent. Between June 1994 and October 1995, the Council processed all the "B" claims,¹⁹² awarding a total of \$13.5 million to 4000 claimants.¹⁹³ Between October 1994 and October 1996, the Governing Council processed all the "A" claims. In a series of six decisions, the Council awarded \$3.2 billion to more than 922,000 claimants.¹⁹⁴ In December 1994, the Council

191. *U.N. Commission Approv[e]s More Gulf War Compensations*, Xinhua Eng. Newswire, July 23, 1996, available in 1996 WL 11046884 [hereinafter *More Compensations*]; *UNCC Governing Council Approves 64,000 Individual Loss Claims Payments*, 11 No. 8 MEALEY'S INT'L ARB. REP. 24 (1996) [hereinafter *64,000 Payments*]; see also Bhushan Bahree, *Iraq Stakes Claim to Funds Marked for Compensation*, ASIAN WALL ST. J., Aug. 1, 1996, at A8.

192. In May 1994, at its 43d meeting, the Council approved the first installment of "B" claims, 670 awards totalling \$2,700,000. See *First Payments*, *supra* note 128. The full text of this decision is available as Mealey's Doc. 05-940620-010.

In December 1994, the Council approved the second installment, 1751 awards, totalling \$5,265,000. *Injury Claims Approved*, *supra* note 190, at 16. For a full text of this decision, see Decision 26 in section H of Mealey's Doc. 05-950130-109; see also Available: *U.N.C.C. Reports on Category 'B' and Category 'C' Claims*, 10 No. 2 MEALEY'S INT'L ARB. REP. 15 (1995) (summarizing payment decisions and providing information about obtaining full text).

In March 1995, the Council approved 810 awards totalling \$2,900,000. *Difficult Claims*, *supra* note 155, at 75; see also Available: *U.N.C.C. Reports on Category 'A' and 'B' Claims*, 10 No. 5 MEALEY'S INT'L ARB. REP. 19 (1995) (stating \$2,912,500 was approved on behalf of 811 claimants).

In October 1995, the Council approved 719 awards totalling \$2,450,000. *U.N.C.C.: Final Round of Serious Injury Claims to be Paid*, 10 No. 12 MEALEY'S INT'L ARB. REP. 13 (1995) [hereinafter *Final Round*].

193. *Compensation Fund Completes Claims for Gulf War Injuries*, Assoc. Press, Dec. 13, 1995, available in 1995 WL 4418996 [hereinafter *Compensation Fund Completes Claims*].

194. *Future of U.N.C.C.*, *supra* note 13. In October 1994, at its 46th meeting in Geneva, the Governing Council approved payment of the first "A" claims. *Commission Approves Payment*, *supra* note 190. The Council awarded \$185.5 million to 54,000 claimants. The full text of the decision and the commissioners' report on which it was based is reprinted in section D of Mealey's Doc. 05-941128-104.

In March 1995, the Governing Council approved payment of the second group of "A" claims, awarding \$626,986,500 to 162,720 claimants. *More Departure Claims Approved by U.N.C.C.*, 10 No. 4 MEALEY'S INT'L ARB. REP. 12 (1995) [hereinafter *More Claims Approved*].

In May 1995, at its 53d meeting, the Council approved payment of the third group, awarding \$517,650,500 to 132,080 claimants. This approval is recorded in decision 29, reprinted in section I of Mealey's Doc. 05-950828-111. *U.N.C.C. Update: More Departure Claims Approved*, 10 No. 8 MEALEY'S INT'L ARB. REP. 16 (1995).

began processing "C" claims, and, by December 1996, had issued decisions on four installments.¹⁹⁵ These decisions encompassed 200,000 of the 420,000 "C" claims, and the UNCC anticipates that all "C" claims will be processed by 1998.¹⁹⁶

In October 1995, the Council approved payment of the fourth group, awarding \$771,531,000 to 217,513 claimants. *Approves Payment of Serious Injury Claims*, 10 No. 10 MEALEY'S INT'L ARB. REP. 15 (1995); see also *Available: U.N.C.C. Report on Category 'A' Claims*, 10 No. 11 MEALEY'S INT'L ARB. REP. 18 (1995) (confirming the previous report on the fourth installment of "A" claims and informing readers how to acquire the full text of commissioners' report and recommendations).

In December 1995, the Council approved payment of the fifth group, awarding \$784,000,000 to 217,000 claimants. *Final Round*, *supra* note 192, at 13.

In October 1996, the Council approved payment of the sixth group, awarding \$320,000,000 to 80,500 claimants. *Future of U.N.C.C.*, *supra* note 13.

195. In December 1994, the Council approved the first installment of "C" claims, numbering 2863. These awards totalled \$51,053,616. *Injury Claims Approved*, *supra* note 190. For a full text of this decision, see Decision 25 in section H of Mealey's Document 05-950130-109.

In May 1996, the Council approved the second installment of 62,000 claims, totalling more than \$425 million. *U.N.C.C. Update: More than 62,000 Individual Loss Claims Payments Approved*, 11 No. 6 MEALEY'S INT'L ARB. REP. 17 (1996) [hereinafter *62,000 Claims Approved*]; see also *Iraqi Victims Get \$425 Million*, ROCKY MTN. NEWS, June 2, 1996, at 56A; *More Gulf War Claims to be Paid*, Xinhua Eng. Newswire, May 30, 1996, available in 1996 WL 10249507; *More Claims Against Iraq*, MONTREAL GAZETTE, May 30, 1996, at B1, available in 1996 WL 4187538.

In July 1996, the Council approved the third installment of 64,000 claims, totalling more than \$323 million. *More Compensations*, *supra* note 191; *64,000 Payments*, *supra* note 191; see also Thalif Deen, *U.N. Prepares to Pay Off Gulf War Victims*, Inter Press Serv., July 25, 1996, available in 1996 WL 10768382.

In December 1996, the Council approved the fourth installment of 70,000 claims, totalling \$637 million. *U.N.C.C. Governing Council Approves \$610 Million Award to Kuwait Oil Co.*, 11 No. 12 MEALEY'S INT'L ARB. REP. 14 (1996) [hereinafter *Kuwait Oil Co.*].

196. *Kuwait Oil Co.*, *supra* note 195. Progress with "D," "E," and "F" claims was less substantial. Not until December 1995 did the Governing Council approve salaries for the commissioners who would review those claims. *Extra Time Allowed for Large, Complex U.N.C.C. Claims*, 11 No. 1 MEALEY'S INT'L ARB. REP. 13 (1996). No commissioners had been appointed as of June 1996, though administrative processing of claims had begun. *62,000 Claims Approved*, *supra* note 195; see also Bhushan Bahree, *Iraq Stakes Claim to Funds Marked for Compensation*, ASIAN WALL ST. J., Aug. 1, 1996, at 22, available in 1996 WL-WSJA 10219546 [hereinafter Bahree, *Iraq Stakes Claim to Funds Marked for Compensation*] (stating the UNCC has turned to the high-value corporate and government claims including those of 150 U.S. companies claiming losses of \$2 billion and 300 German companies claiming losses of \$3 billion); Bhushan Bahree, *Iraq to Seek Some Oil Proceeds Earmarked for War Reparations*, WALL ST. J., Aug. 1, 1996, at A8 [hereinafter Bahree, *Iraq to Seek Some Oil Proceeds Earmarked for War Reparations*] (asserting that companies from Japan, Russia, the Netherlands, Britain, Jordan, and Egypt all have large claims against Iraq; noting Kuwait's claim is largest, exceeding \$100 billion).

In October 1996, the chief of legal services for the UNCC indicated that no decisions would be reached before mid-1997, and that none were likely before the end of 1997. *Future of U.N.C.C.*, *supra* note 13 (quoting Dr. Norbert Whler).

Thus, in five years, the UNCC processed over two million awards totaling almost \$4 billion. In contrast to this success in approving awards, however, lies the UNCC's failure in actually funding them. The UNCC's initial payment of B-claims, made in June 1994, was a harbinger of problems to come. Although the June payment was made promptly after the claims were approved,¹⁹⁷ it was made with borrowed money.¹⁹⁸ Furthermore, this \$2.7 million payment was more symbolic than substantive, representing less than .001% of the value of claims alleged.¹⁹⁹ Most disturbingly, it was the only installment paid during the UNCC's first four years of operation.²⁰⁰ Eventually, the UNCC paid all 4000 B-claimants,²⁰¹ and most A- and C-claimants have received compensation.²⁰² To date, however, most claims remain unpaid.

Despite this prediction, the Governing Council did approve a \$610 million award for a Category "E" claim filed by the Kuwait Oil Company (KOC) for the costs of extinguishing oil well fires left burning when Iraqi forces withdrew from Kuwait. KOC claims an additional \$337 million, which is still pending. *Kuwait Oil Co.*, *supra* note 195. This claim, however, was not handled by the regular "E" claims commissioners; the Governing Council had created a special panel in March 1995 to assess KOC's \$1 billion claim against Iraq. *More Claims Approved*, *supra* note 194, at 12; *Difficult Claims*, *supra* note 154, at 74. After a year and a half, this panel had reached the partial decision noted here.

For discussions of the significance of the UNCC in relation to other international legal developments of 1996, see Keith Highet, et al., *International Courts and Tribunals*, 31 INT'L LAW. 599, 602-05 (1997); John Kim, *International Institutions*, 31 INT'L LAW. 671, 673 (1997); John F. Murphy, *Foreign Claims*, 31 INT'L LAW. 579, 585-87 (1997).

197. See *First Payments*, *supra* note 128.

198. See *supra* notes 155-57 and accompanying text.

199. The settlement value of corporate claims may be substantially less than the asserted value. One commentator observed that, if international arbitration settlements are taken as a guide, the ratio may be about 40%. Bhushan Bahree, *U.N. Panel to Process Corporate Claims Totalling About \$82 Billion Against Iraq*, WALL ST. J., May 6, 1996, at B8. Commission insiders say the ratio may be lower because corporations and their insurance companies have, in some cases, both filed claims. *Id.* Nevertheless, the \$2.7 million award remains at best a tentative nod toward justice.

200. See *supra* text accompanying notes 127-29.

201. As discussed above, the first payment of "B" claims, totalling \$2.7 million, was made in June 1994. See *First Victims*, *supra* note 129. The second payment, of \$8.3 million, was made in October 1995. See *supra* note 194. The final payment, of \$2.45 million, was made in December 1995. *Final Round*, *supra* note 192, at 13 ("This means the UNCC has paid in full all category 'B' claims," UNCC Press Officer Dr. Walid Abdel Nasser said.).

202. See, e.g., *UN: United Nations Compensation Commission Pays Out Almost \$569 Million*, M2 Presswire, Oct. 9, 1997, available in 1997 WL 14466115 [hereinafter *Commission Pays Out Almost \$569 Million*]; *UN: United Nations Compensation Commission Pays Out \$144 Million*, M2 Presswire, Mar. 18, 1997, available in 1997 WL 8031379 [hereinafter *Commission Pays Out \$144 Million*].

Realistically, then, both payment and processing remain problematic. The UNCC has "awarded" over six billion dollars but has paid only \$726 million. This \$726 million amounts to only .3% of the total asserted value of the claims. Even if commissioners are correct that the claims are overvalued by a factor of three, the payment ratio remains .009.

Furthermore, that the UNCC has processed more than ninety percent of the claims is little solace to corporate and government claimants. Although the UNCC efficiently processed 2.4 million of 2.6 million claims, the 200,000 claims remaining account for \$238 billion of the \$244 billion in alleged damages. Even if the commissioners are correct that the outstanding claims are valued more accurately at \$81 billion than \$244 billion, the UNCC has yet to process claims for ninety-three percent of the monetary damage.

2. The "Oil-for-Food" Deal: Resolution 986

As discussed above, international commitment to the embargo against Iraq waned during the mid-1990s. A number of countries became increasingly responsive to pressures from the business world²⁰³ and began advocating an end to the embargo despite Iraq's failure to comply with treaty terms.²⁰⁴ Added to these political and corporate forces were the humanitarian concerns of the United Nations for the Iraqi people.

The United Nations had assessed conditions in Iraq immediately after the 1991 cease-fire²⁰⁵ and found hunger, illness, and inoperative sanitation and agricultural systems.²⁰⁶ As a result, the Security Council passed Resolution 687, allowing Iraq to receive food and other humanitarian supplies although maintaining a general embargo.²⁰⁷

This concession was not enough, however, to end the Iraqis' suffering. Resolution 687 was designed to provide temporary relief until Iraq began selling oil again. As Iraq has refused to do so, it has not generated funds needed to restore a tolerable standard of living. Seven years after the cease-fire, living conditions in Iraq remain largely unchanged.

In 1994, the Red Cross and the Red Crescent Societies described the humanitarian situation in Iraq as "disastrous,"²⁰⁸ and this situation has continued to deteriorate. Malnutrition and

203. See *supra* notes 167-81 and accompanying text.

204. See *supra* notes 160-62, 180-81 and accompanying text.

205. See *supra* note 56 and accompanying text.

206. See *supra* notes 56-59 and accompanying text.

207. See *supra* notes 60-63 and accompanying text.

208. *Turning the Screw*, *supra* note 139.

child mortality have increased dramatically during the embargo, and damaged sanitation facilities, poor disease control, and a lack of safe water have led to a steep escalation in water-borne diseases.²⁰⁹ Meanwhile, Saddam Hussein has built fifteen palaces rather than repairing the infrastructure.²¹⁰

In response to this crisis, the Security Council adopted Resolution 986 in April 1995.²¹¹ Resolution 986 provided that Iraq could export \$1 billion of oil every ninety days, notwithstanding Resolution 661 (1990), which otherwise prohibits exportation.²¹² The resolution placed two conditions on the exports: (1) that the Iraqi Sanctions Committee²¹³ approve each sale;²¹⁴ and (2) that payments be made into a special escrow account overseen by the U.N. Secretary-General. The resolution provided it would become effective one day after the Secretary-General informed the Security Council that requisite preparations were complete and would remain in force for an initial 180-day period. Moreover, the resolution required the Security Council to review the exportations twice during this period, and to consider renewing the resolution if the reviews were favorable and if Iraq had equitably distributed the food and medical supplies purchased with the proceeds.²¹⁵ The resolution also required that the Compensation Fund receive up to thirty percent of the funds deposited in the Iraqi escrow account.²¹⁶

Initially, Resolution 986 seemed like a promising step toward solving a variety of problems: it would provide enough funds for humanitarian relief but not enough for military build-up; it invited Iraq to rejoin the world economy while preserving the

209. *Id.* Child mortality increased by as much as two to three times the pre-sanction levels during the first five years of the embargo. Rampant diseases included typhoid, cholera, hepatitis, and malaria. Shortages in medical supplies and equipment prevented doctors from providing treatment and performing surgery. *Id.*

210. Burns, *supra* note 138. Richard Haas of the Brookings Institute believes these "palaces" have a military function. Haas, *supra* note 138.

211. S.C. Res. 986, U.N. SCOR, 50th Sess., 3519th mtg., ¶ 8(c), U.N. Doc. S/RES/986 (1995), reprinted in 35 I.L.M. 1144 (1996). Argentina, the United States, and the United Kingdom proposed this resolution, Townsend, *supra* note 42, at 981, and the Security Council unanimously adopted it, S.C. Res. 986, *supra*.

212. S.C. Res. 986, *supra* note 211.

213. This committee was created by Security Council Resolution 661. See *supra* note 16 and accompanying text.

214. See S.C. Res. 986, *supra* note 211. Resolution 986 instructs the Sanctions Committee to ensure that the purchase price reflects fair market value, that an export route is available, and that the purchase conforms with other provisions of the resolution.

215. *Id.*

216. *Id.* This requirement is pursuant to Paragraph 2 of Security Council Resolution 705. S.C. Res. 705, *supra* note 84.

requirement that Iraq honor its treaty obligations; and it would provide a source of funds for the UNCC.²¹⁷

Iraq, however, rejected Resolution 986 immediately,²¹⁸ calling it "illogical and interventionist."²¹⁹ Insisting on the total lifting of sanctions,²²⁰ Iraq argued that Resolution 986 interfered with Iraqi sovereignty because it allotted some food to rebel Kurds, to be distributed outside Iraqi government channels.²²¹

Iraq maintained this stance for ten months. Then, in 1996, Iraq and the United Nations entered negotiations leading to Iraq's acceptance of the terms of Resolution 986. In February of that year, U.N. legal counsel Hans Corell and Iraqi envoy Abdul Amir al-Anbari held a series of fourteen "technical discussions" in which details of the "oil-for-food" deal were addressed.²²² They failed to reach an agreement, however,²²³ and a second round of

217. For a discussion of the negotiations and the oil markets' reactions, see *U.N. Grants Iraq Permission to Sell Oil for Food, Medicine, Other Supplies: Baghdad Weighing the Limited Lifting of Sanctions*, STAR-LEDGER (Newark, NJ), Apr. 15, 1995, available in 1995 WL 5216170 [hereinafter *U.N. Grants Permission*].

218. Dilip Ganguly, *Iraq Refuses to Sell Oil for Food; Instead, Leaders Denounce U.S.*, NEW ORLEANS TIMES-PICAYUNE, Apr. 16, 1995, at A2, available in 1995 WL 6068354. Ganguly describes the reaction in Baghdad on the day Resolution 986 was passed. Thousands of demonstrators, mostly government employees, marched through the streets holding placards with photos of Saddam Hussein and banners denouncing the United States and the United Nations. *Id.* Abdul Gani Abdul Ghafoor, chief of the Baghdad chapter of the leading Baath party, said, "We need to fight the holy war against Satan America until our victory." *Id.* Although Iraqis interviewed by foreign reporters anonymously expressed strong support for 986, state-run Youth Radio, supervised by Hussein's eldest son, broadcast interviews with what it described as "ordinary Iraqis," who criticized Resolution 986 and urged the government to reject it. *Id.*

Iraq is no stranger to such deceptive broadcasts. After the Gulf War cease-fire, Baghdad Radio announced: "O Iraqis! Yes, you triumphed when you stood with all this vigor against the armies of 30 states! You triumphed while emphasizing your ability to face the showdown and confrontation! You have recorded for Arabs and Muslims bright pages of glory that will be remembered for generations!" Scott MacLeod, *With His Country in Ruins, How Long Can Saddam Hang On?*, TIME, Mar. 11, 1991, at 35.

219. Feuilherade, *supra* note 166. The Iraqi News Agency quoted Deputy Prime Minister Tariq Aziz as saying, "This new American project is nothing but a manoeuvre [sic] to deceive international opinion and prolong the embargo." *Id.*

220. See, e.g., *U.N. Grants Permission*, *supra* note 217; Ganguly, *supra* note 218; *U.N. Investigator*, *supra* note 138.

221. John M. Goshko, *U.N., Iraq End Discussions on Oil Sales*, WASH. POST, Feb. 20, 1996, at A3. The Iraqis considered this requirement tantamount to legitimizing the secession of northern Iraq. *Id.*

222. *Id.*; see also Michael Littlejohns, *Progress in Iraq-U.N. Oil Sale Talks*, FIN. TIMES, Feb. 20, 1996, at 5.

223. Robert H. Reid, *Iraqi Oil Talks End Without a Pact*, HOUSTON CHRON., Feb. 20, 1996, at 1, available in 1996 WL 5582742. Sources said the Iraqis insisted that \$4 billion of frozen assets be returned to them but the United Nations would not accede to this demand. See also *Iraq, United Nations Talks on 'Oil for Food' Resolution Adjourned*, 11 No. 2 MEALEY'S INT'L ARB. REP. 14 (1996)

talks was held in March.²²⁴ Those talks also ended without an agreement, primarily because the dispute over aid to the Kurds remained unresolved.²²⁵ Finally, after a third round of talks,²²⁶ Iraq and the United Nations reached an agreement about the resumption of oil sales. This agreement was memorialized in a Memorandum of Understanding on May 20, 1996.²²⁷

As Resolution 986 had originally provided, Iraq could now sell up to \$2 billion worth of oil over six months. Iraq's chief negotiator, Abd al-Amir al-Anbari, was confident that oil sales would resume by August 1996.²²⁸ The UNCC anticipated receiving \$100 million per month with which it could begin paying claims.²²⁹ These predictions, however, proved overly optimistic.

In August, Hussein's government began to balk at the deal, demanding that Iraq receive the money allocated to the UNCC.²³⁰ Iraq argued it needed the money to pay for its legal defense against the compensation claims and further asserted a right to the funds under international law.²³¹ Iraq's Deputy Foreign

(quoting a U.N. spokesman as saying that disagreement remained as to what percentage of oil sales would go through Turkey, as opposed to Iraqi Gulf ports).

224. *Aid for Kurds Sticking Point in Iraq Talks*, ORANGE COUNTY REG. (Cal.), Mar. 19, 1996, at A3, available in 1996 WL 7017688.

225. *Id.*

226. *Iraq Optimistic as UN Sanctions Talks Start*, LLOYD'S LIST INT'L, Apr. 9, 1996, at 10, available in 1996 WL 6273527. These talks began April 8, 1996. They were suspended temporarily when the United States objected to some terms, Bahree, *Iran Stakes Claim to Funds Marked for Compensation*, *supra* note 196, but ultimately resulted in a pact. See also Letter from Pres. William J. Clinton to the Speaker of the House of Reps. & the Pres. pro tempore of the Senate, M2 Presswire, May 7, 1996, available in 1996 WL 10341847 ("It remains unclear whether Iraq is serious about implementing [Resolution 986] as drafted. We would like to see [it] implemented, but only with the safeguards envisioned in the Resolution to ensure that Saddam Hussein cannot abuse [its] humanitarian purposes.").

227. *'Oil for Food' Resolution to be Implemented*, 11 No. 5 MEALEY'S INT'L ARB. REP. 14 (1996); see also 35 I.L.M. 1095 (1996) (providing the full text of the Memorandum of Understanding, signed May 20, 1996); *Iraq Accepts U.N. Humanitarian Oil Deal*, Deutsche Presse-Agentur, May 20, 1996, available in 1996 WL 5/20/96 Deutsche Presse-Agentur 12:42:00 (stating the parties resolved the food distribution dispute by providing that U.N. humanitarian agencies would distribute food in the Kurdish north but that Saddam Hussein would devise the distribution plan for the rest of Iraq, subject to U.N. approval and monitoring); Burns, *supra* note 138 (transcript of State Department briefing concerning the implementation of Resolution 986).

228. Peter Feuillerade, *Iraq Agrees Oil for Food Deal with UN*, MIDDLE E., July 17, 1996, at 9.

229. Deen, *supra* note 195.

230. See Bahree, *Iraq Stakes Claim to Funds Marked for Compensation*, *supra* note 196; Bahree, *Iraq to Seek Some Oil Proceeds Earmarked for War Reparations*, *supra* note 196.

231. Bahree, *Iraq Stakes Claim to Funds Marked for Compensation*, *supra* note 196. Iraq has continued to demand money from the UNCC to cover its legal

Minister, Riyadh Al-Qaysi, presented this argument to the panel of commissioners evaluating the KOC claim,²³² which refused to delay hearings on that claim. Al-Qaysi then walked out with his delegation, announcing to the press that "it would be a parody of justice" if the Governing Council garnished Iraq's oil revenues to pay the Compensation Commission.²³³ Shortly thereafter, Iraq invaded Kurdistan, further delaying oil sales under Resolution 986.²³⁴ As the Commission's executive secretary put it, "Troubles have upset the plan."²³⁵

At last, in December 1996, Resolution 986 was implemented—twenty months after the Security Council had adopted it and seven months after Iraq had agreed to it.²³⁶ Despite its inauspicious beginnings, the oil-for-food plan functioned admirably for the first half of 1997. By February of that year, the Sanctions Committee had approved four contracts for humanitarian aid, totaling \$97.5 million; supplies were to reach Iraq by March.²³⁷ During the first 180-day period of the oil-for-food regime, fifty-one oil contracts were approved for a total of 121 million barrels, and sales of \$2.16 billion were completed.²³⁸ By the time the period ended in June, over \$1.7 billion in oil-sale proceeds had been deposited into Iraq's U.N. account, and \$497.2 million had been transferred directly to the

fees, *Iraq Still Wants Money to Cover Legal Fees*, 12 No. 7 MEALEY'S INT'L ARB. REP. 22 (1997), alleging that the UNCC is entertaining "excessive and absurd" claims that have no legal basis, Thalif Deen, *U.N.-Mideast: Iraq Alleges Frivolous Claims for War Reparations*, Inter Press Serv., Aug. 13, 1997, available in 1997 WL 13256041. Despite vigorous U.S. opposition, the United Kingdom recently agreed to consider releasing some of Iraq's frozen assets so Iraq could hire legal counsel to defend against these claims. Richard Norton-Taylor, *Iraq Asks UK to Release Assets*, GUARDIAN (London), Oct. 25, 1997, available in 1997 WL 14737328.

232. See *supra* note 196 (discussing the special panel appointed to consider the KOC claim).

233. Bahree, *Iraq Stakes Claim to Funds Marked for Compensation*, *supra* note 196; see also *Iraq Wants to Tap Compensation Fund for Legal Fees*, 11 No. 10 MEALEY'S INT'L ARB. REP. 23 (1996).

234. *3.2 Billion Dollars for Workers Driven from Kuwait by Iraqis*, Agence Fr.-Presse, Oct. 16, 1996, available in 1996 WL 12158585 [hereinafter *3.2 Billion Dollars*]; *OPEC Will Not Change Production Ceiling in 1997*, Agence Fr.-Presse, Nov. 18, 1996, available in 1996 WL 12183412.

235. *3.2 Billion Dollars*, *supra* note 234; see also *Future of U.N.C.C.*, *supra* note 13.

236. *U.N. Begins Dispersing Funds to Buy Supplies for Iraq*, Dow Jones Int'l News Serv., Jan. 30, 1997, available in WL 1/30/97 DJINS 15:09:00.

237. *U.N. May Approve 10 More Iraq Aid Contracts by Friday*, Dow Jones News Serv., Feb. 13, 1997, available in 1997 WL 2/13/97 DJNS 10:14:00 [hereinafter *10 More Aid Contracts*].

238. *UN: Security Council Extends Iraq 'Oil-for Food' Arrangement for Additional 180 Days, Beginning 8 June*, M2 Presswire, June 5, 1997, available in 1997 WL 10371786.

UNCC fund, with \$151.3 million allocated to the payment of claims and UNCC operating expenses.²³⁹ From these funds, the UNCC paid \$144 million to sixty-three governments and one international organization in satisfaction of 57,636 "A" and "C" claims.²⁴⁰

This payment trend, however, did not continue. After completing a single 180-day oil-for-food period, Iraq raised new objections to the agreement and suspended oil sales.²⁴¹ The UNCC thus conducted its twenty-fourth meeting under the familiar and unfortunate conditions that had plagued its five-year history: it awarded to claimants substantial sums it had no immediate prospects of being able to fund. Specifically, at its June meeting, the UNCC approved a fifth installment of 76,000 "C" claim payments totalling \$721 million,²⁴² to be distributed to forty-three countries and three international organizations.²⁴³ That installment brought the total of "C" claim awards to \$2.1 billion, to be paid to 277,730 claimants.²⁴⁴

At its next meeting in September, the UNCC reviewed claims from 1.24 million Egyptian workers²⁴⁵ seeking redress for lost

239. *Id.* Other developments during this period included the UNCC's decision to expedite "A" claims from 1306 Indian claimants, 1,306 to *Get Gulf War Compensation*, HINDU, Apr. 10, 1997, available in 1997 WL 9969231, and its decision to postpone its next meeting from April 28, 1997, to June 23 and 24, *UN: Compensation Commission Governing Council to Meet in June*, M2 Presswire, May 1, 1997, available in 1997 WL 10367330.

240. Thalif Deen, *United Nations: U.N. Doles Out \$144 Million in Reparations*, Inter Press Serv., Mar. 12, 1997, available in 1997 WL 7074159; *Pay Out of First Awards Causing Chaos in Kuwait*, 12 No. 4 MEALEY'S INT'L ARB. REP. 16 (1997); *Commission Pays Out \$144 Million*, *supra* note 203.

241. *Future Award Payments from UNCC Compensation Fund are in Doubt*, 12 No. 7 MEALEY'S INT'L ARB. REP. 20 (1997). The suspension lasted from June to mid-August. *UN: Gulf War Compensation Body Meets to Discuss Payouts*, Agence Fr.-Presse, Sept. 29, 1997, available in 1997 WL 13404163 [hereinafter *Compensation Body Meets*]. The Iraqis cited delays in distribution of humanitarian goods as their reason for suspending sales; this complaint was the latest in a series of such complaints against their Gulf War adversaries. As Iraq's U.N. ambassador had previously stated, "[These problems are] the fault of the system which includes the U.N. and the 661 Committee. . . . They are giving us a very unsmooth implementation." *10 More Aid Contracts*, *supra* note 238.

242. *Compensation Body Meets*, *supra* note 241.

243. *UN: Compensation Commission's Council Approves \$721 Million for Individual Losses Up to \$100,000*, M2 Presswire, June 25, 1997, available in 1997 WL 11936270 [hereinafter *Council Approves \$721 Million*]; Capdevila, *supra* note 13.

244. *Council Approves \$721 Million*, *supra* note 243; Capdevila, *supra* note 13. The UNCC also approved the appointment of six Commissioners to handle "E" claims. *Council Approves \$721 Million*, *supra* note 243; Capdevila, *supra* note 13.

245. *UN to Compensate Egyptian Workers*, *supra* note 14.

funds they had deposited in Iraqi banks for transfer to Egypt.²⁴⁶ Although the UNCC concluded that 223,817 claims did not fall within its jurisdiction, it awarded 900,000 workers \$84,393,992, bringing the total number of claims resolved to more than 2.4 million, for a total of more than \$6 billion.²⁴⁷

Fortunately for claimants and the UNCC, oil-for-food revenues were once again being generated after the June-to-August hiatus imposed by Iraq. Thus, in October 1997, the UNCC was able for the third time²⁴⁸ to make funds available to pay previously awarded "A" and "C" claims.²⁴⁹ These funds totalled \$568,972,563, and were transferred to seventy-five governments and three international organizations on behalf of 228,575 claimants.²⁵⁰

At its final meeting of 1997, the UNCC approved the award of \$2,220,043 in satisfaction of eleven "F" claims filed by nine governments.²⁵¹

D. *The Future of the UNCC: The "Ambitious Five-Year Plan"*

After seven years of operation, the UNCC still has \$238 billion of claims to resolve. The most substantial claims have yet to be evaluated. Thousands of corporations seek billions of

246. *Compensation Body Meets*, *supra* note 241.

247. *UN to Compensate Egyptian Workers*, *supra* note 14. For an extended discussion of the Egyptian Workers' Claim, see *Lack of Documentation Drastically Cuts Payment on \$491 Million Egyptian Workers' Claims*, 12 No. 10 MEALEY'S INT'L ARB. REP. 12 (1997). As that article states, the original claim filed on behalf of the Egyptian workers sought \$491 million on behalf of 1.24 million claimants. *Id.* The UNCC panel that evaluated the claim concluded that documentation for many claims was inadequate and recommended that only \$84 million be paid to 223,817 claimants. *Id.*

248. As discussed above, the UNCC made \$13,450,000 available to satisfy all "B" claims by the end of 1995. In March 1997, the UNCC made available \$144,019,945 to resolve the first installment of "A" and "C" claims. See, e.g., *Commission Pays Out Almost \$569 Million*, *supra* note 202.

249. *Id.* These claims had been resolved in the second installment of awards. *Id.*

250. *Id.*; see also *UNCC Pays \$568,972,563 in Departure and Personal Loss Claims*, 12 No. 10 MEALEY'S INT'L ARB. REP. 14 (1997). Kuwait received \$105 million from this disbursement. *Kuwait Receives 105 Million in Gulf War Compensation*, Deutsche Presse-Agentur, Oct. 11, 1997, available in 1997 WL 10/11/97 DCHPA 13:39:00. Pakistan received \$12 million. *Pakistan Gulf War Victims Get[] Over 12 Million Dollars from UN*, Agence Fr.-Presse, Nov. 12, 1997, available in 1997 WL 13432768. The Philippines received \$4.6 million. *Gulf War Claims*, BUS. WORLD (Manila), Nov. 26, 1997, available in 1997 WL 16252142.

251. *UN: Governing Council of United Nations Compensation Commission Concludes Session*, M2 Presswire, Dec. 23, 1997, available in 1997 WL 16296826.

dollars in "E" claim compensation,²⁵² and numerous countries seek additional billions in "F" claim compensation for environmental damage and costs incurred in responding to it.²⁵³ The UNCC has set forth an ambitious plan for processing all these claims by 2003.²⁵⁴ It intends to complete all Category "C" claims by the end of 1998 and will then concentrate its resources on the remaining "D," "E," and "F" claims.²⁵⁵ Based on its record thus far, the UNCC seems likely to be able to evaluate these claims according to the schedule it has established. The diligence and speed with which the commissioners and their staff have worked has often been lauded.²⁵⁶ The unanswerable question, however, is the obvious one: will Iraq maintain oil sales that will generate the revenue required to satisfy the claims processed by the UNCC?

V. CONCLUSIONS AND RECOMMENDATIONS

During the seven years of its existence, the UNCC has accomplished a great deal. It has approved 2.4 million awards worth more than \$6 billion,²⁵⁷ and it has paid "A," "B," and "C" claimants more than \$726 million.²⁵⁸ More significantly, it has renewed faith in the post-war claims commission as an institution.

252. See Hight et al., *supra* note 13, at 603 (noting there are \$80 billion in "E" claims); King, *supra* note 13, at 603 (describing the author's visit to UNCC headquarters and discussing specific claims such as those arising from the Bekhme Dam case, and listing the top 10 corporate claimants by country).

253. See \$27 Billion in Environmental Claims Filed with UNCC, 12 No. 2 MEALEY'S INT'L ARB. REP. 17 (1997) (discussing Kuwait's \$16.3 billion claim, Iran's \$11 billion claim, the U.S. \$8.8 million claim, and smaller claims by Australia, Canada, Germany, the Netherlands, Saudi Arabia, and Turkey); Hight et al., *supra* note 13, at 603 (noting there is between \$100 and \$200 billion in "F" claims).

254. UNCC Adopts 'Ambitious' Work Program, 12 No. 10 MEALEY'S INT'L ARB. REP. 15 (1997).

255. *Id.*

256. See, e.g., Bahree, *Iraq Stakes Claim to Funds Marked for Compensation*, *supra* note 196; Richard B. Bilder & Alan D. Meltzer, Book Review, 90 AM. J. INT'L L. 532 (1996) (reviewing THE UNITED NATIONS COMPENSATION COMMISSION (Richard B. Lillich ed., Transnational Publishers, Inc. 1995)); Bederman, 1994, *supra* note 13, at 42.

257. Capdevila, *supra* note 13.

258. This total results from three payments: \$13,450,000 in 1995, *Compensation Fund Completes Claims*, *supra* note 193; \$144,019,945, UN: *United Nations Compensation Commission Pays Out \$144 Million*, M2 Presswire, March 18, 1997, available in 1997 WL 8031379; \$568,972,563, UN: *United Nations Compensation Commission Pays Out Almost \$569 Million*, M2 Presswire, Oct. 9, 1997, available in 1997 WL 14466115.

The UNCC has garnered praise from many quarters. Observers have called its progress "remarkably swift and unprecedented"²⁵⁹ and its accomplishments "impressive."²⁶⁰ It has been lauded as a "bold and thus far largely successful experiment,"²⁶¹ "an institution that represents one of the most important developments in international law in this decade,"²⁶² "the fulfillment of the ideal of peaceful settlement of disputes. . . ." ²⁶³

Yet its success has not been unbridled. For the first five years of its existence, the UNCC's operating budget exceeded claims payments by a factor of two.²⁶⁴ Total operating costs during that period probably exceeded payments by a factor of ten. If its success were to be measured by its ability to compensate victims swiftly, the UNCC would have to be deemed a failure.

But the UNCC is a success, because it serves all the traditional goals of post-war reparation.²⁶⁵ Society remains interested in achieving correction, example, and retribution regarding proponents of unjust wars. The UNCC is an important mechanism for achieving these goals, even though it has had limited success in delivering funds.

Regarding the goal of correction,²⁶⁶ the UNCC's success is reflected in Saddam Hussein's failure to create a global holocaust and to accomplish his goal of recreating the Abbasid Empire.²⁶⁷ In practical terms, the UNCC's garnishment mechanism deters future military activity because the reduced revenues render Iraq less able to engage in military spending.²⁶⁸ Garnishment also deters military aggression by making the Iraqis less willing to

259. Bahree, *Iraq Stakes Claim to Funds Marked for Compensation*, *supra* note 196.

260. Bilder & Meltzer, *supra* note 256, at 532; see also Susan Taylor Martin, *U.N. Can Boast of Record in Helping Gulf War Victims*, ST. PETERSBURG TIMES, Jan. 11, 1998 (praising "the impressive work" of the UNCC).

261. *Id.*

262. *Id.* at 534.

263. Bederman, 1994, *supra* note 12, at 42.

264. See Townsend, *supra* note 42, at 1013, n.289; *supra* note 151.

265. See *supra* notes 5-11 and accompanying text.

266. See *supra* notes 7-8 and accompanying text.

267. See, e.g., Lance Morrow, *The Devil in the Hero: Iraq's Leader May Be a Blood-Drenched Tyrant, But For Many He Is Nonetheless a Symbol of Dignity, Unity and Self-Reliance*, TIME, Jan. 28, 1991, at 64 (asserting Saddam Hussein casts himself alternatively as Nebuchadnezzar and an Arabian Bismarck). See generally Dennis, *supra* note 138, at 41 (suggesting Saddam Hussein considers himself a modern Nebuchadnezzar).

268. During the 1980s, Iraq spent between a third and half of its revenues on the military. Garnishing 30% of future oil revenues should prevent recurrence of such spending, because the remaining 70% is needed to restore Iraq's ruined infrastructure and meet humanitarian needs.

undertake such action. It provides a warning that unjust belligerence will not go unpunished. Although critics of the garnishment provision have argued that it exacts too high a price from the Iraqi people, such arguments fail in the face of well-established precepts concerning human rights and duties.²⁶⁹ The Iraqis should not be allowed to evade their moral and financial obligations by hiding behind the Myth of Popular Innocence.²⁷⁰ By requiring Iraq to fulfill the obligations to which it has agreed, the United Nations effectuates the corrective purpose of the cease-fire provisions.

Regarding the goal of example,²⁷¹ the UNCC's success is shown best by the fact that victims of other wars have begun to inquire as to whether the United Nations can establish similar commissions to evaluate their claims.²⁷² Although aggressors may go undeterred, thus failing to heed the U.N. message of nonaggression, at least their victims find in the UNCC an example of a global attempt to vindicate victims' rights.

Finally, regarding the goal of retribution,²⁷³ the UNCC has exacted satisfaction from Iraq on behalf of thousands of claimants who, though not fully restored, have received substantial compensation.

269. See, e.g., GROTIUS, Kelsey trans., *supra* note 1, at 535 (punishment may be inflicted on a community so long as the community exists); *id.* at 587 (subjects ordered to go to unjust war should refuse to serve); *id.* at 624 ("it has been established by the law of nations that both the possessions and the acts of subjects are liable for the debt of a ruler").

270. See *The Gulf War: Commentary*, U.S. NEWS & WORLD REP., Mar. 4, 1991, at 41.

271. See *supra* notes 9-10 and accompanying text.

272. Delegations from Rwanda and Bosnia visited UNCC headquarters in Geneva last year in an effort to determine whether a similar commission could be set up on behalf of war victims in Central Africa and the former Yugoslavia. King, *supra* note 13.

The difficulty of making an "example" of Middle Eastern aggressors is revealed in the words of Ahmad Oweidi Abbadi, chairman of the Jordanian National Front and a member of parliament:

We Arabs are proud of our dignity. Saddam talks about things we feel. The U.S. will win the battle but lose the war. Both Arab Christians and Muslims want a jihad against America, against the U.K. and the Jews. The citizens of every nation fighting against Iraq will be in danger—those with blue eyes and a red face. . . . As the U.S. destroys Iraq, it will give birth to the jihad that will destroy the West.

Morrow, *supra* note 267.

The diplomatic community must remain cognizant of the dangers posed, and it must inform the business community of the risks of dealing with Saddam Hussein. In the words of one Egyptian observer: "He is a very bad man." Morrow, *supra*. See also *supra* note 138.

273. See *supra* note 11 and accompanying text.

As a U.N.-sponsored commission, the UNCC serves both symbolic and practical functions. In the long run, it will fail to compensate all victims for all harms suffered. Nevertheless, it embodies principles society cannot afford to sacrifice: that unjustified aggressors will be punished and that, at least on occasion, their victims will be compensated.

*Lea Carol Owen**

* J.D. Candidate, Vanderbilt Law School, 1998; B.A., Yale University. The Author wishes to thank Ms. Stacy Feld and the editors of the *Vanderbilt Journal of Transnational Law* for their assistance in preparing this manuscript; Professors Frederick M. Ahl, Joan Dayan, Neil R. McMillen, and C. Warren Robertson for their advice and encouragement; and the Trustees of Telluride Association for their continuing support of her education. The Author especially thanks her daughter, Kelsey Owen Lewis, and her parents, Mr. and Mrs. Charles W. Owen, for their devotion and patience.

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