

INTRODUCTORY NOTE TO GOVERNING COUNCIL DECISION 277
(U.N. COMPENSATION COMM'N)
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[January 13, 2022]

Introduction

On January 13, 2022, the secretariat of the United Nations Compensation Commission (UNCC), an institution established by the UN Security Council in 1991 to process and pay claims resulting from Iraq's unlawful invasion and occupation of Kuwait from August 2, 1990, to March 2, 1991, issued a press release stating that, with a payment that day of over US\$629 million to Kuwait, all claimants awarded compensation by the UNCC had received full payment.¹

On February 9, 2022, the UNCC Governing Council held a special session and adopted Decision 277 declaring that Iraq had fulfilled its international obligation to compensate all claimants and inviting the UN Security Council "to take the necessary action to note that the mandate of the Commission has been fulfilled and that the Commission will be winding down all activities in 2022."² The UNCC secretariat issued a press release that day stating:

Approximately 2.7 million claims with an asserted value of US\$352.5 billion were filed with the Commission. Following the conclusion of claims processing, the Commission awarded \$52.4 billion to approximately 1.5 million successful claims from individuals, corporations, governments and international organizations. With the final payment of compensation made on 13 January 2022, all compensation awarded by the Commission has now been paid in full. Funds to pay compensation were drawn from the United Nations Compensation Fund which received a percentage of the proceeds generated by the export sales of Iraqi petroleum and petroleum products. This percentage was originally set at 30 per cent and was reduced over the years under various Security Council resolutions and Governing Council decisions. It was most recently set at three per cent under Governing Council decision 276 (2017).³

This introduction briefly explains the background and context of Decision 277.

Establishment of the UNCC and Claims Processing

During a rare period of post-Cold War harmony,⁴ the UN Security Council condemned Iraq's invasion of Kuwait and, acting by binding resolution under Chapter VII of the UN Charter, reaffirmed that Iraq was liable "under international law for any direct loss, damage—including environmental damage and loss of natural resources—or injury to foreign Governments, nationals and corporations as a result of its unlawful invasion and occupation of Kuwait," and decided to create a fund (the Compensation Fund) to pay compensation for these claims and a commission to administer the fund.⁵

The UNCC was composed of a Governing Council, consisting of the fifteen members of the UN Security Council, a secretariat, and nineteen panels of three commissioners. The Governing Council made decisions as to how claims would be collected and processed. The panels of commissioners considered the claims that were submitted and made recommendations for claims award. The Governing Council then decided on the award. The secretariat provided critical support and assistance to both the Governing Council and the panels of commissioners.⁶

In its first decision in August 1991, the Governing Council established expedited procedures for the processing of urgent claims. Claims for departure from Iraq or Kuwait during the occupation period and claims for death or serious personal injury (classified as A and B claims) could have access to fixed payments ranging from \$2,500 to \$10,000

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based on minimal documentation if no further claims were made by those claimants. There were over 856,000 claims awarded compensation in these categories, resulting in payments of about \$3.1 billion. Claims for certain losses up to \$100,000 (category C) could also be made with appropriate documentation and would be given priority. There were over 672,000 claims awarded compensation in this category, resulting in payments of over \$5.2 billion. Given the large number of these claims, matching of computer records and sampling techniques were used.⁷

There were fewer individual claims over \$100,000 (category D), corporate claims (category E) and government and international organization claims (category F), but they were larger. More than 14,000 claims resulted in payments of about \$44 billion.⁸

Funding the Compensation Fund

In early August 1991, the Governing Council charged the Commission's executive secretary with providing detailed information regarding Iraq's oil production and "options for holding and managing revenues from Iraqi exports of petroleum and petroleum products" to fund compensation, to allow a UNCC working group to develop a funding mechanism itself.⁹ Later that month, and in September 1991, the Security Council instead adopted resolutions 706 and 712 respectively, to set up a draw on Iraqi petroleum and petroleum products,¹⁰ but no exports were made under this system either. To meet urgent UNCC funding needs, in October 1992 the Security Council adopted resolution 778 mandating the transfer of certain Iraqi funds held abroad to the Compensation Fund.¹¹ In April 1995, the Security Council, again acting under Chapter VII, adopted resolution 986 establishing the "oil for food" program, which would provide Iraq humanitarian goods in addition to funding compensation.¹² Finally, Iraq began exports and the Compensation Fund obtained resources—although, as the UNCC's February 9, 2022, press release states, the percentage draw varied over time.¹³

Conclusion

The UNCC was a mass claims program established for the first time by Chapter VII UN Security Council decisions. It was possible to establish it and for it to fulfill its mandate because there was a Security Council consensus, the aggressor was clear, and there was a ready source of funding.¹⁴ These conditions were not present in any of the other post-Cold War conflicts in which there were a large number of victims and considerable damage.¹⁵ The Russian aggression against Ukraine would be ripe for a mass claims process similar to the UNCC, since a massive number of victims exist and massive damage has occurred, the aggressor is clear, and frozen Russian assets abroad could be at least a partial source of funding; however, since there is a Russian veto, there can be no prospect of the Security Council adopting such a system. On the other hand, the UN General Assembly could establish a claims collection process, as it did (despite United States and Israeli objections) for damage caused by the construction of the wall in the occupied Palestinian territory.¹⁶

ENDNOTES

- 1 Press Release, U.N. Compensation Comm'n, United Nations Compensation Commission Pays Out Final Compensation Award, U.N. Press Release PR/2022/1 (Jan. 13, 2022), <https://www.uncc.ch/sites/default/files/attachments/documents/Press%20release%20-%20Payment%20of%2013%20January%202022.pdf>.
- 2 U.N. Doc. S/AC.26/Dec.277 (2022).
- 3 Press Release, U.N. Compensation Comm'n, Governing Council of United Nations Compensation Commission Holds Special Session To Mark The Fulfilment of its Mandate, U.N. Press Release PR/2022/2 (Feb. 9, 2022), <https://www.uncc.ch/sites/default/files/attachments/Press%20release%20-%2016th%20Special%20Session.pdf>.
- 4 See generally Michael J. Matheson, *Council Unbound* (U.S. Institute of Peace Press 2006) [hereinafter Matheson].
- 5 S.C. Res. 687, ¶¶ 16, 18 (Apr. 8, 1991). UN Security Council resolution 692, again under Chapter VII, again decided to establish the Fund and the UNCC, which it decided would be located in Geneva. S.C. Res. 692, ¶ 3 (May 20, 1991).
- 6 For background on the establishment and structure of the UNCC, see John R. Crook, *The United Nations Compensation Commission: A New Structure to Enforce State Responsibility*, 87 A.J.I.L. 144 (1993); Ronald J. Bettauer, *The United Nations Compensation Commission—Developments since October 1992*, 89 A.J.I.L. 416 (1995); and THE UNITED NATIONS COMPENSATION COMMISSION (13th Sokol

- Colloquium, Richard B. Lillich ed., 1995) [hereinafter Lillich]. The United States was a driving force in the creation of the UNCC and in the development of its claims processing regime. Ronald J. Bettauer, *Establishment of the United Nationals Compensation Commission: The U.S. Government Perspective*, in Lillich at 29. Decisions of the Governing Council are available at <https://uncc.ch/decisions-governing-council>. Those decisions and reports of the panels of commissioners have been published as UN documents under the symbol S/AC.26/ and can be located using the search feature at <https://documents.un.org/prod/ods.nsf/home.xsp>. The rules of procedure for submitting and processing claims are contained in Decision 10, S/AC.26/1992/10, available at <https://documents.un.org/prod/ods.nsf/home.xsp>. Decisions 1-26 are reproduced in Lillich at 397-468.
- 7 U.N. Doc. S/AC.26/1991/1. Statistics on the number of claims in each category, the amounts claimed, and the amounts awarded and paid are at "Summary of Award and Current Status of Payments," <https://uncc.ch/summary-awards-and-current-status-payments>. For a discussion of the method used to process A claims, see the first A claims panel report, U.N. Doc. S/AC.26/1994/2, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G94/647/71/img/G9464771.pdf?OpenElement>. For a discussion of the method used to process B claims, see the B claims panel report, U.N. Doc. S/AC.26/1994/1, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G94/618/68/pdf/G9461868.pdf?OpenElement>. For a discussion of the method used to process C claims, see the first C claim panel report, U.N. Doc. S/AC.26/1991/3, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G94/653/34/img/G9465334.pdf?OpenElement>. See also Christopher S. Gibson, *Mass Claims Processing: Techniques for Processing over 400,000 Claims for Individual Loss at the the United Nations Compensation Commission*, in Lillich, *supra* note 6, at 155.
- 8 These figures are drawn from the Summary of Award and Current Status of Payments cite in the previous footnote. Panel of commissioner reports for these categories are available on the UN official document site, cited in footnote 5. For example, a D claim report is designated U.N. Doc. S/AC.26/1998/1; an E claim report is U.N. Doc. S/AC.26/1998/7; and an F claim report is U.N. Doc. S/AC.26/1998/4.
- 9 U.N. Doc. S/AC.26/1991/2, https://uncc.ch/sites/default/files/attachments/documents/dec_02.pdf.
- 10 S.C. Res. 706 (Aug. 15, 1991); S.C. Res. 712 (Sept. 19, 1991).
- 11 S.C. Res. 778 (Oct. 2, 1992).
- 12 S.C. Res. 986 (Apr. 14, 1995).
- 13 See Fact Sheet, Office of the Iraq Programme, <https://www.un.org/Depts/oip/background/fact-sheet.html>. See also Matheson, *supra* note 4, at 173.
- 14 See Matheson, *supra* note 4, at 179.
- 15 *Id.*
- 16 General Assembly resolution A/RES/ES-10/17 (2007), adopted at the 10th emergency special session, establishing the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory. See www.unrod.org. The General Assembly has established an 11th emergency special session on Ukraine and adopted resolution A/RES/ES-11/1 on March 2, 2022.

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Governing Council

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Fulfilment of the mandate of the Commission

The Governing Council,

Recalling paragraph 16 of Security Council resolution 687 (S/RES/687 (1991)) which affirmed Iraq's liability under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait,

Recalling also paragraph 18 of Security Council 687 and paragraph 3 of Security Council resolution 692 (S/RES.692 (1991)) wherein the Security Council decided to establish both the Commission and the Compensation Fund to process claims and pay compensation for losses and damage suffered as a direct result of Iraq's unlawful invasion and occupation of Kuwait,

Recalling further that pursuant to various Security Council resolutions and decisions of the Governing Council, the Government of Iraq was required to transfer a percentage of proceeds from export sales of petroleum, petroleum products and natural gas into the Fund,

Noting that following the establishment of the Commission, approximately 2.69 million claims were submitted by more than one hundred Governments and international organizations, seeking a total of approximately US\$352.5 billion in compensation,

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Noting also that following the processing of all claims received by the Commission, the Governing Council awarded \$52,383,356,715 to 1,543,619 successful claimants,

Noting further that with the final compensation payment of \$629,324,488 made on 13 January 2022 to the Government of Kuwait on behalf of the Kuwait Petroleum Corporation, all claims awarded compensation by the Commission have now been paid in full,

Appreciating the commitment of the Government of Iraq to meeting its obligations under relevant Security Council resolutions and Governing Council decisions and its cooperation over the lifespan of the Commission,

Recognizing the cooperation of the Government of Kuwait with both the Commission and the Government of Iraq,

Welcoming the improved relations between Iraq and Kuwait,

1. *Declares* that the Government of Iraq has fulfilled its international obligations to compensate all claimants awarded compensation by the Commission for losses and damages suffered as a direct result of Iraq's unlawful invasion of Kuwait;

2. *Decides* that effective immediately, the Government of Iraq is no longer required to deposit a percentage of proceeds from export sales of petroleum, petroleum products and natural gas into the Compensation Fund;

3. *Requests* that the President of the Governing Council present the final report of the Governing Council, as approved by the Governing Council, to the Security Council;

4. *Invites* the Security Council to take the necessary action to note that the mandate of the Commission has been fulfilled and that the Commission will be winding down all activities in 2022;

5. *Notes* that a final Governing Council session will be required to conclude the remaining matters related to the dissolution of the Commission and the Fund;

6. *Directs* the Secretariat to take the necessary administrative action for the return of any amounts remaining in the Compensation Fund to the Government of Iraq.