Introductory Note to Decisions 14 Through 23 of the United Nations Compensation Commission

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UNIVERSAL NATIONS COMPENSATION COMMISSION: 
GOVERNING COUNCIL DECISIONS 14 TO 23 
(Committee on Administrative Matters; Allied Coalition Forces’ Claims; 
Interest; Transparency; Priority; Direct Cause; Filing Claims; 
Coordinating Claims)* 
[Taken between December 18, 1992 and October 20, 1994]
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Introductory Note
by
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On June 8, 1994, Secretary-General Boutros Boutros-Ghali at a ceremony marking the first 
awards of compensation by the United Nations Compensation Commission ("UNCC") stated:

By this act today, the international community is showing that it stands by the 
undertaking it gave to victims of Iraq's invasion of Kuwait. It demonstrates our 
commitment to the vitality of international law, to the strength of the claims of justice 
and to the ability of the United Nations to face up to its challenges and 
responsibilities.¹

These first awards of compensation, Category "B" claims, by the UNCC were approved by 
the UNCC Governing Council in its Decision 20 of May 26, 1994. Further awards of compensation, 
Category "A" claims, were approved by the Council in its Decision 22 of October 21, 1994.² The 
texts of Decisions 20 and 22, and also Decisions 14 through 21 and 23, follow this brief note. The 
ten Decisions involve important developments in international dispute resolution, state 
responsibility and the relations between international organizations and states.

¹ UN Doc. SG/SM/5319 (8 June 1994).
² The first awards of compensation for Category "C" claims are expected in December 1994.

*The Introductory Note was prepared for International Legal Materials by David D. Caron, Professor of Law 
at the University of California at Berkeley. Decisions 14-23 of the Governing Council are reproduced from UN 
Individual Claims for Serious Personal Injury or Death (Category "B" Claims) can be found at 34 I.L.M. 263 
(1995). The October 21, 1994, Report and Recommendations made by the Panel of Commissioners concerning the 
First Instalment of Claims for Departure from Iraq or Kuwait (Category "A" Claims) appear at 34 I.L.M. 305 

the Governing Council, and an Introductory Note by David D. Caron, are reproduced at 31 I.L.M. 1009 (1992). 
UN Security Council Resolution 687 (1991) affirming earlier resolutions and setting forth terms of cease-fire in the 
compensation payment as a percentage of oil export value is reproduced at 30 I.L.M. 1715 (1991). Security 
Council Resolution 706 (1991) authorizing states to import oil from Iraq pursuant to certain conditions appears at 
meet Iraqi humanitarian needs is reproduced at 30 I.L.M. 1730 (1991).]
Creation of Committee on Administrative Matters -- Decision 14. The Governing Council decided to create a Committee on Administrative Matters to consist of "interested State members of the Governing Council" to provide "guidance" on major administrative and budgetary matters presented to it by the Executive Secretary of the UNCC.

Guidelines as to "Direct Cause" where the Trade Embargo was also a Cause -- Decision 15. Security Council resolution 687 (1991) provides in paragraph 16 that Iraq is liable under international law for any "direct" loss resulting from Iraq's unlawful invasion and occupation of Kuwait. The meaning of "direct" has been of particular concern to many claimants. The Governing Council in Decision 9, paragraph 6, provided that the "trade embargo and related measures, and the economic situation caused thereby, will not be accepted as the basis for compensation." The Governing Council in Decision 15 provides guidelines to Commissioner and claimants on the meaning of paragraph 6 of Decision 9. The Council notes that in the case of larger and more complex claims some losses may be a direct result of the invasion and occupation, while other losses may result solely from the trade embargo and related measures. In such cases, "partial compensation would in principle be payable." In other cases, the loss will have "parallel causes," i.e. it may be attributed both to the invasion and occupation, and to the trade embargo and related measures. In cases of parallel causes, "full compensation would in principle be awarded."

The Awarding of Interest -- Decision 16. The Governing Council, confirming recent arbitral practice, indicates in Decision 16 that interest will be awarded "from the date of loss to the date of payment at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." The Panel addressing the Category "A" claims approved in Decision 22 considered the fixed amounts set by the Commission for Category "A" claims to be "losses" within the meaning of Decision 16, recommended that interest be paid on such fixed amounts set by the Commission and was of the opinion that "in view of the number of category "A" claims to be processed and the practical difficulties that would arise from attempting to calculate interest as of the date of departure of each claimant separately, ...that the phrase 'the date the loss occurred' in Decision 16 should be interpreted to be a single fixed date for all category "A" claims." The Panel recommended the single date to be the date of the invasion, 2 August 1990.

Transparency and Priority of Payments -- Decisions 17 and 18.

Transparency. Decision 18 offers important insights into the changing role of states vis a vis their citizens and international organizations. Under diplomatic protection, a state espoused the claim of its national. It was the state that had standing and received the award. The state in such cases had no international duty to inform anyone of what it ultimately did with the funds received. The UNCC process is quite different. True, it is the states that submit consolidated claims. But they do so as agents for their citizens. This role of agent is manifest in Decision 18. Decision 18 requires that all governments receiving awards (1) prior to or immediately following receipt of payment, inform in writing the UNCC on the arrangements made for distribution of the funds to claimants; (2) within six months of receipt, distribute the specified funds to named claimants; (3) not later than three months after the deadline for distribution, inform the UNCC on the amounts distributed and the reasons for any non-payment; and (4) after distribution of all payments received, provide a final summary account of all distributions made. If a government fails to distribute the funds received, fails to submit adequate reports, or does not in the view of the Governing Council provide satisfactory reasons for non-payment, the Governing Council "may decide not to distribute further
funds to that particular government." Funds received which have not been distributed to claimants owing to inability to locate such claimants "shall be reimbursed to the Compensation Fund." Governments in establishing their arrangements for distribution may deduct processing costs from payments made to claimants, but such fees (1) shall not be imposed until the government involved provides "explanations satisfactory to the Governing Council;" (2) shall be commensurate with the actual expenditure of governments; and (3) should not exceed 1.5% of amounts payable in categories A, B and C, or 3% of amounts payable in categories D, E and F. If the governments involved intend to convert the United States dollar payments into other currencies for distribution, they shall notify the Council on the method of conversion and exchange rate to be used.

Priority. The UNCC is guided in its allocation of funds for payment of awards by two principles: (1) similarly situated claimants within the same categories are treated equally; and (2) claimants within the urgent categories (categories A, B and C) receive priority of treatment both in processing and payment. Given the very limited funds available to the Commission at present, Decision 17 implementing the above two principles provides that each successful claimant within categories A, B and C shall receive "an initial amount of $2,500 (or the principal amount of the award, if less)...." A mechanism, subject to revision by the Council, for eventual further payments is outlined in Decision 17. The UNCC is to retain a reserve adequate for one year's operating expenses.

Confirmation of Decision regarding Claims of Members of Allied Coalition Forces — Decision 19. Responding to requests of several governments, the Governing Council confirmed in Decision 19 its earlier decision that the costs of the Allied Coalition Forces, including the costs of military operations of such forces against Iraq, were not eligible for compensation from the UNCC.

The report of the Commissioners underlying Decision 20 interprets the limitation on eligible claimants to not include members of the Kuwait Armed Forces injured in the opening days of the war because the "Allied Coalition Armed Forces did not exist at that time," or members of the Kuwaiti resistance who were not integrated as units under the command of the Allied Coalition Armed Forces.

The First Category "B" Awards of Compensation -- Decision 20. Decision 20 of the Governing Council approves, without change, the recommendations made by a panel of three Commissioners (Mohamed Bennouna (Chairman), Denise Bindschelder-Robert and Fang Ping) concerning individual claims for serious personal injury or death (what the UNCC terms "Category B" claims). The Decision in doing so (1) approves payment of an initial payment of $2500 on each of 670 claims of individuals from sixteen countries, primarily Kuwait and Jordan; (2) denies compensation on 307 claims; and (3) notes the transfer of 88 claims to Category C. The report of the Panel is important for its discussion of (1) the innovative approach the UNCC has adopted for the processing of one category of claims among the millions of claims presented to it, and the role of the Commissioners in the development of that approach; (2) issues of jurisdiction; (3) the attribution of losses and damages to Iraq; and (4) the necessary level of proof for various claim situations.

Methodology. The Panel report outlines the methodology and procedures employed by the UNCC Secretariat in the processing of Category B claims. It reflects the important role that Secretariat reports prepared under article 16 of the Provisional Rules for Claims Procedure have
come to play in allowing comment by governments, including Iraq, on legal issues posed by categories of claims. Most importantly, the section of the Panel's report on methodology discusses the relationship between the work of the Commissioners and the Secretariat.

**Jurisdiction.** The report discusses several dimensions of the jurisdiction of the UNCC. As to the time period over which the UNCC has jurisdiction for serious personal injury claims, the Panel noted that although Decision 1 refers to the period between 2 August 1990 and 2 March 1991, several of the claims involved injuries occurring outside the period. The Panel considering claims based on mine explosions outside the mentioned period considered them admissible noting the link to the invasion and occupation of Kuwait.

As to the scope of eligible claimants, the Panel discusses several categories of claimants. In the case of death claims by family members, the Panel was confronted with "the concept of family being interpreted differently by both claimants and Governments in various countries." The Panel, noting that Decision 1 provides that claims for death of an individual may be made by a "family (consisting of any person and his or her spouse, children or parents)," interpreted the term "family" to exclude death claims by "other relatives such as brothers or sisters, grandchildren, grandparents, nieces, nephews or uncles and aunts of the deceased." As to the meaning of parent and child, the Panel considered "it appropriate, in conformity with general principles of private international law, to apply to each claimant his or her own national law..." The Panel also concluded that where "a man had more than one [legally recognized] wife, each of the wives and her respective children constitute a separate family unit...." The Panel did not accept the position, particularly of concern to Arab societies, that (1) the widow and minor children, (2) the parents of the deceased and (3) the adult children of the deceased should be each regarded as constituting distinct family units. Instead, the Panel recommended that all of these family members should be viewed, for purposes of the Commission's jurisdiction, as one family unit who must share in the potential award of U.S. $10,000. Given the apparent separateness of these elements of family in some Arab societies -- particularly the widow and the parents of the deceased, this aspect of the Panel's report is particularly controversial and likely will require difficult decisions by governments as to the distribution of such awards among named claimants.

**Attribution.** Inasmuch as there must be a link between the injury or death involved in Category B claims and the invasion or occupation of Kuwait, the Panel report considers the attribution of losses or damages to Iraq in five situations: Where the alleged cause of an injury or death was (1) a road traffic accident; (2) lack of medical care; (3) an illness or death (such as heart attack) triggered by events that were a part of the invasion or occupation; (4) suffered in a refugee camp; or (5) related to authorities other than Iraq. For the first four categories, the Panel considered the losses and damages potentially attributable to Iraq because there was, depending on the particular circumstances of each case, a sufficiently direct causal link between the loss or damage and the invasion and occupation of Kuwait. The view of the Panel as to these "particular circumstances" justifying attribution were objectionable to some states in the case of the first category -- "road accidents." While the Panel thought that "in principle all accidents involving an Iraqi military vehicle were a direct consequence" and attributable to Iraq, and that "[a]n accident occurring on the first day of or on the days immediately following the invasion of Kuwait is found to be related to the 'breakdown of civil order' " and hence attributable, it also was the view of the Panel that "the farther the place of the accident was from the claimant's point of departure from Iraq or Kuwait, the more unlikely it was that a link existed between this accident and Iraq's invasion and occupation of
Kuwait." In practical terms, this means that a not-insignificant number of claims involving road accidents which occurred in third countries, such as Turkey or Iran, will not be attributable to Iraq. Several governments objected to the Panel’s recommendation regarding accidents in third countries, but ultimately the Panel’s view that the causal link was too attenuated in such circumstances was accepted.

The fifth category consisted of claims of persons who held Jordanian passports, who either were detained in Iraqi prisoner of war camps in Saudi Arabia or detained in Kuwait during the days immediately preceding 2 March 1991, and who claimed to have been injured by those in control of such detention areas. The Panel, noting that while "the claimants in this group presented well-substantiated claims, and that under general principles of law these claimants would be entitled to claim for compensation," concluded that "in such cases there is no 'direct' link to the invasion and occupation of Kuwait because these acts were accomplished by authorities or persons and in places out of the control of the Iraqi authorities." The Panel recommended that these claims not receive payment from the UNCC. These claims represent over two thirds of the 307 claims which were denied compensation under Decision 20.

**Evidence.** The Panel’s report expands upon the evidentiary standard set forth in article 35, paragraph 2 of the Provisional Rules for Claims Procedure calling for "simple documentation of the fact and date of injury [or] of the death and the family relationship" in the case of claims for fixed amounts. Noting that the Governing Council had set forth a more relaxed standard of evidentiary support in categories A, B and C and that similarly situated tribunals or claims commissions have had to decide claims on the basis of meagre or incomplete evidence, the Panel followed a more relaxed standard but "required in all cases a minimum level of evidence." The Panel’s considerations as to types of evidence cover (1) identity documents, (2) statements by claimants, (3) witness statements, (4) death or burial certificates, (5) medical opinions. The Panel’s evidentiary considerations for serious personal injury addresses situations of (1) torture, (2) sexual assault, and (3) effects of pollution from burning oil wells.

**Coordination and Filing of Claims -- Decisions 21.** Noting that certain claims had been filed both as higher amount Category A claim and as a B, C, or D claim and that higher amount Category A claims presuppose claimant’s agreement not to file the claim under other categories, Decision 21 provides that in such cases the Category A claim shall be deemed by the Commission as a lower amount Category A claim.

**The First Category "A" Awards of Compensation -- Decision 22.** Decision 22 of the Governing Council approves, without change, the recommendations made by a panel of three Commissioners (Kamal Hossain (Chairman), Matti Pellonpää, and Rafael Rivas Posada) concerning individual claims for departure from Iraq or Kuwait (what the UNCC terms "Category A" claims). The Decision in doing so approves payment of $185,500,500 for 53,845 claims of individuals submitted by sixty countries and the UNDP (Jerusalem). Almost half of the claims (23,334) were submitted by Egypt.

As in the case of Decision 20, the report of the Panel is important for its discussion of the

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3 Kamal Hossein was appointed to the Panel on 12 August 1994 following the death of Judge José María Ruda, the former Chairman.
innovative approach the UNCC has adopted for the processing of a second category of claims. The departure claims considered in Decision 22, unlike the claims for serious personal injury addressed in Decision 20, present a narrow range of factual situations. This narrow range allows the Commission and Panel to make class wide decisions as to the evidentiary value of certain types of records of departure and to employ computer verification of a large number of claims. The fact that a significantly larger number of Category "A" claims remain to be addressed should not overshadow the achievement of the Commission and Panel in addressing so promptly some 50,000 claims. The work of the Commission and its Panels represents a quantum step forward in the resolution of international claims.

**Coordination and Filing of Claims --Decisions 23.** Decision 23 provides that except as provided in Decision 12, individual Category A, B, C, or D need be filed on or before January 1, 1995.

**Closing Remarks.** Even as the UNCC delivers its first awards of compensation, difficulties remain. Most critical to the future of the UNCC efforts is the question of funding. As noted by Secretary-General Boutros Boutros-Ghali:

> These first payments are not large. They cannot be, because the funds at the disposal of the Commission are not large...I call on Member States to ensure that funds promised now come forward [Security Council resolution 778 (1992)]. Only if they do so can the Commission meet its undertakings.

> The work of the Commission continues to represent a highly innovative and appropriate effort to compensate the victims of Iraq's invasion and occupation of Kuwait.4

**I.L.M. Content Summary**

UNITED NATIONS
Security Council

[Transmitting Decision Nos. 14-16 of 18 December 1992]

Annex I DECISION NO. 14 - I.L.M. Page 244
Establishment of the United Nations Compensation Commission Committee on Administrative Matters [CAM]
[Composition; meetings; functions (to provide guidance on major administrative and budgetary matters)]

Annex II DECISION NO. 15 - I.L.M. Page 244
Compensation for business losses resulting from Iraq's unlawful invasion and occupation of

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4 The literature regarding the UNCC is increasing, although the majority of it is general. Most valuable and recommended are the proceedings of the recent Sokol Colloquium held at the University of Virginia, forthcoming in early 1995 as "The United Nations Compensation Commission," Richard B. Lillich, editor.
Kuwait where the trade embargo and related measures were also a cause

1-10 [Compensation for direct loss only; related claims; evidence; guidelines in previous decisions; valuation methods; direct losses due to the invasion should be compensated even though the trade embargo and related measures may be "parallel" causes (no compensation for losses due solely to the embargo or related measures)]

Annex III DECISION NO. 16 - I.L.M. Page 247

Awards of interest

[Interest from the date of loss until the date of payment; methods of calculation to be determined by the Governing Council; time of payment]

Annex IV - I.L.M. Page 248

Declaration by the President of the Governing Council at the 31st plenary meeting

[On discussions of Working Group A regarding the priority of payment of claims]

UNITED NATIONS

Security Council


[Transmitting Decision Nos. 17-19 on 23-24 March 1994 regarding the procedures for payment of compensation and regarding whether the Allied Coalition Forces are eligible for compensation (no)]

Annex I [DECISION NO. 17] - I.L.M. Page 250

Priority of payment and payment mechanism: Guiding principles

1 [Equal treatment of similarly situated claimants; priority to claims in categories A, B and C]

Payment mechanism - I.L.M. Page 250

2-4 [Initial payments of US$ 2500 to successful claimants in categories A, B and C; subsequent payments]

Allocation of funds - I.L.M. Page 251

5-7 [First to claimants in categories A, B and C; then a minimum of US$ 5000 to all remaining categories; proportionate allocation of payments over US$ 5000]

Revision of the system - I.L.M. Page 251

8-9 [As need, by the Governing Council]

Transparency - I.L.M. Page 251

10 [Distribution of payments by the governments concerned]

Annex II [DECISION NO. 18] - I.L.M. Page 252

Distribution of payments and transparency

[Deduction of processing fees by governments; distribution within 6 months; duty of governments to report on distributions to the Governing Council; form of payment; monitoring by the Governing Council]


Military costs

[Costs of the Allied Coalition Forces are not eligible for compensation]
Decision [No. 20] - I.L.M. Page 254

Concerning the First Instalment of Claims for Serious Personal Injury or Death (Category B Claims)
[Approving the 670 recommended awards (see Annex I); country-by-country summary of awards, totaling over US$ 2.7 million (largest to Kuwait and Jordan); no compensation for 307 claims (see Annex II); transfer of 88 claims to the Panel of Commissioners (category C claims) (see Annex III); no recommendation has been made for 54 claims (see Annexes IV & V)]

Decision [No. 21] - I.L.M. Page 256

Multi-Category Claims
[On the treatment of claims filed by claimants in both category "A" and another category]

Decision [No. 22] - I.L.M. Page 258

Decision Concerning the First Instalment of Claims for Departure from Iraq or Kuwait (Category "A" Claims)
[Approving the recommendations made by the Panel of Commissioners with respect to 53,845 individual claims; table showing country-by-country breakdown of the number of claims and the amount of compensation recommended]

Decision [No. 23] - I.L.M. Page 262

Notification of the Governing Council's Intention Not to Accept Further Individual Claims After 1 January 1995
[Affects claims in categories "A" through "D"]