Contents

CHAPTER 8

International Claims and State Responsibility

A. CLAIMS AGAINST THE PALESTINIAN AUTHORITY AND PLO

On February 3, 2020, the State Department provided notice of the method by which U.S. nationals may contact the Department about claims covered under the Promoting Security and Justice for Victims of Terrorism Act of 2019 (Div. J, Pub. L. 116–94) ("the Act"). 85 Fed. Reg. 6010 (Feb. 3, 2020). The notice is excerpted below.

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Section 903(b)(4) of the [Act] provides that it is the sense of Congress that (A) covered claims should be resolved in a manner that provides just compensation to the victims; (B) covered claims should be resolved and settled in favor of the victim to the fullest extent possible and without subjecting victims to unnecessary or protracted litigation; (C) the United States Government should take all practicable steps to facilitate the resolution and settlements of all covered claims, including engaging directly with the victims or their representatives and the Palestinian Authority and the Palestine Liberation Organization; and (D) the United States Government should strongly urge the Palestinian Authority and the Palestine Liberation Organization to commit to good-faith negotiations to resolve and settle all covered claims.

Section 903(b)(2)(A) provides that the Department of State shall publish a notice in the **Federal Register** identifying the method by which a national of the United States, or a representative of a national of the United States, who has a covered claim, may contact the Department of State to give notice of the covered claims. Section 903(b)(2)(B) further provides that the Secretary of State, or a designee of the Secretary, shall meet (and make every effort to continue to meet on a regular basis thereafter) with any national of the United States, or a representative of a national of the United States, who has a covered claim and has informed the Department of State of the covered claim using the method established pursuant to subparagraph

(A) to discuss the status of the covered claim, including the status of any settlement discussions with the Palestinian Authority or the Palestine Liberation Organization.

Consistent with section 903(b)(2)(A), the Department of State hereby provides notice that nationals of the United States, or their representatives, may submit notice of and information concerning their covered claim to *PalestinianClaims@state.gov* by May 3, 2020. Such information shall include, at a minimum, the method by which the Department of State may contact a claimant, as well as sufficient documentation to establish that the claim constitutes a "covered claim" within the meaning of section 903. Section 903 defines a "covered claim" to mean any pending action by, or final judgment in favor of, a national of the United States, or any action by a national of the United States dismissed for lack of personal jurisdiction, under section 2333 of title 18, United States Code, against the Palestinian Authority or the Palestine Liberation Organization. In the event notice and information of a covered claim is submitted by the representative of a national of the United States, the information provided shall also include such documentation as necessary to establish the representative's legal capacity to act on behalf of the national of the United States.

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B. HOLOCAUST ERA CLAIMS

On July 29, 2020, the State Department released a report to Congress pursuant to the Justice for Uncompensated Survivors Today ("JUST") Act of 2017. Pub. L. No. 115-171, 132 Stat. 1288 (2018). The Department press statement announcing the release of the report is available at https://2017-2021.state.gov/release-of-the-just-act-report/, and excerpted below.

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The JUST Act Report highlights the important actions taken by countries to provide restitution of or compensation for property confiscated during the Holocaust era or subsequently nationalized during the Communist era, consistent with commitments those countries undertook when they endorsed the Terezin Declaration at the conclusion of the Prague Holocaust Era Assets Conference in June 2009. The report also describes the vital work that countries are doing to commemorate the Holocaust, open archives, and promote Holocaust education in order to honor survivors and victims and to ensure such atrocities never happen again.

As we mark the 75th anniversary of the end of the Holocaust and more than 10 years after the adoption of the Terezin Declaration, the legacy of the Nazis' mass looting and subsequent Communist-era nationalizations of such property, remains largely unaddressed in too many places.

The Report details the critical work that remains to be done to provide a belated measure of justice to Holocaust survivors and their families, and to Jewish communities destroyed by the Holocaust. Given the advanced age of Holocaust survivors around the world—many of whom live in or near poverty—the need for action is urgent. All victims of the Nazi regime should be able to live out their remaining days in dignity.

When President Trump signed a landmark Executive Order on combatting anti-Semitism in December 2019, he also stressed the importance of strengthening restitution efforts. I am proud of the Department of State's work in this area, which is led by our Special Envoy for Holocaust Issues, and I will continue to make it a priority.

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C. IRAN CLAIMS

On March 10, 2020, the Iran-United States Claims Tribunal ("Tribunal") issued a partial award in cases A15 (II:A), A/26 (IV) and B43 (Award No. 604-A15 (II:A)/A26 (IV)/B43-FT) with seven separate dissenting and concurring opinions. The awards and separate opinions are available at https://iusct.com/cases/. The summary below references paragraphs from Partial Award 604, available at https://iusct.com/cases/a15ii-a-doc-2350-t-award-10-march-2020-en/.

In these consolidated cases, Iran asserts violations by the United States of its obligation under the Algiers Accords to transfer certain Iranian properties to Iran. In a previous partial award issued on May 6, 1992 (Award No. 529-A15-FT, https://iusct.com/cases/a15ii-a-doc-1083-t-award-6-may-1992-2/), the Tribunal decided a number of general issues concerning the United States' transfer obligation and concluded that certain U.S. conduct was inconsistent with that obligation in general respects. However, the Tribunal was unable to determine whether, *inter alia*, such breaches caused any losses to Iran or the specific properties to which the breaches may have applied without further proceedings.

In Award 604, the Tribunal decided several additional general issues related to the scope of the U.S. obligation under Paragraph 9 of the Algiers Accords. Declaration of the Government of the Democratic and Popular Republic of Algeria (General Declaration), 19 Jan. 1981, https://iusct.com/wp-content/uploads/2021/02/1-General-Declaration .pdf. The text of Paragraph 9 of the General Declaration of the Algiers Accords requires the United States to "arrange, subject to the provisions of U.S. law applicable prior to November 14, 1979, for the transfer to Iran of all Iranian properties which are located in the United States and abroad and which are not within the scope of the preceding paragraphs." In Partial Award 604, one of the Tribunal's main tasks was to interpret the meaning of "Iranian properties." As the Tribunal noted (¶¶ 98-99), it had interpreted the phrase "Iranian properties" in an earlier award to mean tangible properties that were "solely owned by Iran." The Tribunal concluded in Partial Award 604 that, in determining whether specific properties were "solely owned by Iran," title is the key consideration (¶ 129) and "the objective means by which to determine the question of ownership over the property claimed and to conclude whether the property falls within the scope of Paragraph 9." (¶ 131.)

For purposes of assessing whether and when the passage of title occurred, the Tribunal noted that general public international law does not provide any applicable rules or principles and, accordingly, it would look to "the relevant domestic law

governing passage of title" (¶ 137) and specifically the *lex rei sitae*, i.e., "the law of the place where the goods are located at the time of their transfer." (¶¶ 144, 164.)

Beyond the interpretation of "Iranian properties," the Tribunal also ruled on other aspects of the U.S. obligation under Paragraph 9. *First*, the Tribunal concluded that the U.S. obligation arose on January 19, 1981, the date that both Iran and the United States adhered to the Algiers Accords (¶ 173). However, the Tribunal qualified this ruling by explaining that the United States was not required to have already taken steps to arrange for the transfer of properties to Iran by this date. Rather, it was necessary for the Tribunal "to carry out a claim-by-claim analysis in order to determine when the United States should have taken additional steps in light of the specific circumstances of each Individual Claim," such as when Iran provided "direction to the property holders and indication to the United States of any need for assistance." (¶¶ 175-76.)

Second, the Tribunal rejected Iran's argument that Paragraph 9 imposed on the United States an obligation of result, i.e., an obligation to ensure that properties were, in fact, transferred to Iran (¶ 190). The Tribunal concluded instead that the precise nature of the obligation "very much depend[s] on the circumstances of the specific case and cannot be determined in general terms." (¶¶ 189, 191.)

Third, the Tribunal found that, while the U.S. obligation under Paragraph 9 arose independent of any action by Iran, assessing whether the United States had fulfilled that obligation required consideration of "(i) whether Iran had provided the holders [of the property at issue] with the information necessary for them to effect the transfer and (ii) whether Iran had informed the United States that holders were not transferring Iranian properties that should have been transferred pursuant to the transfer directive contained in Executive Order No. 12281." (¶ 204.) According to the Tribunal, these were "burdens in Iran's own interest, in the sense that, absent their performance, in principle, the United States' responsibility for failing to take steps to ensure that holders would transfer Iranian properties to Iran could not be engaged." (¶ 205.) On the other hand, "in situations where direction to holders or indication to the United States was unnecessary or futile, Iran could not reasonably have been expected to take those actions." (¶ 207.)

The Tribunal dismissed two alternative claims that Iran asserted for cash sums it had paid to private contractual partners toward the purchase of properties. Iran's primary claim was under Paragraph 8 of the Algiers Accords, which provides in relevant part that:

> the United States will act to bring about the transfer to the Central Bank of all Iranian financial assets (meaning funds or securities) which are located in the United States and abroad . . . to be held by the Central Bank in escrow until their transfer or return is required by Paragraph 3 above.

The Tribunal concluded that the phrase "Iranian financial assets," as used in Paragraph 8, could not possibly include the sums that Iran was attempting to claim, which "were typically held in bank accounts in the name of Iran's business partners themselves

rather than in Iran's name." (¶ 230.) As the Tribunal observed, "Iran was not the beneficiary of those accounts and had no claims vis-à-vis the banks to the monies deposited therein." (*Id*.)

The Tribunal also rejected Iran's alternative claim, made under General Principle A of the General Declaration of the Algiers Accords, for these same sums. Iran argued that General Principle A, in providing that "the United States will restore the financial position of Iran, in so far as possible, to that which existed prior to November 14, 1979," effectively obligated the United States to ensure the return of payments that Iran had made to private contractors by that date. The Tribunal concluded, however, that to the extent General Principle A could serve as a "free-standing source of rights and obligations," the United States satisfied its obligations thereunder "by removing, on 19 January 1981, all restrictions it had imposed on the mobility and free transfer of all Iranian assets between 14 November 1979 and 19 January 1981 through Executive Order No. 12281." (¶ 247.)

The Tribunal made a number of specific rulings in its analysis of claims relating to specific properties for which Iran argued the United States had breached its obligations. The Tribunal rejected Iran's claims for a wide range of properties, and accepted its claims for other properties, awarding compensation to Iran for the fair market value of the properties as of the date of the breach. The Tribunal also awarded Iran "post-award interest at the successive prevailing prime bank lending rates in the United States for the period of non-payment of this Partial Award." (¶ 2610.) The Tribunal rejected Iran's claim for compounding pre-award interest, instead calculating interest on a simple basis.

In total, inclusive of its claims for interest, Iran sought nearly $1.9 billion in compensation. In its Award, the Tribunal awarded Iran approximately $29 million in compensation (inclusive of pre-award interest). The Tribunal also ordered the United States to transfer certain properties to Iran within four months of the Award. (¶ 2611(12), (13).) If the United States did not do so, the Tribunal ruled that it must pay to Iran $7,882,829.43 in damages and pre-award interest.

On April 9, 2020, the United States sought corrections to certain aspects of the Tribunal's Award, as well as an additional award on a defense that the Tribunal had failed to address. On November 27, 2020, the Tribunal issued its decision on the U.S. request. The Tribunal granted some of the corrections that the United States sought, while denying others and denying the request for an additional award. The Tribunal's decision resulted in a $5,605.00 reduction in the amount of damages awarded to Iran and a $8,828.03 reduction in the amount of pre-award interest, for a total reduction of $14,433.03.

D. SUDAN CLAIMS

See Chapter 10 for discussion of the Supreme Court's 2020 decision in *Opati v. Republic of Sudan*, 590 U.S. ___, 140 S. Ct. 1601 (2020) (also relating to claims arising from the 1998 embassy bombings in Tanzania and Kenya).

1. Claims Settlement Agreement

On October 30, 2020, the United States and Sudan signed the Claims Settlement Agreement between the Government of the United States of America and the Government of the Republic of the Sudan ("Agreement"). Together, the Agreement with a side letter clarifying Article IV(2) of the Agreement, the Sudan Claims Resolution Act ("Act"), discussed *infra*, and an agreement pertaining to the release of escrowed funds, provide the framework to address claims against Sudan related to the 1998 East Africa embassy bombings, the 2000 attack on the U.S.S. Cole, and the 2008 killing of a USAID employee. Pending claims against Sudan related to the September 11 attacks were not affected by the Agreement or the Act.

On November 2, 2020, the State Department announced the Agreement in a press statement, available at https://2017-2021.state.gov/u-s-sudan-signing-ceremony-on-bilateral-claims-agreement/. The press statement says, in part:

> The agreement also provides for the transfer of compensation for victims of the 2000 attack on the USS Cole and the 2008 killing of U.S. Agency for International Development employee John Granville. This agreement is the culmination of more than a year of negotiations between both countries. It memorializes Sudan's agreement to provide $335 million in compensation for victims of terrorism, which will be released to the United States following the rescission of Sudan's State Sponsor of Terrorism designation and the enactment of legislation that would restore its immunities to those of a country not so designated.

The Agreement, excerpted below, addresses the restoration of sovereign, diplomatic, and official immunities to Sudan and the barring and precluding of litigation of covered claims against Sudan in U.S. courts through the enactment of legislation. The full text of the agreement and the side letter clarifying Article IV(2) are available at https://www.state.gov/sudan-21-209.

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ARTICLE II

The objective of this Agreement is to reach a comprehensive settlement that:

1. settles the claims of the United States of America and, through espousal, those of U.S. nationals;
2. provides meaningful compensation in connection with claims of foreign nationals employed or performing a contract awarded by the United States and establishes a fair process through which to distribute compensation for such claims; and
3. bars and precludes all U.S. national and foreign national suits and actions (including suits and actions with judgments that are still subject to appeal or other forms of direct

judicial review, as well as suits or actions to wholly or partially satisfy final judgments through execution or attachment) and future suits and actions in the courts of the United States of America through legislation providing to Sudan the sovereign, diplomatic and official immunities normally provided by the United States to other states

if such claims, suits, or actions are against Sudan or, where the claims, suits, or actions implicate in any way the responsibility of Sudan, against Sudan's nationals; and such claims, suits, or actions are brought by or on behalf of U.S. nationals or such claims, suits, or actions are brought by or on behalf of foreign nationals; and such claims, suits, or actions arise from personal injury (whether physical or non-physical, including emotional distress), death, or property loss caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking or detention or other terrorist act, or the provision of material support or resources for such an act, occurring outside of the United States of America and prior to the date of execution of this Agreement.

ARTICLE III

1. Upon entry into force of this Agreement, the Government of the United States of America confirms the enactment of legislation that Sudan may invoke, upon the receipt by the United States of the funds referred to in Paragraph 2 of this Article, that:
   a. provides the same sovereign, diplomatic, and official immunity to Sudan and its property and to its agencies, instrumentalities, officials, and their property, as is normally provided by the United States to other states and their property and to their agencies, instrumentalities, officials, and their property; and
   b. bars and precludes all suits and actions specified in Article II of this Agreement pending in the courts of the United States of America whether brought by or on behalf of U.S. nationals or foreign nationals (including suits or actions with judgments that are still subject to appeal or other forms of direct judicial review, as well as any pending suits or actions to wholly or partially satisfy final judgments through execution or attachment) and future suits and actions specified in Article II.
2. The Government of the Republic of the Sudan shall transfer to the Government of the United States a payment of U.S.$335,000,000, as the basis for settling the claims and the legislation barring and precluding the suits and actions specified in Article II of this Agreement, to be used by the Government of the United States of America for making distribution payments as specified in the annex to this Agreement ("Annex").

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ARTICLE IV

1. The Government of the United States of America shall accept the funds specified in Article III(2) of this Agreement for distribution as a full and final settlement of its claims, suits, and actions and, through espousal, those of U.S. nationals as specified in Article II of this Agreement, and for payment of compensation, as specified in Article II, to resolve claims, suits, and actions of foreign nationals.
2. Upon receipt of the funds from the Government of the Republic of the Sudan specified in Article III(2) of this Agreement, the Government of the United States of America:

a. Shall certify that Sudan has made final payment of the funds to the United States in accordance with any certification requirement set forth in the legislation referred to in Article III(1) of this Agreement.
b. Shall take action as appropriate and necessary, consistent with its constitutional structure, to help bring about the success of Sudan's efforts to secure
   i. the termination of legal proceedings in U.S. federal or state courts involving any claims, suits, or actions specified in Article II of this Agreement, regardless of the nationality of the claimant; and
   ii. the nullification of any and all attachments and measures in support of attachments, and the vacatur of any judgments rendered by a U.S. federal or state court,

   consistent with the legislation referred to in Article III(1) of this Agreement.
c. Shall avoid any action that:
   i. contradicts the terms of this Agreement, and in particular challenges the sovereign immunity of Sudan concerning any of the claims, suits, or actions specified in Article II of this Agreement; or
   ii. stands as an obstacle to the accomplishment and execution of this Agreement.

* * * *

In connection with the signing of the Agreement, Assistant Secretary of State for African Affairs Tibor Nagy sent a side letter to Sudan, excerpted below, providing an exemplar of the U.S. practice with respect to the termination of litigation based on the 2008 Libya claims settlement process. The full text of the letter is appended to the Agreement.

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[Article IV(2) paragraphs (a)-(b) of the Agreement] address the termination of litigation and reflect the process by which the termination of litigation would be secured in the U.S. judicial system.

As discussed during the negotiations between the Parties to the Agreement, Sudan, as the defendant in any cases covered by the Agreement, and consistent with the Foreign Sovereign Immunities Act, would be responsible for moving to dismiss any such case in the court in the United States in which it is pending. The legislation referred to in Article III(1) presumably would be a basis for the motion to dismiss.

The United States, which is currently not a party to such cases, nonetheless has the ability to participate in the litigation. For example, the United States has the authority to make filings in cases pursuant to 28 U.S.C. § 517, which permits the Attorney General to attend to the interests of the United States in any case pending in a state or federal court. The United States has made such filings in many cases in the courts of the United States, and in particular, in cases that were covered by the 2008 Libya Claims Settlement Agreement. In those cases, Libya moved for

dismissal, and the United States supported Libya's request for dismissal with a filing that explained the United States' interest in the litigation.

The process for initiating the United States' participation in those cases began with a request by the Department of State to the Department of Justice to make such a filing, invoking among other things, the 2008 Libya Claims Resolution Act, which restored to Libya immunities normally enjoyed by states that are not designated as state sponsors of terrorism. The Department of Justice agreed with the recommendations in those cases, filed the appropriate papers to support dismissal requested by Libya, and the cases were dismissed in due course.

As explained during the negotiations, while the Department of State cannot guarantee that the United States will appear in any particular case in advance, it would expect that once Sudan were to move to request dismissal of a case covered by the Agreement on the basis of the legislation referred to in Article III(1), the Department of State would send a request to the Department of Justice for participation by the United States to support Sudan's request for dismissal on that basis and that such a request by the Department of State would receive favorable consideration. This would apply to all cases covered by the Agreement, including, but not limited to, *Opati v. Republic of Sudan* (D.D.C), 12-cv-1224 (JDB).

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2. Sudan Claims Resolution Act

On December 27, 2020, the Sudan Claims Resolution Act ("Act") was signed into law in furtherance of the claims settlement with the Government of Sudan. Title XVII, Div. FF, Pub. L. No. 116-260, 134 Stat. 1182 (2020). Section 1704(a), excerpted below, provides for the restoration of Sudan's sovereign immunity from terrorism-related claims in U.S. federal and state courts, upon certification by the Secretary of State that the United States has received sufficient funds pursuant to the Agreement. Pursuant to § 1706, this provision does not apply to September 11 claims that were pending in the multi-district litigation in the U.S. District Court for the Southern District of New York on December 27, 2020. Otherwise, pursuant to 1704(b), the provision applies to "all conduct and any event occurring before [March 20, 2021]."

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(a) Immunity.—

(1) IN GENERAL.—Subject to section 1706, and notwithstanding any other provision of law, upon submission of a certification described in paragraph (2)—

(A) Sudan, an agency or instrumentality of Sudan, and the property of Sudan or an agency or instrumentality of Sudan, shall not be subject to the exceptions to immunity from jurisdiction, liens, attachment, and execution under section 1605(a)(7) (as such section was in effect on January 27, 2008) or section 1605A or 1610 (insofar as section 1610 relates to a judgment under such section 1605(a)(7) or 1605A) of title 28, United States Code;

(B) section 1605A(c) of title 28, United States Code, section 1083(c) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 28 U.S.C. 1605A note), section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Public Law 104–208; 28 U.S.C. 1605 note), and any other private right of action relating to acts by a state sponsor of terrorism arising under Federal, State, or foreign law shall not apply with respect to claims against Sudan, or any of its agencies, instrumentalities, officials, employees, or agents in any action in a Federal or State court; and

(C) any attachment, decree, lien, execution, garnishment, or other judicial process brought against property of Sudan, or property of any agency, instrumentality, official, employee, or agent of Sudan, in connection with an action that is precluded by subparagraph (A) or (B) shall be void.

(2) CERTIFICATION.—A certification described in this paragraph is a certification by the Secretary to the appropriate congressional committees stating that—

(A) the August 12, 1993, designation of Sudan as a state sponsor of terrorism has been formally rescinded;

(B) Sudan has made final payments with respect to the private settlement of the claims of victims of the U.S.S. Cole attack; and

(C) the United States Government has received funds pursuant to the claims agreement that are sufficient to ensure—

(i) payment of the agreed private settlement amount for the death of a citizen of the United States who was an employee of the United States Agency for International Development in Sudan on January 1, 2008;

(ii) meaningful compensation for claims of citizens of the United States (other than individuals described in section 1707(a)(1)) for wrongful death or physical injury in cases arising out of the August 7, 1998, bombings of the United States embassies located in Nairobi, Kenya, and Dar es Salaam, Tanzania; and

(iii) funds for compensation through a fair process to address compensation for terrorism-related claims of foreign nationals for wrongful death or physical injury arising out of the events referred to in clause (ii).

(b) Scope.—Subject to section 1706, subsection (a) of this section shall apply to all conduct and any event occurring before the date of the certification described in subsection (a)(2), regardless of whether, or the extent to which, application of that subsection affects any action filed before, on, or after that date.

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In a December 30, 2020 press statement, the State Department confirmed the enactment of the Act. The press statement is available at https://2017-2021-translations.state.gov/2020/12/30/enactment-of-legal-peace-legislation-to-restore-sudans-sovereign-immunities/index.html and excerpted below.

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With the enactment of the Consolidated Appropriations Act …, the way is clear for victims of the 1998 East African Embassy bombings, the 2000 attack on USS Cole, and the 2008 murder of USAID employee John Granville, to receive long-awaited compensation for their immeasurable losses. The $335 million previously provided by Sudan and to be released to the United States from escrow is in addition to the compensation Sudan has already paid to some victims of the Cole attack as part of a private settlement.

Achieving compensation for these victims of terrorism has been a top priority of the Department. We are pleased to have been able to work with Congress on this legislation while also preserving the ability of 9/11 victims with pending claims against Sudan to continue to pursue those claims.

The enactment of this legislation represents a fundamental change in Sudan's relationship with not only the United States but also the entire international community. It removes a major impediment to Sudan's full reintegration into the global economy by reducing the risk of attachment of Sudan's assets, opening the possibility for substantially increased trade and investment.

This historic step is possible because of the courageous actions of the Sudanese people, who have placed their country on a path towards democracy and economic prosperity. The leadership of the civilian-led Transitional Government in delivering on the demands of the people of Sudan is integral to the success of this transition. We commend the Sudanese people for their continued insistence on freedom, peace, and justice, and we congratulate Prime Minister Hamdok and the civilian-led Transitional Government for their courage in advancing both the aspirations of the people they serve and the cause of regional peace under the Abraham Accords.

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E. IRAQ CLAIMS UNDER THE 2014 REFERRAL TO THE FCSC

The Foreign Claims Settlement Commission ("FCSC" or "Commission") began issuing decisions in 2016 in the Second Iraq Claims Program ("Iraq II"), which was established by a referral dated October 7, 2014, from the State Department's Legal Adviser under a 2010 claims settlement agreement between the United States and Iraq. The FCSC announced the Iraq II program was completed April 13, 2020. 85 Fed. Reg. 19,029 (Apr. 3, 2020). Several of the final decisions issued in 2020 relate to the Commission's standard for hostage-taking under international law (i.e. whether claimants were "seized or detained" by Iraq). Three such decisions are summarized below. The final decisions are available at https://www.justice.gov/fcsc/final-opinions-and-orders-5#s3.

1. Claim No. IRQ-II-346, Decision No. IRQ-II-322 (2020)

This claim under Category A involves a minor U.S. national who was living with his family in Kuwait when Iraq invaded on August 2, 1990. The Claimant asserted that he was held hostage from August 2 through October 10, 1990, when he boarded a bus to Basra, Iraq, and boarded an evacuation flight to London. In its Proposed Decision, the Commission held that Claimant was only held hostage through August 28, 1990, when the Iraqi

government announced that all female and minor U.S. nationals were permitted to leave Kuwait and Iraq. Thus, Claimant was only awarded compensation through that date. On objection, Claimant argued, *inter alia*, that, despite the August 28 announcement, he continued to be detained by Iraq because of continued threats to U.S. nationals, such as the criminalization of hiding of foreigners, door-to-door searches for U.S. citizens, and the establishment of neighborhood checkpoints. In its Final Decision, the Commission rejected this argument, noting that the evidence did not indicate that "Iraqi soldiers in Salmiya continued to target *women and children* for detention after the August 28, 1990 release." Moreover, Claimant was unable to "establish that he remained confined, and thus detained, merely because" of Iraq's decree criminalizing the hiding of foreigners, because he had not provided evidence that he was among the U.S. nationals subject to the decree after the August 28 announcement regarding women and children. Thus, the Commission affirmed its Proposed Decision denying the portion of the claim for hostage-taking after August 28, 1990, since he had not proven that he was "seized or detained" by Iraq after that date, as required by the Commission's standard for hostage-taking in violation of international law.

2. Claim No. IRQ-II-365, Decision No. IRQ-II-323 (2020)

This Category A claim also involves a minor U.S. national who was living with her family in Kuwait when Iraq invaded on August 2, 1990. She too asserted that she was held hostage from August 2 through October 10, 1990, when she boarded an evacuation flight to London in Basra, Iraq. In the Proposed Decision, the Commission held, again, that Claimant was only held hostage through August 28, 1990, when the Iraqi government announced that all female and minor U.S. nationals were permitted to leave Kuwait and Iraq. On objection, Claimant argued, *inter alia*, that, despite the August 28 announcement, she continued to be detained by Iraq because Iraq required exit visas for all departing women and children, which she claims required a U.S. passport, which she did not possess. She claims that Iraq would not allow her mother, who held Claimant's U.S. passport, to enter Kuwait until September 30, 1990, and the next available evacuation flight was October 10. In its Final Decision, the Commission noted that other claimants had been able to obtain exit visas by presenting documents "in lieu of a U.S. passport" by the U.S. Embassy in Baghdad due to a shortage of blank passports. Claimant was thus unable to prove that a U.S. passport "was an 'absolute . . . requirement' for her departure and that Iraq 'prohibited [her] from leaving Kuwait at any time until she had her [U.S.] passport,' i.e. until September 30." The Commission therefore affirmed its Proposed Decision denying the portion of the claim for hostage-taking after August 28, 1990, because she had not proven that she was "seized or detained" by Iraq after that date, as required by the Commission's standard for hostage-taking in violation of international law.

3. Claim No. IRQ-II-374, Decision No. IRQ-II-329 (2020)

This Category A claim involves yet another minor U.S. national who was living with his family in Kuwait at the time of the Iraqi invasion. As in the other claims discussed *supra*, Claimant asserted that he was held hostage from August 2 through October 10, 1990, when he boarded an evacuation flight from Kuwait to London via Baghdad. In the Proposed Decision, the Commission held, again, that Claimant was only held hostage through August 28, 1990, when the Iraqi government announced that all female and minor U.S. nationals were permitted to leave Kuwait and Iraq. On objection, Claimant argued, *inter alia*, that, despite the August 28 announcement, he continued to be detained by Iraq after that date because his parents "'subjectively believed . . . they could not leave Kuwait or even come out of hiding' and 'did not "choose" to stay' until October 10, 1990." He maintained that his parents were "simply ill-informed" about the evacuation flights or were " so extremely skeptical that they believed that they could not go to the U.S. Embassy without risking arrest or harm to their family, until just before October 10, 1990." However, the Commission concluded that Claimant had "not shown that he remained in Kuwait due to actions taken by Iraqi authorities to restrict his movements or to otherwise prevent him from leaving Kuwait[]" after August 28, 1990. The Commission therefore affirmed its Proposed Decision denying the portion of the claim for hostage-taking after August 28, 1990, since he had not proven that he was "seized or detained" by Iraq after that date, as required by the Commission's standard for hostage-taking in violation of international law.

Cross References

International Tribunals and Accountability Mechanisms, **Ch. 3.C**
International Court of Justice, **Ch. 7.B**
Sudan, **Ch. 9.A.2**
Expropriation Exception to Immunity, **Ch. 10.A.3**
Opati v. Sudan, **Ch. 10.A.5**
Investment Dispute Resolution, **Ch. 11.B**
Iran, **Ch. 16.A.1**
Sudan (rescission of state sponsor of terrorism designation), **Ch. 16.A.7**
Sudan, **Ch. 17.B.5**