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DIVIDE, CONQUER, AND PAY: CIVIL COMPENSATION FOR WARTIME DAMAGES

ROSEMARY E. LIBERA*

Abstract: The United Nations Compensation Commission (UNCC) was created by the United Nations (U.N.) in order to compensate monetarily those injured personally and financially by Iraq's illegal actions during the Persian Gulf War (Gulf War). This Note compares the situation in Iraq to that in the former Yugoslavia and considers why such a compensation system was instated in Iraq but not in the Balkans. The author concludes that the UNCC will serve as precedent for the imposition of civil liability for wartime damages and delineates those circumstances under which such a civil compensation system could exist.

INTRODUCTION

After the Gulf War, the United Nations cease-fire agreement forced Iraq to assume civil liability for the damage that it caused during its illegal invasion of Kuwait.1 It also imposed upon Iraq an unprecedented2 civil compensation system directed at monetarily compensating those individuals, entities, and governments that sustained losses during the war.3 After the break-up of the former Yugoslavia, in contrast, the U.N. did not impose civil liability on Serbia, the aggressor state, even though the circumstances of the two conflicts were similar.4 This Note treats the Gulf War civil compensation system as international precedent and considers, first, the circumstances under which that precedent might extend to nations other than Iraq and, second, the potential deterrent effects of imposing a civil compensation system as part of a cease-fire agreement.

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Part I of this Note compares the Gulf War with the conflict in the former Yugoslavia and highlights the similarities between the U.N.'s treatment of each state during their respective conflicts. It also details the Gulf War civil compensation system, the claims that victims have filed, and the awards that the compensatory body has made. Part II considers the Gulf War compensation system's value as international precedent for imposing civil compensation for wartime damages and the attendant limitations on that precedent. Through a comparison of the economic situations in Iraq and in the former Yugoslavia, it also attempts to delineate the nature of the limited circumstances where civil compensation for wartime damages is economically feasible. Finally, Part II examines the extent to which the U.N.'s authority to intervene in international conflicts limits its ability to impose civil liability.

Part III of this Note argues that the economic costs of illegal conflict increased significantly for certain nations with the creation of the Gulf War compensation system and discusses the potential deterrent effects of this increase in cost. This Note concludes that the Gulf War civil compensation system was not an isolated display of U.N. authority and suggests that the overall success of the system will encourage the U.N. to employ it in the future.

I. History of the Gulf War and the Break-up of the Former Yugoslavia

On August 2, 1990, motivated by oil, territorial disputes, and Saddam Hussein's quest for power, Iraq invaded the sovereign nation of Kuwait, thereby beginning the Gulf War. In less than nine months, Iraq caused as much as $300 billion in damages to individuals, entities, and governments located in or associated with Kuwait, Iraq, and the neighboring countries. Iraq detained, tortured, and killed individuals and destroyed personal, real, and business property, as well as the environment.

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6 All monetary values throughout this Note are in United States dollars.
A comparable conflict erupted in the former Yugoslavia around the same time as the Gulf War began in the Middle East. Yugoslavia’s many provinces, separated by culture and politics, considered forming independent nations. Popular sentiment prevailed when Slovenia and Croatia seceded from Yugoslavia in June 1991; Bosnia-Herzegovina (Bosnia) followed suit shortly thereafter, seceding in February 1992. The secession of Croatia and Bosnia created a Serbian minority in each of the new nations. The Serbs in those provinces, supported by Serbia, opposed the secession, and fighting soon escalated between the Serbs and the Muslims and Croats both in Serbia and in the surrounding territories of the former Yugoslavia. As in the Gulf War, the aggressor nation, Serbia, inflicted severe personal and property damages on individuals, entities, and governments during the course of the conflict. Damage to infrastructure in Bosnia has been estimated at between $40 and $50 billion, and approximately 200,000 deaths resulted from fighting in that country.

A. The U.N.’s Reaction

The countries involved in each of these conflicts are members of the U.N. and thus, are subject to the provisions of the U.N. Charter. Iraq and Yugoslavia, now consisting of Serbia and Montenegro, have been members since 1945, the year of the U.N.’s inception. Kuwait joined in 1963, and Bosnia, Croatia, and Slovenia joined in May

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10 Dragnich, supra note 9, at 167.

11 Id.

12 Id. at 169.

13 Id. at 168, 169.

14 Id. at 168-69.


16 STEVEN L. BURG & PAUL S. SHOUP, THE WAR IN BOSNIA-HERZEGOVINA 169-71 (1999) (damage to individuals); CONFLICT IN THE FORMER YUGOSLAVIA, supra note 9, at 84 (damage to infrastructure).

17 CONFLICT IN THE FORMER YUGOSLAVIA, supra note 9, at 84.

18 Id. at 38. Contra BURG & SHOUP, supra note 16, at 169-71 (discussing the range of death estimates).


20 Id.
1992. Article 2 of the U.N. Charter requires U.N. members to “refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.” U.N. members who employ force illegally become subject to Chapter VII of the U.N. Charter which governs threats to the peace, breaches of the peace, and acts of aggression. Article 39, found in Chapter VII, grants the Security Council the power to decide what measures to take pursuant to Articles 41 (sanctions) and Article 42 (use of force) “to maintain or restore international peace and security.” The acts of aggression by Iraq and Yugoslavia brought both of those nations within the purview of Chapter VII.

Initially, the Iraqis and the Serbs suffered similar fates for their violations of the U.N. Charter. The U.N., for example, subjected Iraq to sanctions and an economic embargo beginning in August 1990 in order to pressure Iraq to withdraw from Kuwait. The U.N. forbid Iraq from exporting its own or Kuwaiti oil and permitted it to import only food and medicine. Likewise, the U.N. imposed an arms embargo on the Balkans in order to prevent the further armament of Serbian rebels. Also, in May 1992, U.N. Resolution 757 “banned all trading and financial links with [Yugoslavia], froze all the republic’s overseas assets, forbade all types of cooperation, and imposed a ban on all commercial flights and maritime links to and from [Yugoslavia].”

Although Iraq and Yugoslavia are members of the U.N. and received similar treatment during their respective conflicts, the U.N.’s post-war treatment of these nations has varied considerably. The U.N.

21 Id.
22 U.N. CHARTER art. 2, para. 4; see also U.N. CHARTER art. 2., para. 3 (“All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.”).
23 U.N. CHARTER arts. 39–51 (Chapter VII).
24 U.N. CHARTER art. 39.
25 Resolution 687, supra note 1, at 852, ¶ 16 (Iraq); Kirgis, supra note 4, at 113 (Yugoslavia).
27 Rosemary Hollis, Overview, in Oil and Regional Developments in the Gulf 6 (Rosemary Hollis ed., 1998).
28 Cohen, supra note 15, at 38–39. One difference does exist between the Chapter VII positions taken by the U.N. toward Iraq and Yugoslavia: the Security Council never expressly found that Yugoslavia had committed an act of open aggression. See Kirgis, supra note 4, at 113, 113 n.46. Since the U.N. took Chapter VII action against both countries, however, the difference is not crucial. See id.
29 Conflict in the Former Yugoslavia, supra note 9, at 254.
has established a mechanism of civil compensation, the United Nations Compensation Commission, for the victims of the Gulf War, whereas no such system of civil compensation exists for those who suffered very similar losses at the hands of their Balkan aggressors. Iraq's oil wealth accounts for the difference in the U.N.'s post-war treatment of Iraq and Yugoslavia. As Jean-Claude Aime, the U.N. diplomat in charge of the UNCC effort, said, "[t]hese claims are here because Iraq has oil. If Iraq didn't have oil, there would be no claims." Serbia, on the other hand, is "oil-poor, land-locked, and [was] economically dependent on Croatia and Slovenia." For this reason, there are no claims against Serbia.

B. The UNCC

In the U.N. cease-fire agreement that ended the Gulf War, Resolution 687, Iraq assumed liability for "any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations" that resulted from its unlawful invasion and occupation of Kuwait. The agreement, signed in April 1991, also required Iraq to compensate monetarily those individuals, entities, and governments presenting valid claims against the country and established a fund (Compensation Fund) from which the claims would be paid. Finally, the UNCC was created to process claims and to award damages. The cease-fire addressed the fund's solvency by specifying that, once Iraq was al-

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50 Alzamora, supra note 2, at 4.
51 Kirgis, supra note 4, at 113–14.
52 Bhushan Bahree, Gulf War Claims Against Iraq Could Top $100 Billion, With Deadlines Nearing, WALL ST. J., June 29, 1994, at A13, available at 1994 WL-WSJ 334000 ("Were it not for Iraq's potential oil earnings, compensation would be unlikely" for those individuals and entities damaged as a result of the war).
54 Cohen, supra note 15, at 27.
55 See id.
56 Resolution 687, supra note 1, at 852, ¶ 16. Resolution 674, the predecessor to Resolution 687 signed by the Security Council in October 1990, demanded that Iraq cease and desist from its illegal wartime conduct and reminded Iraq that it was liable under international law for any damage it caused. Resolution 674, 29 INT'L L. MATERIALS 1560, 1562, ¶ 1, 1563, ¶ 8 (1990); see also Resolution 686, 30 INT'L L. MATERIALS 567, 568–69 (1991) (demand on Iraq signed in March 1991).
57 Resolution 687, supra note 1, at 852, ¶ 18.
58 Id.; see also Resolution 692, 30 INT'L L. MATERIALS 864, 865, ¶ 3 (1991) (establishing Compensation Fund and Compensation Commission in accordance with the recommendations of the Secretary-General).
ollowed to resume exporting, the UNCC would retain a percentage of its oil revenue in order to pay the damage awards and the UNCC’s operating costs.\textsuperscript{39} 

The UNCC is a subsidiary branch of the Security Council\textsuperscript{40} and is composed of the Governing Council, the Commissioners, and the Secretariat.\textsuperscript{41} The Governing Council established the criteria for compensation of claims and determined the procedures that the UNCC would follow in assessing claims and making payments to successful claimants.\textsuperscript{42} Its membership is identical to the membership of the Security Council.\textsuperscript{43} The Commissioners, “international jurists and other professionals with an established international reputation,” review the claims and make recommendations to the Governing Council.\textsuperscript{44} As of December 1998, there were 54 commissioners representing 40 nationalities.\textsuperscript{45} The Secretariat provides administrative, technical, and legal support to the Governing Council and administers the Compensation Fund.\textsuperscript{46} 

A notable structural aspect of the UNCC distinguishes it from other international claims tribunals such as the Iran-U.S. Claims Tribunal and the International Court of Justice—the UNCC does not employ an adversarial process.\textsuperscript{47} It is not a judicial body; rather, it is a political and administrative body,\textsuperscript{48} a “claims resolution facility” aimed at “mak[ing] determinations on a large number of claims in a reasonable time.”\textsuperscript{49} The UNCC very rarely invites either the claimants or Iraq

\textsuperscript{39} Resolution 687, supra note 1, at 852, ¶ 19.

\textsuperscript{40} Alzamora, supra note 2, at 3–4.

\textsuperscript{41} The Governing Council, in UNCC, supra note 7; The Commissioners, in UNCC, supra note 7; The Secretariat, in UNCC, supra note 7.

\textsuperscript{42} The Governing Council, supra note 41.

\textsuperscript{43} Id. Thus, China, France, Russia, the United Kingdom, and the U.S. are permanent members of the UNCC. Id. They do not, however, have the power to veto compensation decisions as they have the power to veto regular Security Council resolutions. Id. UNCC decisions are adopted when nine or more members of the Governing Council grant their approval. Id.

\textsuperscript{44} The Commissioners, supra note 41.

\textsuperscript{45} Id.

\textsuperscript{46} The Secretariat, supra note 41. The Secretariat consists of the Executive Secretary, the Claims Processing Division, the Support Services Division, and the Governing Council Secretariat. Id.

\textsuperscript{47} Claims Processing, in UNCC, supra note 7; 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 2, at 15, 16.

\textsuperscript{48} Alzamora, supra note 2, at 8.

\textsuperscript{49} Claims Processing, supra note 47.
to participate in oral proceedings.\textsuperscript{50} Also, all decisions of the UNCC are final and binding.\textsuperscript{51}

\textbf{C. Payment of Compensation}

Pursuant to Resolution 687, the Security Council determined that the UNCC would retain 30\% of Iraq’s oil revenues in order to pay the UNCC’s operating costs and the successful claims.\textsuperscript{52} The UNCC receives the money from a U.N. created escrow account into which importing Member States must pay oil revenues directly.\textsuperscript{53} In 1989, the year before the Gulf War, Iraqi oil revenues totaled $14.5 billion.\textsuperscript{54} Thus, if Iraq exported at its 1989 rate, the UNCC would receive 30\% of $14.5 billion, or $4.35 billion per year.\textsuperscript{55} In May 1991, the U.N. secretary-general estimated that this amount would be even higher.\textsuperscript{56} He anticipated that Iraq’s 1993 oil revenues would total $21 billion, providing the UNCC with approximately $6 billion.\textsuperscript{57}

Exports, however, did not reach this volume; in fact, Iraq did not export any oil at all until December 1996.\textsuperscript{58} In 1991, Iraq rejected an offer\textsuperscript{59} to sell oil made by the Security Council pursuant to Resolution 706, a resolution authorizing Iraq to receive oil profits of $1.6 billion in a one-time-only six month sale period in order to fund the purchase of humanitarian items.\textsuperscript{60} Thirty percent of those profits would have been directed to the UNCC.\textsuperscript{61} Iraq said the plan would make a “‘trusteeship of Iraq.’”\textsuperscript{62}

Iraq also did not comply with the U.N. in eliminating its non-conventional weapons and long-range missile deployment capabili-
ties. The cease-fire agreement stipulated that this compliance was a prerequisite to the U.N.’s lifting of the economic sanctions that it had imposed on Iraq during the conflict. Because Iraq refused to comply fully with the U.N. Special Commission weapons inspectors, the U.N. did not alleviate the economic embargo, Iraq did not resume exporting oil, and the UNCC received no revenues.

Prior to December 1996, loans from the U.N. Working Capital Fund and from frozen oil revenues held by other countries funded the UNCC’s operating costs and compensation payments. Member States that had frozen Iraqi oil revenues when the conflict began transferred those revenues to escrow accounts; then, pursuant to Resolution 778, the UNCC collected 30% of the amount in those accounts. By 1993, the UNCC had collected $21 million from this method. These two funding sources enabled the UNCC to compensate all claimants who had suffered serious personal injuries, for instance, by December 1996.

By 1995, the Iraqi economy had suffered so greatly as a result of the economic embargo that the U.N. contemplated a system under which Iraq could sell oil in exchange for humanitarian goods such as food and medicine. This scheme, accepted by the Security Council in Resolution 986, is known as the oil-for-food program. Although initially rejected by Iraq in 1995, Iraq changed its position in December 1996 and, for the first time since the beginning of the Gulf War, exported oil. Resolution 986 originally allowed Iraqi oil revenues to total $4 billion per year. Resolution 1284, passed in 1999, removed the ceiling. In addition, in December 2000, the Security Council reduced the percentage of Iraq’s oil revenues available for the UNCC

63 Alkadiri, supra note 58, at 99; see also Resolution 687, supra note 1, ¶ 12, 13.
64 Alkadiri, supra note 58, at 99; see also Resolution 687, supra note 1, ¶ 22.
65 Alkadiri, supra note 58, at 103.
67 Caron, supra note 66, at 1010.
69 Payment Procedure, in UNCC, supra note 7.
70 Alkadiri, supra note 58, at 97.
71 Id.
72 Id.
73 Id.
74 Id.
75 Payment Procedure, supra note 69.
to 25% because of humanitarian concerns about the situation in Iraq.76

D. The Claims

The UNCC received approximately 2.6 million claims77 prior to the May 1998 filing deadline.78 The UNCC divided these claims into six categories, A through F, and considered them in order of humanitarian need; A, B, and C Category claims were most pressing.79 The UNCC has resolved all of the Category A, B, and C claims.80

1. Individual Losses: Categories A, B, C, and D

Category A claims are departure claims of individuals who had to leave Kuwait or Iraq between the date of the invasion and the ceasefire.81 The UNCC received approximately 920,000 Category A claims requesting approximately $3.6 billion and has awarded $3.2 billion to approximately 860,000 claimants.82

Category B claims are claims for serious personal injury or the death of a spouse, child, or parent.83 The UNCC received approximately 6000 of these claims requesting $21 million; 4000 claimants succeeded and received a total of $13 million.84

Category C claims, of which there were 420,000 requesting $9 billion in compensation, are for individual damages up to $100,000.85 Individual damages range from mental pain and anguish to loss of stock to loss of real property.86 The UNCC awarded approximately $4.9 million to Category C claimants.87

Category D claims still are being considered.88 These 10,500 claims are the same as the Category C claims, except damages claimed

76 Id.
77 The Claims, supra note 7. Although the claims are those of individuals, entities, and governments, all of the claims were filed by governments on behalf of those within their jurisdictions, as mandated by the UNCC. Alzamora, supra note 2, at 8.
78 Claims Processing, supra note 47.
79 Id.
80 Status of Claims Processing, in UNCC, supra note 7.
81 Category "A" Claims, in UNCC, supra note 7.
82 Id.
83 Category "B" Claims, in UNCC, supra note 7.
84 Id.
85 Category "C" Claims, in UNCC, supra note 7.
86 Id.
87 Id.
88 Status of Claims Processing, supra note 80.
The most prevalent claims are for loss of personal and real property, loss of income, and business losses.

2. Corporate and Government Losses: Categories E and F

Category E and F claims are the most complex and also still are being considered. Category E claims are from corporations, other private legal entities, and public sector enterprises; they cover damages such as contract losses and lost profits. Category E entities filed 5800 claims seeking $80 billion. Category F claims, government claims, total 300 and request $210 billion. These claims include damage to governmental property and the environment.

As of January 2001, the UNCC had awarded $32.2 billion and had paid $11 billion to claimants in Categories A through F. Furthermore, the UNCC has addressed virtually all of the 2.6 million claims; only 12,000 remain to be resolved. Although the remaining claimants request damages of $223 billion, the majority are Category E and F claimants.

II. THE UNCC AS PRECEDENT FOR THE IMPOSITION OF CIVIL LIABILITY FOR WARTIME DAMAGES

The U.N. most likely will rely on the UNCC as precedent for the imposition of civil liability for wartime damages in future conflicts. First, the success of the UNCC's efforts to date in civilly compensating

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89 Category "D" Claims, supra note 7.
90 Id.
91 Status of Claims Processing, supra note 80.
92 Category "E" Claims, in UNCC, supra note 7. Category E claims include oil sector claims (E1), claims of Kuwaiti corporations unrelated to oil (E4), claims of non-Kuwaiti corporations relating to construction and engineering but not relating to oil (E3), and an "other" subcategory (E2). Id.
93 Id.
94 Category "F" Claims, in UNCC, supra note 7.
95 Id.
96 Id. Category F claims are divided into four categories: F4 for damage to the environment, F3 for damage to the Kuwaiti government (includes damage to property and contract losses), F2 for damage to Jordan and Saudi Arabia, and F1 for all other government claims related to the evacuation of civilians and damage to property. Id. There is also an E/F Category covering export guarantee and insurance claims. Id.
97 Status of Claims Processing, supra note 80.
98 Id.
99 Id.
100 See Kirgis, supra note 4, at 113–15 (discussing possible precedential value of Resolution 687).
the victims of the Gulf War is apparent; the UNCC has paid claimants approximately one-third of the amount it has awarded so far and has addressed almost all of the claims.\textsuperscript{101} Second, the permanent members of the Security Council explicitly rejected a proposed amendment to the Gulf War cease-fire agreement that would have held the Gulf War unique and the remedies lacking precedential value.\textsuperscript{102} The U.N.'s ability to establish civil compensation systems, however, is limited by two factors: the economic feasibility of that compensation\textsuperscript{103} and the extent of the U.N.'s authority over the acts of aggression that give rise to the damages.\textsuperscript{104}

A. The Economic Feasibility of Civil Compensation for Wartime Damages

A compensation system comparable to the one that exists for the Gulf War victims is economically feasible only in very limited circumstances. A comparison between the economies of Iraq and Serbia helps define these circumstances and illustrates that a number of factors, together, determines whether a country could be the compensating party in a civil compensation system. In order to be the compensating party, a country must have some form of wealth\textsuperscript{105} that has a high degree of liquidity,\textsuperscript{106} that was not destroyed during the conflict,\textsuperscript{107} that is easily accessible to the U.N.,\textsuperscript{108} and that is not privately owned.

1. Wealth

First and most apparent, a country must have some form of wealth sufficient to pay a sizable portion of the claims and to fund the system itself.\textsuperscript{109} The U.N. will not subject a country to a civil compensation system simply as an exercise in politics because there is "little point in creating a UN compensation commission for conflicts where there is no prospect of actually compensating anyone."\textsuperscript{110} The U.N.

\textsuperscript{101} Id.
\textsuperscript{102} Id. at 113 n.45. The amendment said, "the circumstances [of the Persian Gulf War] are unique, requiring unprecedented actions 'which do not set undue precedents.'" Id.
\textsuperscript{103} See King, supra note 33, at A1.
\textsuperscript{104} See U.N. CHARTER arts. 39-51.
\textsuperscript{105} See King, supra note 33, at A1.
\textsuperscript{106} See generally, Kirgis, supra note 4, at 115.
\textsuperscript{107} See CONFLICT IN THE FORMER YUGOSLAVIA, supra note 9, at 84.
\textsuperscript{108} See Kirgis, supra note 4, at 115.
\textsuperscript{109} King, supra note 33, at A1.
\textsuperscript{110} Kirgis, supra note 4, at 115.
already has hinted at its unwillingness to hold an aggressor nation civil­ly liable in the absence of any realistic ability to pay.\(^{111}\) In 1997, a delegation from Bosnia visited the head of the UNCC and inquired whether a civil compensation system similar to the one in place for the Gulf War could be instituted to help the Bosnian victims.\(^{112}\) Jean-Claude Aime suggested that Serbia’s lack of wealth was prohibitive.\(^{113}\)

In 1990, pre-war Yugoslavia’s gross domestic product (GDP)\(^{114}\) for the combined Yugoslav republics totaled $55 billion.\(^{115}\) In Serbia, the GDP per capita\(^{116}\) for the same year was approximately $2,700.\(^{117}\) Industrial manufacturing provided most of Serbia’s wealth, accounting for approximately 45% of its 1990 GDP.\(^{118}\) Services were the next largest contributor, and agriculture accounted for another 15%.\(^{119}\) Before Yugoslavia dissolved, Serbia was economically dependent on its neighboring provinces; it also did not have (and still does not have) any highly valuable natural resources.\(^{120}\)

Iraq, unlike Serbia, is an ideal country for the imposition of a civil compensation system\(^{121}\) because it possesses significant wealth in the form of a natural resource, oil.\(^{122}\) Oil production has dominated the Iraqi economy since the 1950s.\(^{123}\) Between 1973 and 1982, Iraq and the other Middle Eastern oil producing countries experienced great prosperity as a result of increased revenues from the export of

\(^{111}\) King, supra note 33, at A1.

\(^{112}\) Id.

\(^{113}\) See id. A delegation from Rwanda visited, as well, and received the same prognosis.

\(^{114}\) Gross domestic product is the total market value of all goods and services produced in a country by the factors of production located in that country, regardless of who owns the factors of production. Karl E. Case & Ray C. Fair, Principles of Economics 613 (1992). Factors of production are land, labor, and capital. Id. at 71. Gross national product, in contrast, is the total market value of all goods and services produced in a country by the factors of production owned by a country’s citizens. Id. at 611.

\(^{115}\) Conflict in the Former Yugoslavia, supra note 9, at 84.

\(^{116}\) Per capita GDP is GDP divided by the country’s population. Case & Fair, supra note 114, at 627.

\(^{117}\) Conflict in the Former Yugoslavia, supra note 9, at 84.

\(^{118}\) Id.

\(^{119}\) Id.

\(^{120}\) Cohen, supra note 15, at 27.

\(^{121}\) See id.


\(^{123}\) Id. at 9.
crude oil, natural gas, and refined products.\textsuperscript{124} During these years, referred to as the “oil decade,” Iraqi oil revenues ranged from a low of $1.8 billion in 1973 to a high of $26.0 billion in 1980.\textsuperscript{125}

Though the “oil decade” had ended, Iraq was still a wealthy nation around the time of the Gulf War.\textsuperscript{126} In 1990, Iraq’s oil reserves constituted 10% of the total world oil reserves.\textsuperscript{127} Furthermore, in 1989, Iraq’s GDP totaled $66.4 billion\textsuperscript{128} of which oil earnings accounted for 61%, followed by services, industry, and agriculture.\textsuperscript{129} More importantly, the revenue generated from the export of oil consistently has accounted for more than 90% of Iraq’s export earnings,\textsuperscript{130} and Iraqi oil revenues generally account for at least 98% of total government revenue.\textsuperscript{131} If Iraq did not possess this wealth, the U.N. would not have subjected it to a civil compensation system.\textsuperscript{132}

2. Liquidity

Before the U.N. can subject a nation to a civil compensation system, not only must that nation possess some form of wealth, but that wealth also must have a high degree of liquidity.\textsuperscript{133} If a country, for example, were rich in oil but did not have the capacity to produce that oil, the U.N. would be taking an extraordinary step if it either seized the raw natural resource or forced the owner nation to develop the means to export the resource for the purpose of funding a compensation system. The U.N. most likely never will take either of these steps.

The U.N. has demonstrated, however, that it is capable of forcing an unwilling payer, such as Iraq, that has the capacity to generate a highly liquid asset to generate that asset notwithstanding its unwillingness.\textsuperscript{134} The U.N.’s actions toward Iraq between 1991 and 1996 are

\textsuperscript{124} GAD G. GILBAR, THE MIDDLE EASTERN OIL DECADE AND BEYOND 1 (1997). The oil producing countries that experienced the greatest wealth during these times were Iraq, Saudi Arabia, KuwaIt, Libya, and the United Arab Emirates. \textit{Id}. at 3.
\textsuperscript{125} \textit{Id}. at 1.
\textsuperscript{126} See EIU, supra note 122, at 20.
\textsuperscript{127} \textit{Id}. In addition, the country is rich in natural gas. \textit{Id}. In 1990, Iraq’s gas reserves accounted for 2.4% of the total world reserves. \textit{Id}.
\textsuperscript{128} ALNASRAWI, supra note 26, at 93 tbl.5.3.
\textsuperscript{129} EIU, supra note 122, at 13.
\textsuperscript{130} \textit{Id}. at 20; Alkadiri, supra note 58, at 92.
\textsuperscript{131} THE STATIONARY OFFICE, WHITAKER’S ALMANAC 2000, at 909 (2000).
\textsuperscript{132} See King, supra note 33, at A1.
\textsuperscript{133} See generally, Kirgis, supra note 4, at 115.
\textsuperscript{134} See Alkadiri, supra note 58, at 95.
illustrative.135 Prior to 1996, although the U.N. permitted Iraq to sell oil according to the terms of the oil-for-food arrangement, Iraq did not do so because Saddam Hussein found that the arrangement infringed upon Iraq’s sovereignty.136 During these years, the U.N. maintained against Iraq “the most extensive and rigidly enforced international sanctions regime in modern history.”137 As a result, Iraq had experienced socio-economic collapse by 1996.138 GDP plummeted,139 inflation soared,140 health care suffered,141 and malnutrition became prevalent.142 Nonetheless, the U.N. continued the embargo until Iraq acquiesced to the oil-for-food deal.143 The U.N. action taken toward Iraq between 1991 and 1996 suggests that, in the future, the U.N. will not refrain from imposing civil liability on a wealthy nation simply because the leaders of that nation are willing to jeopardize their economy and the welfare of their citizens in order to avoid payment.144

3. Retention of Wealth

Furthermore, the U.N. could not subject to a civil compensation system a nation that has not retained its wealth or the potential to generate wealth after the conflict.145 Serbia, for instance, no longer is able to generate revenue in the ways it did prior to the war (or in any new ways).146 Most factories—crucial to industrial manufacturing—have closed.147 Only the “evasion of U.N. sanctions and the country’s agricultural self-sufficiency have kept it afloat.”148 In addition, Serbia’s lack of capital for new investment has prevented it from rebuilding the infrastructure and productive capacity necessary for a return to industrial manufacturing.149

135 See Alnasrawi, supra note 26, at 161.
136 Id.
137 Alkadiri, supra note 58, at 91.
138 Id. at 92–95.
139 Id. at 93.
140 Id. at 93.
141 Id. at 96.
142 Alkadiri, supra note 58, at 95.
143 Id. at 97.
144 Id.
145 See generally Conflict in the Former Yugoslavia, supra note 9, at 84.
146 Id.
148 Id.
149 Conflict in the Former Yugoslavia, supra note 9, at 84.
Iraq, in contrast, remains a wealthy nation even though its economy has been devastated by the U.N. sanctions still imposed on it; it maintains the potential to exploit the natural resource that lies beneath its land.150 After the Gulf War, as evidenced by its current ability to export oil, Iraq retained both its oil and at least a minimal capacity to prepare that oil for exportation notwithstanding the damage caused by the U.N. air campaign.151 This favorable outcome for Iraq can be contrasted with the extensive damage Iraq inflicted upon Kuwait's oil resources.152 As the Iraqi troops retreated from Kuwait, they ignited 727 oil wells, damaging more than 90% of the producing wells in that country.153 If Iraq's natural resource had suffered similarly, the U.N.'s imposition of civil liability most likely would depend on, first, the amount of oil remaining and, second, the practicality and cost of Iraq's repairing the damage and resuming exporting.

4. Accessibility to the U.N.

Next, the liable nation's wealth must be easily accessible to the U.N. because "a claims process is not likely to produce much actual compensation unless the respondent has a source of funds that can be generated or tapped outside its territory."154 Wealth derived from foreign trade is the most amenable to diversion by the U.N.155 After the Gulf War, the U.N. redirected a portion of Iraq's oil revenues into the UNCC simply by mandating that all nations to which the U.N. permitted Iraq to sell oil pay the revenues that would otherwise go to Iraq into an escrow account.156 The procedural simplicity of the diversion of funds should be attributed to the fact that the funds constituted foreign trade revenue.157 Providing for civil compensation through foreign trade revenue is attractive because the U.N. need not interfere with a country's internal affairs in order to receive the funds.158 For example, if the wealth of a nation originates not from foreign trade but from internal transactions such as the taxation of individual

150 See Alkadiri, supra note 58, at 97.
151 See id.
153 TETREAULT, supra note 152, at 142.
154 Kirgis, supra note 4, at 115.
155 See id.
156 UN Security Council Resolution 986, supra note 53.
157 See id.
158 See Kirgis, supra note 4, at 155.
and corporate income, the U.N. will have greater difficulty gaining access to that wealth. Quite possibly, the only way the U.N. could receive assets earned though internal transactions would be by imposing severe sanctions on a country, thereby forcing it to "voluntarily" relinquish a portion of its assets.

5. Public Wealth

Finally, before the U.N. can impose a civil compensation system, a nation must have wealth that is not privately owned; the government itself must have assets or income. If private individuals or entities possess the wealth of the country and those individuals or entities are not civilly liable to the victims of the conflict, a civil compensation system should fail for two reasons.

First, it is doubtful that the U.N. has the authority to appropriate private revenues in the absence of liability; possibly, the U.N. does not have this authority even when liability exits. In Iraq, the U.N. has not encountered any difficulty that can be attributed to the private ownership of wealth in its collection of the UNCC judgments because oil production is nationalized; the Iraq National Oil Company controls the industry. The effect of Iraq’s having a national oil sector is that the country’s leaders can appropriate to the government the entire spread between the costs of oil production and the sale price of that oil. Thus, because all oil revenue is government owned and because it is the government that is civilly liable under the cease-fire, the U.N. is able to redirect revenues to the UNCC.

Second, if the U.N. does have the authority to appropriate private revenues in the absence of liability, the imposition of such a scheme would constitute troubling precedent for international law and thus would prompt Member States to oppose it. Because the UNCC is the first compensation system of its kind, it cannot be determined definitively whether the U.N. would attempt to collect a civil judgment from a country whose wealth was privately owned. It is unlikely, however, that the U.N. would go so far as to seize private wealth to satisfy a judgment against the country. For example, if Iraq’s oil and productive capacity were owned by a variety of private companies and

\[159\] See id.
\[160\] See id.
\[161\] ALNASRAWI, supra note 26, at 12. The Iraq National Oil company was created in 1964. Id.
\[162\] Id.
\[163\] See generally Resolution 687, supra note 1.
private multi-nationals, the U.N. probably would not attempt to direct those revenues into an escrow account with the intent to seize a percentage.

This conclusion remains unaltered even though the U.N. is able to impose sanctions against the entire aggressor country and, therefore, indirectly can prevent from occurring any wealth generating private transactions involving international parties. Imposing sanctions on a country as a whole because of the acts of the government is fundamentally different from imposing punishment directly on private individuals to compensate for the acts of the government. Member States would oppose private asset seizure because private entities within their borders would pressure them to do so.

B. U.N. Authority Over Acts of Aggression

There are two aspects of the Gulf War cease-fire agreement that may limit the U.N.'s imposition of civil compensation systems in the future. First, the Gulf War is a case of "naked aggression by one state against another, where the basic principle of State Responsibility is clear." Second, Iraq technically consented to the creation of the UNCC. It is unlikely, however, that the U.N. will construe the UNCC precedent narrowly and restrict its imposition of civil liability to conflicts involving aggression similar to that taken by Iraq or to conflicts after which the aggressor agrees to compensate its victims.

1. Acts of Aggression

Iraq's actions in invading Kuwait placed it squarely within the provisions of Chapter VII of the U.N. Charter that prohibits aggression by one independent state against the territorial integrity of another independent state. Instances of naked aggression such as those present in the Gulf War, however, occur infrequently in interna-

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164 Until the 1960's, private multi-national oil companies owned a portion of the oil and production capacity in Iraq. See Alnasrawi, supra note 26, at 12. Iraq, however, made a concentrated effort to free the oil wealth from foreign and private control and, in 1967, the Iraq National Oil Company was granted the exclusive right to exploit the country's oil resources. Id.

165 U.N. Charter art. 41.

166 Kirgis, supra note 4, at 113.

167 Id. at 106.

168 Gordon A. Christenson, State Responsibility and the UN Compensation Commission: Compensating Victims of Crimes of State, in The United Nations Compensation Commis-
tional relations.\textsuperscript{169} Thus, the value of the UNCC as precedent would be greatly diminished if the U.N. limited civil compensation to these instances. Instead, the U.N. should interpret the UNCC precedent broadly and extend its principles to any instance in which the U.N. takes action under Chapter VII (granting the U.N. the authority to maintain and restore international peace and security\textsuperscript{170}) such as the use of force or the imposition of sanctions. The UNCC should be viewed as a mechanism by which international peace and security is restored; Iraq is paying reparations to its victims in order to restore them, ideally, to their pre-war situations.\textsuperscript{171} Thus, in a conflict such as the break-up of the former Yugoslavia where the U.N. took Chapter VII action, international law should allow the U.N. to impose civil liability as well.\textsuperscript{172}

One author has suggested that, under the doctrine of State Responsibility for emergent governments, the U.N. even might extend UNCC precedent to the victor in a civil war if the U.N. subjected that victor to Chapter VII actions during the war.\textsuperscript{173} Extending that reasoning, UNCC precedent also may be available where the U.N. could have but did not take Chapter VII action during the course of a conflict.\textsuperscript{174} If the justification for the imposition of civil compensation rests with the U.N.'s power to restore international peace and security, the U.N.'s lack of involvement during a conflict would not necessarily bear on its authority to act upon the termination of that conflict.\textsuperscript{175}

2. Consent of the Aggressor

Not only will the U.N. most likely not be limited by a naked aggression prerequisite to the imposition of civil liability, it also most likely will not be limited by a consent prerequisite.\textsuperscript{176} Iraq did consent to the provisions of the cease-fire agreement, but it did so only because "It had no choice but to accept [them]."\textsuperscript{177} The U.N., however, should not have needed to elicit Iraq's rancorous consent before

\begin{itemize}
\item \textsuperscript{169} Kirgis, supra note 4, at 113.
\item \textsuperscript{170} U.N. Charter arts. 39–51.
\item \textsuperscript{171} Christenson, supra note 168, at 312.
\item \textsuperscript{172} Kirgis, supra note 4, at 114 (suggesting it would be a "short step" to the imposition of a UNCC for Yugoslavia).
\item \textsuperscript{173} Id.
\item \textsuperscript{174} See id.; see generally U.N. Charter arts. 39–51.
\item \textsuperscript{175} See generally U.N. Charter arts. 39–51.
\item \textsuperscript{176} See Kirgis, supra note 4, at 106.
\item \textsuperscript{177} See id.
\end{itemize}
holding it civilly liable for the damage it caused.\textsuperscript{178} Civil liability is a means of restoring international peace and security in the same way that U.N. sanctions and the use of force are means of doing so.\textsuperscript{179} Thus, in the same way that the U.N. can impose sanctions on or use force against a Member State that violates the U.N. Charter—without its consent—so should the U.N. be able to impose civil liability without the consent of the aggressor state.\textsuperscript{180}

\section*{III. The Rising Costs of Illegal Conflict and Their Potential to Deter}

Traditionally, the expenses that an aggressor nation incurs as a result of an illegal conflict include the costs of waging the war,\textsuperscript{181} the internal costs stemming from reconstruction,\textsuperscript{182} probable submission to U.N. sanctions,\textsuperscript{183} and possible criminal prosecution of the nations’ leaders by an international war crimes tribunal.\textsuperscript{184} This last possibility is remote, as there were no internationally organized war crime tribunals in place between the time of the Nuremberg trials and the Yugoslavian war crimes trials.\textsuperscript{185} Neither Saddam Hussein nor other Iraqi leaders has been tried for international war crimes.\textsuperscript{186}

The possibility of a successful civil suit, brought by a plaintiff in his country of origin against the aggressor nation as a whole or against leaders of the nation individually, has proved equally remote.\textsuperscript{187} In 1994, for example, two sets of plaintiffs filed suits under the Alien Tort Claims Act and the Torture Victims Protection Act\textsuperscript{188} against Radovan Karadzic, the leader of Srpska—a Serbian area of Bosnia—in the United States District Court for the Southern District of New York.\textsuperscript{189} Even if these types of suits result in judgments entered against a foreign aggressor, the likelihood that the aggressor will pay

\begin{itemize}
\item \textsuperscript{178} See Christenson, supra note 168, at 322.
\item \textsuperscript{179} See U.N. Charter arts. 39–51.
\item \textsuperscript{180} See id.
\item \textsuperscript{181} Conflict in the Former Yugoslavia, supra note 9, at 324.
\item \textsuperscript{182} Id.
\item \textsuperscript{183} U.N. Charter art. 41.
\item \textsuperscript{184} Conflict in the Former Yugoslavia, supra note 9, at 325.
\item \textsuperscript{185} Id.
\item \textsuperscript{186} John F. Murphy, Civil Liability for the Commission of International Crimes as an Alternative to Criminal Prosecution, 12 Harv. Hum. Rts. J. 1, 15–16 (1999).
\item \textsuperscript{187} See id. at 28–29.
\item \textsuperscript{188} Russell J. Weintraub, Establishing Incredible Events by Credible Evidence: Civil Suits for Atrocities that Violate International Law, 62 Brook. L. Rev. 753, 755 (1996).
\item \textsuperscript{189} Id. at 753–54.
\end{itemize}
the judgment is slim. 190 “In [civil] suits against individuals and governments, plaintiffs have encountered extreme difficulties in collecting on their judgments.” 191

With the creation and the subsequent success of the UNCC, the costs of illegal conflict for wealthy nations increased significantly. 192 If the UNCC precedent is construed broadly, countries with wealth or assets will face a significant likelihood of being forced to civilly compensate those individuals and entities that they injure during the course of conflicts. 193 Although individual war criminals will be no more likely than they were previously to pay judgments rendered against them, the collection of judgments against aggressor nations will alleviate the necessity for civil suits against the individual perpetrators of war crimes. 194

The potential increase in the economic costs of conflicts for wealthy nations should deter some of those nations from engaging in illegal aggression in which they otherwise might engage. 195 Although action based on deterrence is outside the scope of the U.N. Charter—deterrence does not constitute maintenance or restoration of international peace and security 196—U.N. action that has the dual effect of restoration and deterrence is not only permissible but ideal. 197 Carlos Alzamora, executive secretary of the UNCC, said in 1994 that “the message of the international community, via the U.N., is that not only does ‘aggression not pay, you have to pay for it.’ ” 198 Though deterrence is nearly impossible to measure—it is difficult to know when and why nations are refraining from illegal conduct—the potential imposition of U.N. sanctions most likely has deterred some nations from engaging in illegal conduct. 199 Similarly, nations for whom civil compensation would be economically feasible will consider that there now exists an additional and substantial cost to war that did not exist prior to the Gulf War. 200

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190 Murphy, supra note 186, at 28.
191 Id.
192 See generally Resolution 687, supra note 1; Alzamora, supra note 2.
193 See generally Resolution 687, supra note 1.
194 See generally Murphy, supra note 186; Weintraub, supra note 188.
195 See Bahree, supra note 32, at A13.
196 U.N. CHARTER art. 39.
197 Bahree, supra note 32, at A13.
198 Id.
199 See id.
200 See id.
Of course, there are some nations for whom the potential imposition of a civil compensation system can have no deterrent effect: those nations for whom civil compensation is not economically feasible.\textsuperscript{201} These nations have no more to lose after the creation of the UNCC than they did before its creation.\textsuperscript{202} Serbia falls into this category because it does not have the wealth necessary to pay any judgments rendered against it.\textsuperscript{203} Thus, Serbia need not be wary of such judgments.\textsuperscript{204}

In addition to deterring wealthy U.N. Member States generally, the creation and success of the UNCC also should deter Iraq specifically. The monetary value of the UNCC claims that remain suggests that the U.N. will force Iraq to contribute to the Compensation Fund indefinitely.\textsuperscript{205} When its obligations end, Iraq should hesitate before engaging in another illegal act of aggression. However, any deterrent effect of civil compensation will cease, and will transform into a catalyst for aggression, when the liable nation feels as if it has nothing to lose. As a result, the U.N. must proceed cautiously in its future imposition of civil compensation systems and also must monitor Iraq's economic situation closely.

Important in this respect is the percentage of a country's assets that the U.N. appropriates and directs toward a compensation system. In the case of Iraq, 25\% seems reasonable standing alone but appears less so when coupled with the crushing effects of the sanctions simultaneously in place.\textsuperscript{206} The concurrent imposition of economic sanctions and a civil compensation system has the ironic effect of preventing those who would be compensated in the absence of the sanctions from receiving compensation. Although Iraq's non-compliance with weapons inspections justifies the continued sanctions, as specified in the cease-fire, the alleviation or lifting of the sanctions, when that day comes, means that Iraq could resume exporting oil at a steady volume and thus, could provide a steady stream of revenue to the UNCC.

**CONCLUSION**

The UNCC has compensated, and will continue to compensate, victims of the Gulf War who otherwise would bear their losses without

\textsuperscript{201} See Kirgis, supra note 4, at 115.
\textsuperscript{202} See id.
\textsuperscript{203} See Cohen, supra note 15, at 27.
\textsuperscript{204} See generally Kirgis, supra note 4, at 115.
\textsuperscript{205} See generally The Claims, in UNCC, supra note 7.
\textsuperscript{206} See generally Alkadiri, supra note 58, at 97.
assistance, as do the victims of the break-up of the former Yugoslavia. In this respect, the UNCC is a success and will serve as a precedent for U.N. action in the future to the extent that the economics of the aggressor nation do not thwart the imposition of a civil compensation system. What remains to be determined is whether the UNCC reaches too far into Iraq’s economy. The next few years will reveal whether the U.N. provoked Iraq to act irrationally—whether it stripped the country of so much that it had nothing left to lose. If Iraq has nothing left to lose, this revelation ultimately will define the scope of the UNCC as precedent.