

CRS Report for Congress

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Iraq: Compensation and Assets Issues

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Summary

A U.N. process to compensate the victims of Iraq's invasion and occupation of Kuwait is proceeding, aided by revenues generated by the U.N. "oil-for-food" program in Iraq. However, the amount of money available relative to outstanding claims suggests that the compensation process will not be completed in the foreseeable future. On a related issue, progress to decide the disposition of frozen Iraq assets held by U.S. banks has been hampered by differences over which claimants should have priority.¹ A bill that gives priority to members or veterans of the U.S. armed forces was incorporated into the House version of the FY2000 State Department authorization bill (H.R. 2415), passed by the House July 21, 1999. This report will be updated to reflect legislative developments on this issue. For further information on Iraq, see CRS Issue Brief 92117, *Iraq Compliance with Ceasefire Agreements*.

The U.N. Compensation Process

U.N. Security Council Resolution 674 (October 29, 1990) reminded Iraq that, "under international law, it is liable for any loss, damage, or injury arising in regard to Kuwait and third States, and their nationals and corporations, as a result of the invasion and illegal occupation of Kuwait by Iraq." Security Council Resolution 687 (April 3, 1991) reaffirmed Iraqi liability for compensation to the victims of its invasion and authorized creation of a unique mechanism to adjudicate and pay invasion-related claims. A May 2, 1991 report by the U.N. Secretary General, accepted by the Security Council in Resolution 692 (May 20, 1991), established a Compensation Fund, in which monies for compensation would be deposited and held. The plan also set up a Compensation Commission (UNCC), run by a 15-member Governing Council composed of the representatives of the current members of the Security Council at any given time. Security Council Resolution 705 (August 15, 1991) determined that the compensation effort would

¹ This report mentions some specific compensation claims, within and separate from the U.N. compensation process, for illustrative purposes only. CRS has no way to independently assess the validity or value of any specific compensation claim.

be funded by deducting 30% of Iraq's *future* oil revenues. (Iraqi oil exports were banned immediately after the August 2, 1990 invasion of Kuwait.) Iraq grudgingly accepted these conditions.

Decisions of the UNCC's Governing Council are taken by a majority vote of its members, with no veto permitted. The Council is assisted by an undetermined number of commissioners — experts in finance, law, accounting, insurance, and environmental damage assessment — and by a secretariat to do administrative work. These experts evaluate the claims submitted, verify their validity, and recommend final judgments. The expenses of the UNCC are paid out of the Compensation Fund.

Claims Processing and Payment. The U.N. Secretary General and the UNCC deemed it unworkable to process all claims individually. Governments file claims and distribute payments on their own behalf and on behalf of their nationals and corporations. Claims are categorized as those of individuals (Category A,B,C, and D claims) corporations (Category E), and governments (Category F). There is further specialization of individual claims — fixed amounts for losses arising from departure from Iraq or Kuwait during August 2, 1990 - March 2, 1991² (Category A); fixed amounts for losses resulting from personal injury or death of a relative (Category B); and damages of any type. Individual damage claims are separated into those up to and those exceeding \$100,000 (Category C and D, respectively). Iraq is allowed to make legal and factual comments on UNCC policy, but it is not permitted to dispute individual claims, a restriction Iraq has repeatedly protested. The U.N. compensation process does not preclude parallel claims made through the domestic legal systems of U.N. member governments, but claimants must inform the UNCC of any amounts received and these amounts will be deducted from any awards. Members of the armed forces of countries that fought Iraq in the Gulf war may not file claims through the U.N. process, unless they were taken prisoner and mistreated by Iraq. In addition, the costs of allied military operations against Iraq cannot be claimed under the U.N. compensation process.

Claims Filed and Paid. The deadlines for the filing of new claims have expired, and the UNCC has received about 2.6 million claims, from all categories, totaling about \$230 billion. Kuwaiti claims constitute about 75% of the total. The UNCC has thus far issued 1.3 million awards worth about \$10 billion, giving priority in processing and payment to individual claims.

Until December 1996, when Iraq began exporting significant quantities of oil again under the “oil-for-food” Resolution 986, only \$13.4 million had actually been paid to claimants. About 4,000 Category B (injury or death of a relative) claimants were paid up to that time. Funds for these payments were derived from frozen Iraqi oil assets transferred to a U.N. escrow account under Resolution 778 (October 1992). Since the start of the oil-for-food program, \$3.2 billion has been transferred to the UNCC (as of March 31, 1999). Of that amount, \$2.7 billion has gone to pay claims, \$125 million has covered UNCC administrative expenses, and the remainder is available for payment and expenses.

² Many of the mostly South Asian and Arab expatriate workers forced to leave Iraq and Kuwait after the invasion and occupation would be covered under this category.

The UNCC has acknowledged that the compensation process has been slow and might take many years to finally resolve. UNCC officials have set a goal of processing all claims by 2003. In late 1996, corporate claimants (about \$82 billion in total claims) began to receive awards. In December 1996, Kuwait Petroleum Corporation was awarded \$610 million to settle a \$950 million claim for extinguishing 800 oil well fires set by retreating Iraqi troops in 1991. In April 1999, Israeli firms and individuals were awarded a total of \$31 million for damages caused by Iraqi Scud-variant missile attacks (39 fired) on Israel during the Gulf war. In June 1999, KPC received another \$2.2 billion in awards, and another state-owned Kuwaiti oil company received an award of \$115 million. Governmental claims constitute about \$120 billion of the total claims filed, and the UNCC says it will soon begin awarding claims in this category.

U.S. companies appear to have a significant stake in the U.N. compensation process. Over 150 U.S. firms have made claims through the UNCC process with an asserted value of over \$1.5 billion.³ (Total U.S. claims, about 3,200 in all categories, have an asserted value of about \$1.7 billion.) Among U.S. corporate claims, the Bechtel Corp. of San Francisco has filed a claim for losses incurred when the Gulf crisis despoiled the Bekhme Dam project in northeastern Iraq that it was managing. In late June 1999, several U.S. firms received awards, including Saudi Arabian Texaco (\$506 million) and oil-service firm Halliburton (\$18 million). The U.S. Government seeks \$8.8 million in compensation for the eight U.S. departments that contributed scientific or technical help to the Gulf environmental cleanup.⁴

Funding for Compensation. The large number of unresolved claims and the limited funds available for compensation have raised questions about the future of the UNCC process. As noted above, compensation and the UNCC's operating budget are funded by Iraqi oil revenues. At current oil export capabilities of about \$10 billion per year,⁵ Iraq can generate only about \$3 billion annually for compensation. Even if only a fraction of claims filed result in awards, or if sanctions on Iraq were completely lifted, it might take several decades for Iraq to generate sufficient revenues to pay the awards.

The compensation mathematics have led some observers to speculate that the UNCC process will terminate short of completion. If Iraq's leadership changes, before the compensation process is completed and, at some point, Iraq rejoins the international community, Iraq's reintegration will almost certainly spur calls in the international community to terminate the process and ask claimants to abrogate their claims. On the other hand, some countries, such as Germany, continued to make compensation payments even though they had rejoined the international community. Some observers believe the United States should offer an end to the reparations process as an incentive to Iraqis who are willing to overthrow Saddam Husayn and comply with all applicable U.N. Gulf war-related resolutions. Opposition by some Security Council members to continued sanctions

³ Much of the information in this paragraph is derived from King, Neil. *Firms World-Wide Seek Billions to Cover Their Gulf War Losses.* *Wall Street Journal*, August 18, 1997.

⁴ Nebehay, Stephanie. *Billions in Environmental Claims Filed Against Iraq.* Reuters, February 4, 1997.

⁵ Resolution 1153 (February 20, 1998) allows an increase in Iraqi oil sales to \$5.25 billion every six months, and thus an increase in compensation funds generated.

on Iraq apparently has led Britain and the Netherlands to include in their draft Security Council Resolution (now under discussion) a provision to temporarily suspend compensation deductions, with the proceeds to go toward increased humanitarian relief. Iraq also has succeeded in persuading some international firms to drop claims before the UNCC in exchange for contracts with Iraq under the oil-for-food program.⁶

Claims Against Iraqi Frozen Assets

Some U.S. claims against Iraq arose before the Iraqi invasion of Kuwait, and are ineligible for consideration under the UNCC process. To try to resolve these claims, the Bush and Clinton Administrations have proposed a plan to seize and distribute to U.S. claimants the approximately \$2.2 billion⁷ in Iraqi assets blocked in U.S. financial institutions and their foreign branches. In cases such as this, U.S. claims usually are settled in the context of a reconciliation with the country at issue. Bush and Clinton Administration officials have determined that, in the case of Iraq, the prospects for reconciliation are so limited that the United States should resolve the claims disputes unilaterally.

The Iraqi assets in question were blocked pursuant to President Bush's Executive orders 12722 and 12724 of August 2 and August 9, 1990, respectively. Since the Gulf war, some licenses have been issued to use some of the frozen assets to pay U.S. companies who exported goods to Iraq, prior to the Iraqi invasion, under confirmed letters of credit. These funds were judged by the Office of Foreign Assets Control (OFAC, Department of Treasury) to be the property of the U.S. exporter, and not Iraqi funds. About \$3 billion more remain frozen in foreign banks around the world, and remain blocked by their host countries under Resolution 661 (August 6, 1990). Some governments, including that of Saudi Arabia, have released some frozen Iraqi assets, possibly in an effort to improve relations with Iraq.⁸

The U.S. claims on blocked Iraqi assets exceeds the amount of those assets. The claims, which include those from the U.S. government, corporations, and individuals, are estimated to total up to \$5 billion. Major U.S. government claims include about \$2 billion from the Commodity Credit Corporation and \$50 million from the Export-Import Bank for defaulted Iraqi loan guarantees (mostly for the purchase of agricultural exports). Unsettled U.S. claims from the May 17, 1987 Iraqi attack on the U.S.S. Stark include \$2.3 million in compensation to the 62 crewmen injured⁹, and about \$120 million (exact amount

⁶ Nebehay, Stephanie. Kuwait Accuses Iraq of Extortion At Gulf War Fund. Reuters, June 22, 1999.

⁷ This figure includes about \$211 million in frozen assets already transferred to a U.N. escrow account under Resolution 778. Those monies are being refunded to U.S. financial institutions from the proceeds of Iraqi oil sales under the oil-for-food program.

⁸ Saudi Arabia Frees \$1 million of Iraq's Frozen Assets. Reuters, August 5, 1999.

⁹ The United States and Iraq were close to settling this claim at the time of the Iraqi invasion of Kuwait. The two sides had agreed to settle on an amount of \$1.5 million, but Iraq's transfer of the monies was not completed when the invasion occurred. The U.S. government now stands by the original claim of \$2.3 million. On April 14, 1989, Iraq paid \$27.35 million in compensation to

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undetermined) for damages to the ship itself. U.S. corporate claimants include those, such as ATT, Citicorp, Eastman Kodak, Exxon, Continental Airlines, and others that had contractual obligations Iraq did not fulfill.¹⁰ Other U.S. firms, including tobacco companies and agricultural exporters, want to recoup their losses from exports shipped to Iraq under advised (unsecured) letters of credit that were not able to be paid before U.S.-Iraq business transactions ended. In addition, 3,300 U.S. individuals have registered claims, almost exclusively Gulf war veterans with claims for Gulf War Syndrome health damage. The U.S. Foreign Claims Settlement Commission is maintaining a registry of U.S. claimants in anticipation that an Iraq claims process will be enacted by Congress.

Congressional Debate. The limited assets available relative to total claims has created a debate in Congress over claimant priorities. Congress has thus far been unable to resolve that debate and Bush and Clinton Administration claims proposals have not been enacted. In October 1992, the Bush Administration submitted to Congress a draft bill, entitled “The Iraq Claims Act of 1992,” that would have seized Iraqi assets and established a claims adjudication process under the Foreign Claims Settlement Commission. The draft bill suggested that priority be given to non-commercial claims from members of the armed forces, including crewmen of the U.S.S. Stark, and other claims arising from Iraq’s invasion of Kuwait.

The House and Senate introduced versions (H.R. 3221, S.1401) of the Iraq Claims legislation in mid-1993. Despite substantial debate over which categories of claimants to assign priority to, the House passed the legislation, in much the same form as the Administration draft bill, on April 28, 1994. However, S.1401 did not reach the Senate floor because of opposition from some Senators who wanted to give priority to corporate claimants exporting to Iraq under advised letters of credit. A version of the legislation that gave priority to all categories of corporate claimants was contained in the conference report on the FY1996 foreign aid authorization bill (H.R. 1561). That bill was vetoed because of other issues.

In the first session of the 105th Congress, Iraq claims legislation was incorporated into the Senate version of H.R. 1757, the foreign relations authorization act for FY1998-99. The provision drew opposition from veterans’ groups because it excluded Gulf war veterans from the claimant pool. On October 1, 1997, the House passed a motion to instruct its conferees on the bill to strike the Senate provision because of that exclusion. Supporters of the provision maintained that Gulf war veterans had other recourse, such as veterans affairs programs, to be treated for injuries related to the Gulf war, and that there is no tradition of U.S. servicemen and their families suing a U.S. adversary for war losses. The legislation containing this provision was not enacted. In the 106th Congress, Rep. Lloyd Doggett introduced H.R. 618, the “Gulf War Veterans’ Claims Protection Act of 1999.” The bill, which was incorporated into the House version of H.R. 2415, the FY2000 State Department authorization bill, gives priority to claims by members or veterans of the U.S. armed forces. H.R. 2415 was passed by the House on July 21, 1999; no similar provision is in the Senate version of the bill.

⁹ (...continued)

families of the 37 crewmen killed in the attack on the Stark.

¹⁰ Price, David. Who’s At the Head Of the Line. *Investor’s Business Daily*, February 28, 1997.

Other Proposals. The 1997 crisis over weapons inspections in Iraq has generated new proposals for using Iraqi assets frozen by U.S. banks. Iraqi opponents of Saddam Husayn, with support from some Members of Congress, have proposed releasing the frozen assets for their use in a renewed push to overthrow Saddam Husayn. Others suggest using the assets to provide additional humanitarian aid to the Iraqi people, as an additional means of addressing the suffering of the Iraqi people. If written into legislation, these proposals are likely to draw opposition from U.S. claimants on the assets. (For further information on Iraq, see CRS Issue Brief 92117, *Iraqi Compliance With Ceasefire Agreements*. Updated regularly; and CRS Report 98-179F, *Iraq's Opposition Movements*.)

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