Reparations for Historical Wrongs: From ad hoc Mass Claims Programs to an International Framework Program?

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Introduction

This paper outlines how international and national mass claims programs have been employed over the last two hundred years to redress the consequences of massive wrongs arising out of historical events such as wars, revolutions and other extraordinary incidents, and that have affected a large number of individuals in a similar manner. This paper will focus on the mechanisms used to facilitate financial compensation without considering whether this form of remedy is the most appropriate one from a policy point of view, or indeed from the point of view of the victims themselves. In addition, in terms of the specific consequences of wrongs, we will focus on one particular category of claims, namely those dealing with death and personal injury.[1]

While each of the mechanisms or processes considered here are *ad hoc, i.e.* established to deal with the consequences of certain specific historical wrongs or events, patterns emerge as to the manner in which claims concerning liability for death and personal injury have been dealt with. The question arises as to what extent such past programs might be referred to in addressing the consequences of any contemporary or future events or wrongs. To what extent should such programs be considered precedent or models? To what extent should they be adjusted to the particular circumstances of each individual case? While we do not propose to offer any ready-made solutions, as this would be outside the scope of this paper, we

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1 In the common law tradition, lawyers tend to use the terminology of "personal injury claims." The Black's Law Dictionary defines "personal injury" as follows: "*Torts.* 1. In a negligence action, any harm caused to a person, such as a broken bone, a cut, or a bruise; bodily injury. 2. Any invasion of a personal right, including mental suffering and false imprisonment." *See:* B.A. Garner (ed.), *Black's Law Dictionary*, Eight Edition, 2004.

do suggest that a careful analysis should be made of the relevant past and current programs when designing a novel mass claims process.

The paper will consider the evolution of compensation programs from a historical perspective, bearing in mind that these programs were originally established mainly to deal with property and financial issues arising out of wars, revolutions or other historical events (I). The novel trend of adjudicating death and personal injury claims by mass claims programs will then be investigated (II).

I. The Evolution of Compensation Programs for Property Issues: An Overview

Historically, compensation programs for property issues may be broken down into three relatively easily identifiable phases. From the Jay Treaty of 1794 until World War II, international claims commissions and mixed arbitral tribunals were predominant (A). Then, in the wake of World War II, these programs were "nationalized" and substituted by "lump-sum" settlement agreements, which were negotiated at an inter-governmental level (B). The creation of the Iran-U.S. Claims Tribunal, the end of the Cold War and the rise of information technology in the 1980s marked the rise of a wide variety of international and national mass claims programs (C).[2]

A. From the Jay Treaty of 1794 to World War II: The Age of Mixed Claims Commissions

Doctrine usually defines a "claims commission" as 1) an arbitration court 2) established by agreement of two or more states; 3) to adjust a class of claims within a specified competence; 4) brought or espoused by nationals of the parties; and 5) which, actually renders an award on some or all of those claims.[3] Typically, this "class of claims" would concern property and other economic rights to the exclusion of personal injury damage suffered by individuals.

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2 This periodisation of the law of international claims has been proposed by V. Heiskanen, " Virtue out of Necessity: International Mass Claims and New Uses of Information Technology," in The Permanent Court of Arbitration (ed.), *Redressing Injustices Through Mass Claims Processes, Innovative Responses to Unique Challenges*, Oxford: Oxford University Press, 2006, ss. 25-37.

3 *See:* D.J. Bederman, "The Glorious Past and Uncertain Future of International Claims Tribunals," in M.W. Janis (ed.), *International Courts for the Twenty-First Century*, Dordrecht, Boston, London: Martinus Nijhoff Publishers, 1992, p. 161.

It is widely recognized that the modern era of international arbitration, as one of the mechanisms for resolution of sensitive international disputes, finds its genesis in the Jay Treaty of 1794, which can also be viewed as the predecessor of international claims commissions.[4] The relative success of the arbitration established by the Jay Treaty was replicated in the Alabama arbitrations of 1872.[5]

Scores of claims commissions were subsequently established in the late 19th century and early 20th century to deal with the consequences of wars, revolutions and other conflicts.[6] The Boxer Commission, the United States-Mexican Claims Commissions of 1868 and of the 1920s and 1930s, and the United States-German Mixed Claims Commission[7] are among the best-

4 Treaty of Amity, Commerce and Navigation, 19 November 1994, U.S.-Great Britain, 8 Stat, 116, 119-20, 122 (hereinafter the "Jay Treaty"), also available at <http://www.earlyamerica.com/earlyamerica/milestones/jaytreaty/text.html>, in particular Art. VII (last visited on 3 November 2006). The Jay Treaty established commissions to resolve commercial disputes between the United States and Great Britain through the arbitration of claims by British creditors against U.S. nationals. With a potential war with Britain looming over the U.S. failure to compensate British creditors, the U.S. President, George Washington, commissioned Chief Justice John Jay to negotiate a compromise and conclude a political settlement. The Jay Treaty did not expressly state that the United States were responsible for the non-payment of British creditors. However, it obligated the United States to pay full compensation and to adjudicate these claims before a panel of five commissioners, two appointed by each country and the fifth by unanimous consent. When determining the disputes, the panel allocated liability on a case-by-case basis.

5 The Alabama arbitrations followed allegations that Great Britain had violated its neutrality between the United States Government and the Confederate Government, during the American civil war, by building and deliberately delivering a warship, the *Alabama*, to the confederate army. The Alabama captured more than 60 vessels and caused considerable damage to the Northern economy. After having first refused to submit the cases to arbitration, the British Government in 1871, worried by the worsening of the political situation on the Continent following the victory of the Germans against the French, wished to liquidate the remaining bones of contention with the United States. The United States and the British Government consequently signed, in 1871, the Washington Treaty, whereby the British Government expressed its apologies for the escape of the *Alabama*, and agreed to submit the ensuing monetary claims to arbitration. The Government of Great Britain acknowledged implicitly its responsibility in the treaty, and the scope of liability was later determined by the arbitral tribunals, on a case-by-case basis.

6 It is estimated that over sixty-five such mixed claims commissions were established over more than two centuries. *See:* D.J. Bederman, "The Glorious Past..., p. 161.

7 The language used in the United States - Mexican General Claims Convention and the United States - Mexican Special Claims Convention both of 1923 expressly refers to damage to property and damage suffered by persons. Similar language is included in the (Berlin) Treaty of Peace of 25 August 1921 between the United States and Germany; cited in *Lillian Byrdine Grimm v. Government of the Islamic Republic of Iran*, 2 Iran-U.S. C.T.R. 78. The scope of the class of claims adjudicated by these mixed claims commissions was broad and arguably encompassed

known examples, but numerous other mixed arbitral tribunals and claims commissions were also created during that era.[8]

One of the common features of the Jay Treaty, the Alabama arbitrations and the other international claims commissions was that private claims concerning property rights were submitted to a third party panel for resolution. These institutions rendered awards, which were seldom challenged on their merit.[9]

The key advantage of international claims commissions to resolve mass claims has been aptly described as follows:

"It makes for a superb face-saving device in the conduct of international relations. Contentious disputes are submitted to what appear to be a neutral authority which adjudicates them on the basis of a respect for law. The highly-charged political circumstances which gave rise to the claims – whether wars or political upheavals – are neutralized with (usually) years of dispassionate legal analysis and adjustment. If nothing else, international claims settlement is a superb political soporific."[10]

However, delay in processing the claims was also a common characteristic and the main drawback of claims commissions.[11] For example, the United States-Germany Mixed Claims Commission, one of the most successful claims programs in its time, spent some seventeen years in resolving approximately 20,000 claims. Thus, these delays are often cited as one of the reasons why international claims commissions "fell out of fashion."[12]

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personal injury claims. This was uncommon at the time since the instruments establishing the mixed claims commissions were usually silent on the issue.

8 The Paris Peace Treaties and other peace treaties concluded after World War I provided for the establishment of fifty-seven mixed arbitral tribunals and claims commissions. Thirty-eight of these tribunals and claims commissions were actually established. *See:* N. Wühler, "Mixed Arbitral Tribunals," in I.R. Bernhardt (ed.), Instalment 1, E.P.I.L., 1981, 143. For a discussion of the jurisprudence of the various early international claims commissions, *See:* M. Whiteman, *Damages in International Law*, 1943.

9 *See:* D.J. Bederman, "The Glorious Past...p. 168.

10 *See:* D.J. Bederman, "The Glorious Past...p. 166.

11 *See:* V. Heiskanen, "Virtue Out of Necessity..., p.25.

12 V. Heiskanen, "Virtue Out of Necessity..., citing D.J. Bederman, "The United Nations Compensation Commission and the Traditional Claims Settlement," New York Univeristy Journal of International Law and Policy, 27, 1994, p. 18 ("The phenomenon of delay was undoubtedly the primary cause of disaffection with the institu-

In the wake of World War II, a new mechanism for resolving mass claims disputes appeared: lump-sum settlements agreements. This mechanism was shaped at the governmental level and used not only to settle the traditional private claims to compensate victims of the war or revolution, but also to deal with claims arising out of nationalization and expropriation of foreign property.[13]

B. The Post World War II as the Lump Sum Agreements Era

A lump-sum settlement agreement can be defined as a scheme in which the compensating State pays to the claiming State a specific damage indemnity. The claiming State in turn - in lieu of submitting the private claims to arbitration - establishes a national claims commission to adjudicate private claims and allocate specific damage indemnity amongst successful claimants. With this new scheme, the determination of the private claims of individuals or companies was no longer dealt with by an independent *ad hoc* mixed arbitral tribunal or international claims commission, but by a body of the claimant State itself. The functions previously exercised by international claims commissions were "nationalized."

Lump-sum agreements became the preferred tool to settle political crisis after World War II and typically would deal exclusively with claims relating to property rights. Lump-sum agreements were typically part of any package put forward by would-be peace brokers.[14] According to some authors, there have been a total of one hundred and sixty-eight lump sum agree-

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tion of claims settlement by international tribunals.")

13 *See:* V. Heiskanen, "Virtue Out of Necessity..., p. 26; *See: also* R.B. Lillich, D.J. Bederman, B.H. Weston, *International Claims: Their Settlement by Lump Sum Agreements 1975-1995*, New York:Transnational Publishers, 1999.

14 For example, a lump-sum agreement was suggested in 1951 by the UN Conciliation Commission for Palestine (CCP) with respect to the Middle East refugees, to no avail. Likewise, the former UN Secretary General, Mr. Boutros-Ghali advocated the same principles to the governments involved in the Cyprus problem. *See:* Annex to the Report of the Secretary General to the Security Council, UN Doc. S/24472, Annex, 1992, 18, Arts. 76 and 77 ("76. Each community will establish an agency to deal with all natters related to displaced persons.
77. The ownership of the property of displaced persons, in respect of which these persons See:k compensation, will be transferred to the ownership of the community in which the property is located. To this end, all titles to properties will be exchanged on a global communal basis between the two agencies at the 1974 value plus inflation. Displaced persons will be compensated by the agency of their community from funds obtained from the sale of the properties transferred to the agency, or through the exchange of property. The shortfall in funds necessary for compensation will be covered by the federal government from a compensation fund.")

ments concluded between 1945 and 1988.[15] Remarkably, only six agreements included admission of liability.[16]

Some authors (and sometimes interested parties) advocate that there are clear advantages to lump sum agreements for the involved States. For the claimant State, lump sum agreements usually result in prompt payment, less costly procedures for distributing the funds and control over these procedures. For the paying State, the benefits include: (i) the State knows in advance the extent of its liability, without future increase; (ii) the saving of the high cost of a mixed claims commission; (iii) the possibility to compensate victims without admitting responsibility, and (iv) arguably, a favourable standard of compensation.

Indeed, with regard to the standard of compensation applied in lump sum settlement agreements, the principle which emerged in the post-war period was that of "adequate" compensation (and not full compensation).[17]

When questions of national honor intrude in the settlement negotiations and when there is no clear victorious State, it is sometimes contended to be difficult to secure the acceptance of a lump-sum agreement, and thus avoid the necessity of establishing an international institution of some sort and referring claims to a sort of third party arbitration. In other words, the conclusion of lump-sum agreements requires negotiating flexibility.

Two historical lessons arise. First, if claims commissions and lump sums agreements were the preferred instruments for dealing with claims arising out of wars or revolutions, both were not entirely satisfactory and the compensation of victims was not the principal concern of States. Second, the remedy granted by these institutions could only be financial compensation for damage to property or other economic interests. More recently, the

15 *See:* R.B. Lillich and B.H. Weston, "Lump Sum Agreements: Their Continuing Contribution to the Law of International Claims," American Journal of International Law, 82, p. 69.

16 All of these six agreements referred to Japan's responsibility during the Second World War, all the others being silent on the issue of responsibility. *See:* D.J. Bederman, "The Glorious Past...

17 For example, following the unification of Germany, the German Constitutional Court considered that the standard of compensation for property expropriated between 1945 and 1949 in the former GDR need not be at full market value. *See:* E. Benvenisti and E. Zamir, "Private Claims to Property Rights in The Future Israeli-Palestinian Settlement," 89, American Journal of International Law 1995, p. 331.

available remedies have also included restitution of land, housing or property[18] and financial compensation for death or personal injury.

C. The Modern Age and the Rise of a Wide Variety of Mass Claims Programs

The next cornerstone in the historical evolution of international claims programs is undoubtedly the Iran-U.S. Claims Tribunal. The Tribunal was set up in 1981 by the Algiers Accords in order to arbitrate claims of nationals of the United States against Iran and of nationals of Iran against the United States, as well as certain intergovernmental claims. The Algiers Accords did not contain any recognition of legal liability by either side for claims falling under the Tribunal's jurisdiction, and liability issues were determined by the Tribunal on a case-by-case basis.[19]

The jurisdiction of the Tribunal covered a wide variety of claims, including those arising from "debts, contracts, expropriation or other measures affecting property rights" (Article II, paragraph 1 of the Claims Settlement Declaration). While it could be argued – and was argued – that "other measures affecting property rights" could cover claims for financial compensation by dependants of victims of tort, the Tribunal took the view that it had no jurisdiction to deal with personal injury claims such as physical and psychological harm suffered by the victim or its dependents.[20]

18 Historically, following a war or a civil war, there was no return of displaced population and refugees. Peace treaties containing a relocation agreement usually do not provide for the right of return and the right of expellees to regain the possession of their houses. For example, the Treaty of Neuilly of 27 November 1919, between Bulgaria and Greece, provided for the relocation of forty-six thousand Greeks from Bulgaria, and ninety-six thousand Bulgarians from Greece. In addition, in the wake of the Turkish-Greek war which ended in 1923, about two million Greeks who had formerly been Turkish citizens, and about five hundred thousand Turks who had formerly been Greek citizens, left or were forced to leave for Turkey. The properties left by the refugees were seized by the governments to accommodate their own incoming nationals. Moreover, mass transfers also occurred after World War II in similar circumstances: fifteen million Germans who had lived in Eastern Europe were relocated to Germany and lost title to property they had left behind; also millions or Hindus and Muslims were relocated during the partition of India in 1947: *See:* E. Benvenisti and E. Zamir, "Private Claims to Property..., pp. 321. 322.

19 The Tribunal's awards were enforceable under the New York Convention.

20 *See: Lillian Byrdine Grimm v. Government of the Islamic Republic of Iran*, 2 Iran-U.S. C.T.R. 78 (dismissing for lack of jurisdiction a claim of compensation for loss of support filed by a widow of a U.S. national assassinated in Iran on the ground that failure by Iran to provide security and protection to her husband was not a measure "affecting property rights." The Tribunal stated that "compensation for mental anguish, grief and suffering can obviously not be a property right." *See: also* the dissenting opinion of Judge Howard M. Holtzmann, who con-

The end of the Cold War in the 1980s, combined with several factors such as the rise of liberalism and the emergence of new information technologies contributed to the return of international claims commissions and the multiplication of international claims programs. This "come-back" was confirmed in the 1990s, during which a whole series of new special purpose institutions were established to deal with claims arising out of a variety of extraordinary events, including World War II and the Holocaust. Among the largest are the following:

* The United Nations Compensation Commission (the "UNCC"), which dealt with compensation for a wide variety of personal (including personal injury and death), property, commercial and environmental damage caused by the Iraqi invasion of Kuwait. The Commission was established by UN Security Council resolution 687 (1991), which held Iraq liable for any "direct damage, loss or injury" caused by the invasion.[21] The UNCC process is discussed below in further detail in section II A *infra*.

* Commission for Real Property Claims of Displaced Persons and Refugees (the "CRPC"), which dealt with claims for restoration of property rights and return of displaced persons and refugees in the aftermath of the dissolution of the former Yugoslavia and the civil war in Bosnia and Herzegovina. The CRPC was established by the Dayton Peace Agreement of 21 November 1995. While establishing the right of return of the refugees, the Agreement does not confirm the legal liability of any of the parties to the conflict for damages caused during the conflict. Accordingly, the Commission had no jurisdiction to deal with claims for financial compensation.[22]
* The Housing and Property Claims Commission in Kosovo (the "HPCC"), a claims processing facility established in 2000 by the UN administration in Kosovo to process claims for repossession of properties lost during the NATO air campaign in 1999 to expel Serb forces from Kosovo, and for

sidered that "Mrs. Grimm [had] a "property right" in the financial support of her deceased husband."

21 *See:, generally*, R.B. Lillich (ed.), *The United Nations Compensation Commission* (Thirteenth Sokol Colloquium), 1995; V. Heiskanen, *The United Nations Compensation Commission*, 2003, *Recueil des cours de l'Académie de La Haye*, Vol. 296, The Hague: Martinus Nijhoff Publishers, 2002.

22 Dayton Agreement, Annex VII, Chapter 1, Article 1(1), available at <http://www.nato.int/ifor/gfa/gfa-an7.htm>; See: *also* M. Cox & M. Garlick, "Musical Chairs: Property Repossession and Return Strategies in Bosnia and Herzegovina," in S. Leckie (ed.), *Housing and Property Restitution Rights of Refugees and Displaced Persons, New York:* Transnational Publishers, Inc., 2003, p. 69.

restitution of properties lost as a result of discrimination during the Milosevic regime. The province had been previously, in June 1999, placed under an interim UN administration by UN Security Council Resolution 1244 (1999).[23] The UN administration passed two regulations, which established the institutional and legal framework (the Housing and Property Directorate and the Housing and Property Claims Commission).[24] Unlike Security Council resolution 687 concerning the consequences of Iraq's invasion and occupation of Kuwait, resolution 1244 did not establish the liability of any of the parties to the conflict for property damage or destruction.

* German Foundation "Remembrance, Responsibility and Future," a compensation fund established in 2000 by the German Government and industry to provide compensation to former slave and forced labourers and certain other victims of injustices committed during the Nazi regime. The fund was established by a law enacted by the Germen Government following a settlement agreement between the Federal Republic of Germany and the United States in which Germany acknowledged its liability in order to put an end to class action lawsuits in U.S. courts.[25] Two funds were also created *ex gratia* by the Austrian Government to compensate the victims of the Nazi regime in the territory of what is today Austria.

* Claims Resolution Tribunal for Dormant Accounts in Switzerland ("CRT"), a claims process established in two stages to restore bank accounts of victims of Nazi persecution which had lain dormant since World War II. The first stage of the process ("CRT-I") was established in 1997 by way of an agreement between the Swiss Bankers Association and certain Jewish organizations, whereas the second phase ("CRT-II") was established following a comprehensive audit of Swiss bank accounts and a settlement of class ac-

23 UN Security Council Resolution 1244 (1999), p. 1, reaffirmed the "right for all refugees and displaced persons to return to their homes in safety."

24 *See:* A. Dodson and V. Heiskanen, "Housing and Property Restitution in Kosovo," in S. Leckie (ed.), *Housing and Property Restitution Rights of Refugees and Displaced Persons*, 2003, 225-242. *See: also* J.R. Crook, "Mass Claims Processes: Lessons Learned Over Twenty-Five Years," in The Permanent Court of Arbitration (ed.), *Redressing Injustices Through Mass Claims Processes, Innovative Responses to Unique Challenges*, Oxford: Oxford University Press, 2006, p. 54.

25 *See:* N. Wühler, "German Compensation for World War II Slave and Forced Labour," in L.B. de Chazournes, J.-F. Quéguinier and S. Villalpando (eds.), *Crimes de l'Histoire et Réparations : les Réponses du droit et de la Justice*, Bruxelles: Editions Bruylant, 2004, pp. 163-175.

tion litigation against Swiss banks in U.S courts.[26]

*The Commission for Indemnification of Victims of Spoliations ("CISV") for indemnification of material damage (moral damage excluded) and bank related spoliations caused by anti-Semitic legislation in the context of World War II. On 16 July 1995, President Jacques Chirac publicly acknowledged the responsibility of the French State for the acts of the Vichy regime during the occupation and the deportation of 70,000 French Jews. The Commission was established by decree of 10 September 1999. The scope of the program was broadened following the conclusion of a settlement agreement on 18 January 2001 between France and the United States in order to settle a series of pending class action lawsuits initiated against French banks in the United States.[27] The agreement created two funds to indemnify the victims. The agreement does not contain any acknowledgement by the French of its liability.

* Compensation funds for Korean "comfort" women, who were used as sex slaves by Japan during World War II, Japan set up a public fund and encouraged domestic and international donors to give donations. Following an order of the State, these funds were unilaterally allocated to the Korean victims. The Japanese State recognized publicly its moral responsibility at several occasions, but has systematically refused to acknowledge its legal liability for the acts.[28]

The above list of claims programs arguably resembles an *inventaire à la Prévert.* Nonetheless, certain lessons may be drawn from these experiences. First, in the aftermath of armed conflicts one may note the increasing influence of the United Nations and other international organizations in the establishment of mass claims programs established as part of an international peace-building effort; these include programs such as the CRPC and the

26 *See:* V. Heiskanen, "CRT-II: The Second Phase of the Swiss Banks Claims Process," in L.B. de Chazournes, J.-F. Quéguinier and S. Villalpando (eds.), *Crimes de l'Histoire et réparations : les réponses du droit et de la justice,* Bruxelles: Editions Bruylant 2004, pp. 147-162.

27 Decree No. 2001-243 of 21 March 2001 encapsulates the Washington Agreement of 18 January 2001, available at <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=MAEJ0130022D> (last visited on 10 November 2006).

28 *See:* K. Kikuchi, "Les 'femmes de réconfort' devant la juridiction japonaise," in L.B. de Chazournes, J.-F. Quéguinier and S. Villalpando (eds.), *Crimes de l'Histoire et Réparations : les Réponses du droit et de la Justice,* Bruxelles: Editions Bruylant 2004, pp.131-145.

HPCC, which involve property restitution designed to facilitate the return of refugees and internally displaced people.[29] Second, traditional inter-State settlement agreements continue to be used to establish international claims commission or tribunals (*e.g.*, the Iran-U.S. Claims Tribunal); however, there is an increasing tendency to use such agreements for the particular purpose of settling class action lawsuits brought in particular in U.S. courts (*e.g.*, the German Foundation "Remembrance, Responsibility and Future" and the CRT-II in Switzerland.) Third, in a globalised world, States are becoming increasingly sensitive to the pressure of international public opinion and may create compensation funds at their own initiative (*e.g.*, the fund in Japan to compensate the Korean "comfort women.") Fourth, whilst the claims programs considered above have dealt with a great variety of claims, the constituting treaties or instruments may or may not contain a recognition of liability of one of the parties. In most instances, there is at least an implied recognition in the sense that one of the parties agrees to provide financial compensation or another form of remedy. In one instance (the Iran-U.S. Claims Tribunal) there was not even implied recognition of liability, and liability issues were arbitrated on a case-by-case basis.

Following the ruling of the Iran-U.S. Claims Tribunal in 1983 in the *Grimm* case[30] and the creation of the UNCC some fifteen years ago, one can discern a new trend in which victims' needs and non-material damage are being given increasing consideration. Thus, victims of crimes arising out of historical events may now be given the option to bypass competent State courts and submit directly their personal injury claims to *ad hoc* mass claims programs.

II. The Novel Trend of Adjudication of Death and Personal Injury Claims by Mass Claims Programs

A. The United Nations Compensation Commission (UNCC) (1991)

1. An Overview

The United Nations Compensation Commission (the "UNCC") was estab-

29 Some endeavor to devise a similar scheme for East Timor. *See:* J. du Plessis, "Slow Start on a Long Journey: Land Restitution Issues In East Timor, 1999-2001," in S. Leckie (ed.), *Housing and Property Restitution Rights of Refugees and Displaced Persons,* New York: Transnational Publishers, 2003, pp.143-163.

30 *Lillian Byrdine Grimm v. Government of the Islamic Republic of Iran*, 2 Iran-U.S. C.T.R. 78.

lished in 1991 by Security Council resolution 687 in order to process claims and pay compensation for losses resulting from Iraq's invasion and occupation of Kuwait. The resolution clearly establishes Iraq's legal responsibility for such losses:

"Iraq ... is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait."

The UNCC is a subsidiary organ of the United Nations Security Council based in Geneva. Its structure includes a Governing Council, a secretariat and panels of Commissioners. It has jurisdiction over a wide range of claims: from issues of *personal injury and death, including mental pain and anguish claims*, evacuation and environmental damage, to claims for property damage and commercial and financial losses. Compensation is payable to successful claimants from a special fund that receives a percentage of the proceeds from sales of Iraqi oil.

Due to the volume of claims, it was necessary to adopt procedures to decide the claims within a reasonable period of time. Those procedures deviate considerably from the classical approach usually adopted by courts and arbitral tribunals.[31]

Claims must be submitted by governments on behalf of their nationals or residents on standardised claims forms. The Secretariat makes a preliminary assessment on whether the claims meet the formal requirements (Article 14) and reports to the Governing Council on the claims received and the legal and factual issues raised (Article 16). The Secretariat prepares the cases to be decided by the panels of Commissioners. The panels' reports and recommendations require approval by the Governing Council. Payments are not made to the individual claimants but to the relevant government which then distributes the payment on the basis of Governing Council guidelines. Altogether, over 2.6 million claims with an asserted value of over USD 300

31 The procedure followed is set out in the Provisional Rules for Claims Procedure adopted by the UNCC Governing Council in 1992. For a criticism of certain aspects of the UNCC system, *See:* M.E. Schneider, "How Fair and Efficient is the UNCC System? A Model to Emulate?," Journal of International Arbitration, 15, 1998, pp. 15-26.