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## Foreign Claims

John F. Murphy

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# Foreign Claims

JOHN F. MURPHY

For foreign claims, 1996 was a memorable year. Among the most memorable developments were the passage and delayed implementation of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996,<sup>1</sup> generally known by the names of its principal sponsors as the Helms-Burton Act; the passage of an amendment to the Foreign Sovereign Immunities Act<sup>2</sup> to permit suit in U.S. courts against countries that engage in torture, extrajudicial killing, aircraft sabotage, or hostage taking, and that are on the Department of State's list of countries that sponsor international terrorism; the adoption by the International Law Commission on first reading of draft articles on state responsibility; further resolution of claims before the Iran-U.S. Claims Tribunal at the Hague; progress (albeit slow) regarding claims against Iraq; as well as noteworthy miscellaneous matters.

What follows is a brief consideration of these developments. In large part, the discussion is descriptive, although an effort is made to highlight a few key issues worthy of further exploration, and to avoid overlap with other committee reports, especially those dealing with the Helms-Burton Act.

## I. Helms-Burton Act

The immediate backdrop to the Helms-Burton Act is worthy of brief notice.<sup>3</sup> Up to Saturday, February 24, 1996, it appeared that President Clinton would veto the Helms-Burton bill if it reached his desk and that, in the face of this veto threat, it might never have done so. On that date, however, two Cessna 337 light planes flown by members of a Cuban-American organization based in Florida were shot down over international waters by planes of the Cuban air force. President Clinton immediately condemned the attack and on February 28, 1996, announced he now would sign the Helms-Burton bill. On March 12, 1996, he did so.

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John F. Murphy is a professor of law at Villanova University School of Law in Villanova, Pennsylvania. He is chair of the Foreign Claims Committee.

1. Pub. L. No. 104-114, 110 Stat. 785 (1996) (hereinafter Helms-Burton).

2. Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996).

3. For more extensive consideration, see Andreas F. Lowenfeld, *Congress and Cuba: The Helms-Burton Act*, 90 AM. J. INT'L L. 419 (1996).

As succinctly summarized by Professor Andreas Lowenfeld:

The Act is a mixture of codification of existing economic sanctions previously imposed pursuant to executive orders; inducements and promises related to restoration of democracy in Cuba; threats against persons from third countries that do business with Cuba; a new, unprecedented remedy for expropriation; and restrictions on entry into the United States by persons who "traffic in confiscated property" or who are affiliated with such persons by ownership, employment or family.<sup>4</sup>

This report, in an attempt to emphasize the foreign claims dimension of Helms-Burton, focuses on the "new, unprecedented remedy for expropriation" afforded by the legislation.

Specifically, under Title III of the Helms-Burton Act,<sup>5</sup> whoever "traffics" in property that once belonged to U.S. nationals faces the prospect of litigation in the United States, and of possible damages equal in the first instance to the value of the property at issue, and if trafficking continues, to treble damages. "Trafficking" is defined to include not only selling, transferring, buying, or leasing the property in question, but also "engag[ing] in a commercial activity using or otherwise benefiting from confiscated property."<sup>6</sup> For the first two years from the date of the effectiveness of the Act (August 1, 1996), the only persons entitled to bring a claim are those persons who were U.S. citizens at the time of the loss.<sup>7</sup> Immigrants from Cuba who have become U.S. citizens during the interval, or their children born in the United States who have succeeded to their parents' claims, have to wait until March 14, 1998, to become eligible to bring a claim.<sup>8</sup> In a provision of signal significance, Helms-Burton explicitly states that the act of state doctrine shall not be applicable to actions brought under the Act.<sup>9</sup>

As to all claims, there is a three-month grace period starting on August 1, 1996, before a person who traffics in confiscated property becomes liable under the Act. Moreover, the president is authorized to suspend the effectiveness of Title III for six months if he determines and reports to Congress that the suspension "[i]s necessary to the national interests of the United States and [ii] will expedite a transition to democracy in Cuba."<sup>10</sup> Such suspensions may be extended for additional periods of six months upon further determination by the president to the same effect. On July 16, 1996, President Clinton made such a determination.<sup>11</sup> Whether he will make additional such determinations is unclear at this writing.

What, then, is "new" about this remedy for expropriation? As Brice Clagett has noted,<sup>12</sup> even before passage of the Helms-Burton Act, suits could be brought before federal courts against traffickers in confiscated Cuban property, but unless the confiscated property itself or its functional equivalent was before the court so that the Sabbatino Amendment<sup>13</sup> applies, the claim would be barred by the act of state doctrine. The Helms-Burton Act removes this

4. *Id.*

5. Helms-Burton, *supra* note 1, § 302(a)(1).

6. *Id.* § 4(13).

7. *Id.* § 303(a)(4)(C).

8. *Id.*

9. *Id.* § 302(a)(6).

10. *Id.* § 306(b)(1).

11. The White House, Office of the Press Secretary, *White House Press Release: Press Briefing by Deputy National Security Advisor Sandy Berger and Under Secretary of State for Political Affairs Peter Tarnoff* (visited Dec. 17, 1996) <<http://library.whitehouse.gov/Retrieve.cgi?dbtype=text&id=6920&query=cuban+liberty+a>>.

12. Brice M. Clagett, *A Reply to Professor Lowenfeld*, 90 AM. J. INT'L L. 641 (1996).

13. Section 620(e) of the Foreign Assistance Act of 1961, as amended, 75 Stat. 444 (1961), 22 U.S.C. § 2370 (1994).

impediment. Claggett suggests that merely the removal of the act of state limitation would allow such suits to proceed "and probably succeed," even if Helms-Burton had not explicitly provided for a cause of action based on such trafficking.<sup>14</sup>

Whether such suits would succeed is a debatable proposition, but a discussion of this possibility is beyond the scope of this review. Assuming *arguendo* that Claggett is correct, it appears highly unlikely that a claimant would succeed in winning punitive damages against a trafficker in Cuban confiscated property, absent express provision for such damages in Helms-Burton. The debate over the legality (under international law) and the wisdom of Helms-Burton, one may be confident, will be fierce.<sup>15</sup>

## II. The Antiterrorism and Effective Death Penalty Act of 1996

The Foreign Sovereign Immunities Act (FSIA)<sup>16</sup> constitutes a formidable barrier to those who would bring suits in U.S. courts against countries that sponsor egregious violations of human rights or acts of international terrorism. On August 24, 1996, however, President Clinton signed into law the Antiterrorism and Effective Death Penalty Act of 1996,<sup>17</sup> which amends the FSIA to permit a suit for money damages against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if the act or provision of support is engaged in by an official agent of the foreign state while acting within the scope of his or her duties.<sup>18</sup> The court shall decline to hear such a claim if: (1) the foreign state was not designated as a state sponsor of terrorism under Section 6(j) of the Export Administration Act of 1979<sup>19</sup> or Section 620A of the Foreign Assistance Act of 1961<sup>20</sup> at the time the act occurred, unless later so designated as a result of such acts; (2) even if the foreign state was so designated, if the act occurred within the foreign state against which the claim was brought and the claimant did not afford the foreign state a reasonable opportunity to arbitrate the claim; or (3) the claimant or victim was not a U.S. national.

At this writing, the states designated as sponsors of terrorism include Cuba, Iraq, Iran, Libya, North Korea, Sudan, and Syria. The amendment to the FSIA came about in significant part because of the efforts of counsel representing the families of victims of the Pan Am Flight 103 bombing. The families are seeking three billion dollars in damages in a civil suit against Libya.<sup>21</sup>

There may be efforts to amend the FSIA further so as to remove immunity from all states

14. Claggett, *supra* note 12, at 644.

15. For examples of this debate, see Lowenfeld, *supra* note 3; Claggett, *supra* note 12; and Brice M. Claggett, *Title III of the Helms-Burton Act Is Consistent with International Law*, 90 AM. J. INT'L L. 434 (1996).

16. The Foreign Sovereign Immunities Act of 1976, Jan. 19, 1977, Pub. L. No. 94-583, 90 Stat. 2892 (1976), 28 U.S.C. §§ 1330, 1332(a), 1391(f), 1441(d), 1602-1611 (1994).

17. Pub. L. No. 104-132, 110 Stat. 1214 (1996) (codified at 28 U.S.C.A. § 1605(a)(7) (West Supp. 1997)).

18. 28 U.S.C. § 1605(a)(7) (West Supp. 1997).

19. 50 U.S.C. App. § 2405(j) (1994).

20. 22 U.S.C. § 2371 (1994).

21. Allan Gerson, *Holding Terrorist States Accountable*, WASH. TIMES, June 4, 1996, at A15. Unfortunately for the victims of the bombing of Pan Am 103, the amendment to the Foreign Sovereign Immunities Act is not retroactive. On November 26, 1996, in *Smitb v. Socialist Peoples Libyan Arab Jamabiriya*, 65 U.S.L.W. 2374 (Dec. 10, 1996), the Second Circuit held that Libya's alleged participation in actions that violate fundamental norms of international law did not constitute an implicit waiver of its sovereign immunity.

engaged in the acts covered by this legislation, not just those listed as state sponsors of terrorism.<sup>22</sup> Because of the serious foreign policy complications such an amendment would cause, the success of these efforts is problematic.<sup>23</sup>

### III. The International Law Commission and State Responsibility

The International Law Commission, a subsidiary organ of the United Nations General Assembly established in 1947, has as its primary function the codification and progressive development of international law. At its very first session in 1949, the Commission selected state responsibility as a topic it considered suitable for codification. Doing so, however, has proven to be a formidable task. Finally, after many years of effort, in its summer session of 1996, the Commission succeeded in completing on first reading a set of 60 draft articles (with annexes) and decided to transmit the draft articles to governments for comments to be submitted to the Secretary-General by January 1, 1998.<sup>24</sup>

The early efforts of the Commission focused on state responsibility regarding foreign nationals and their property, but in 1962 this approach was abandoned, and the focus shifted to state responsibility generally, rather than its application in particular contexts.

The draft articles adopted by the Commission in the summer of 1996 have as a primary focus questions of attribution of responsibility to states. For example, draft Article 10 attributes to a state conduct of "an organ of the state . . . such organ having acted in that capacity even if, in the particular case, the organ exceeded its competence according to internal law or contravened instructions concerning its activity." Draft Article 11 provides that the conduct of private individuals shall not be considered acts of the state, but without prejudice to Articles 5-10, which attribute to the state various categories of informal or irregular state action. Draft Article 15 allows the retroactive attribution to a state of acts of an organ of a successful insurrectional movement.

By way of organization, the Commission has divided the draft articles into three parts. Part One covers the "Origin of International Responsibility," Part Two, the "Content, Forms and Degrees of International Responsibility," and Part Three, the "Settlement of Disputes." The modes of settlement of disputes regarding the interpretation or application of the draft articles covered by Part Three include negotiation, good offices and mediation, conciliation, and arbitration. If, as is possible, the final product of this exercise is a draft treaty, these articles on dispute settlement will be extremely useful.

In its report the Commission states that it would "particularly appreciate views on":<sup>25</sup> Article 19, which suggests that states as well as individuals can commit crimes<sup>26</sup> and which

22. In *Saudi Arabia v. Nelson*, 507 U.S. 1017 (1993), the Nelsons, husband and wife, alleged that Scott Nelson had been tortured by Saudi Arabia officials, but the Supreme Court held that their suit was barred by the Foreign Sovereign Immunities Act. The Antiterrorism and Effective Death Penalty Act of 1996 would not change the result if a similar case should arise after the effective date of the amendment, because Saudi Arabia is not on the State Department's list of nations that sponsor terrorism.

23. The Department of State would surely strongly oppose such an amendment, as evidenced by its intervention as *amicus curiae* in *Saudi Arabia v. Nelson*, on the side of Saudi Arabia.

24. *Report of the International Law Commission on the Work of Its Forty-eighth Session*, U.N. GAOR, 51st Session, Supp. No. U.N. Doc. 10(A/51/10) (1996).

25. *Id.* at 6.

26. In its entirety, Article 19 reads as follows:

#### *International Crimes and International Delicts*

1. An act of a State which constitutes a breach of an international obligation is an internationally wrongful act, regardless of the subject-matter of the obligation breached.

has been the subject of sharp debate;<sup>27</sup> issues related to the countermeasures that an injured state may take against a state that has intentionally wronged it; and the dispute settlement provisions. Since the deadline for the submission of member states' views is January 1, 1998, it is clear that the Commission will be working on this topic for some time. Nonetheless, by adopting the draft articles on state responsibility, the Commission has taken a significant step. Even if the draft articles are never adopted in treaty form, at a minimum, they will surely be widely invoked as evidence of general international law.<sup>28</sup>

#### IV. Iran-U.S. Claims Tribunal

On January 19, 1981, the United States and Iran approved two declarations known generally as the Algiers Accords. The Accords provided, *inter alia*, for the creation of an international arbitral tribunal, the Iran-U.S. Claims Tribunal (Tribunal), to hear all claims against either country arising "out of debts, contracts . . . expropriations or other measures affecting property rights."<sup>29</sup> Such claims were to be presented to the Tribunal either by claimants themselves or, in the case of claims less than \$250,000, by the government of such nationals.<sup>30</sup> The Tribunal was also granted jurisdiction to hear claims of either country against the other "arising out of contractual arrangements between them for the purchase and sale of goods and services."<sup>31</sup>

The Tribunal was to serve as the exclusive forum for the litigation of the claims over which it was given jurisdiction. To this end, the United States agreed "to terminate all legal proceedings in U.S. courts involving claims of United States' persons and institutions against Iran . . . to nullify all attachments and judgments obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration."<sup>32</sup>

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2. An internationally wrongful act which results from the breach by a State of an international obligation so essential for the protection of fundamental interests of the international community that its breach is recognized as a crime by that community as a whole constitutes an international crime.

3. Subject to paragraph 2, and on the basis of the rules of international law in force, an international crime may result, *inter alia*, from:

- (a) a serious breach of an international obligation of essential importance for the maintenance of international peace and security, such as that prohibiting aggression;
- (b) a serious breach of an international obligation of essential importance for safeguarding the right of self-determination of peoples, such as that prohibiting the establishment or maintenance by force of colonial domination;
- (c) a serious breach on a widespread scale of an international obligation of essential importance for safeguarding the human being, such as those prohibiting slavery, genocide and apartheid;
- (d) a serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environment, such as those prohibiting massive pollution of the atmosphere or of the seas.

4. Any internationally wrongful act which is not an international crime in accordance with paragraph 2 constitutes an international delict.

27. For a brief consideration of some of the arguments on both sides of this issue, Robert Rosenstock, *The Forty-Sixth Session of the International Law Commission*, 89 AM. J. INT'L L. 390, 393-94 (1995).

28. Oscar Schachter suggests that this has already been done. See Oscar Schachter, *The UN Legal Order: An Overview*, 1 UN LEGAL ORD. 6-7 (1995).

29. Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, 20 INT'L LEGAL MATERIALS 230, 231 (1981).

30. *Id.*

31. *Id.*

32. Declaration of the Government of the Democratic Popular Republic of Algeria (General Declaration), 20 I.L.M. 224 (1981).

Moreover, to ensure payment of all tribunal awards in favor of U.S. nationals, the Accords provided for the establishment of an interest-bearing security account initially to be funded with \$1 billion of blocked Iranian assets and thereafter to be maintained through renewal deposits by Iran, at a minimum balance of \$500 million.

On May 13, 1990, the United States and Iran concluded a settlement agreement that covered the remaining U.S. claims under \$250,000, and the U.S. Government's own claims against Iran for repayment of 15 loans made between 1955 and 1967 as part of the U.S. long-term economic development assistance program in Iran. The settlement agreement was confirmed by an award from the Tribunal. The claims of U.S. nationals of less than \$250,000 that were covered by the agreement were then formally transferred by the U.S. Department of State to the Foreign Claims Settlement Commission for adjudication.

As of September 16, 1996, the Tribunal had rendered a total of 571 awards, a majority of which have been in favor of U.S. claimants.<sup>33</sup> The value of awards to successful U.S. claimants from the security account established by the Algiers Accords was \$2,376,010,041.91.<sup>34</sup>

On July 24, 1996, Iran transferred \$37,700,000 to the security account. However, the security account has remained continuously below the 500 million dollar balance required by the Algiers Accords since November 13, 1992. As of September 23, 1996, the total amount in the security account was \$233,070,128, and the total amount in the interest account was \$5,474,387.<sup>35</sup> Accordingly, the United States has filed suit before the Tribunal, seeking an order to require Iran to meet its obligations to replenish the security account.<sup>36</sup> At this writing the suit is pending.

Before briefly considering a few key decisions of the Tribunal rendered during 1996, a decision handed down by the U.S. Court of Federal Claims should be noted. In *Abrabim-Youri v. United States*,<sup>37</sup> plaintiffs were among those whose claims were transferred to the Foreign Claims Settlement Commission by the 1990 Iran-U.S. settlement agreement. Although plaintiffs' claims were upheld by the Commission, they contended that the value of their claims must include interest measured from the date of Iran's expropriation until the date payment is actually received, rather than just interest up to the Commission's cutoff date of June 22, 1990. The denial of such interest pursuant to the settlement agreement, plaintiffs argued, constituted taking of their property by the U.S. Government for which they were entitled to just compensation. The court disagreed, concluding, *inter alia*, that "the events that befell plaintiffs were part of the risks they assumed in choosing to do business abroad" and that "no principle of justice would support allocation to the public of the losses plaintiffs have claimed."<sup>38</sup>

As for noteworthy decisions of the Tribunal, on October 11, 1996, Chamber Two of the Tribunal denied an Iranian request for an order that the United States stay litigation by McKesson-OPIC against Iran in a U.S. District Court.<sup>39</sup> The parties now await the Tribunal's award on the merits of the cases that were argued more than a year ago. On October 9, 1996,

33. THE WHITE HOUSE: Office of the Press Secretary—Text of a letter from the President to the Speaker of the House of Representatives and the President of the Senate (Nov. 14, 1996), transcript available in Information Access Company, IAC (SM) Newsletter Database (TM), M2 Communications, M2 Presswire (Nov. 18, 1996).

34. *Id.*

35. *Id.*

36. Case A/28, Iran-U.S. Claims Trib., filed in September 1993. *Id.* Iran filed its statement of defense on August 30, 1995, and the United States filed its reply on December 4, 1995.

37. 36 Fed. Cl. 482 (1996).

38. *Id.* at 487.

39. *Iran v. United States*, DEC 125-A15(IV)/A24-FT, WL, INT-IRAN database (Oct. 11, 1996).

Chamber Two of the Tribunal rejected Iran's multimillion dollar claim against the United States for using Iran's railways to ship arms in World War II. In the Tribunal's view, Iran had no contractual agreement for compensation for use of its rails by the Allies to ship arms to the Soviet Union.<sup>40</sup>

On June 20, 1996, Chamber Three of the Tribunal dismissed a \$2.4 million claim brought by a dual national of Iran and the United States for the alleged expropriation of an Iranian construction company. In the view of the Tribunal, the claimant was not dominantly and effectively a U.S. national, and the Tribunal therefore did not have jurisdiction over the claim.<sup>41</sup> Chambers of the Tribunal reached similar conclusions in other cases decided in 1996.<sup>42</sup>

On February 22, 1996, the United States and Iran reached a settlement<sup>43</sup> under which the United States agreed to make *ex gratia* payments of \$61.8 million to family members of Iranians killed when the U.S. Navy Cruiser, *Vincennes*, shot an Iran Air A-300 Airbus out of the air over the Persian Gulf on July 3, 1988. Another \$70 million was to go into bank accounts to pay off private U.S. claims against Iran and Iran's expenses for the Tribunal. As part of the settlement, cases pending before the Tribunal and the International Court of Justice were dismissed. It is worth noting that a case brought by Iran against the United States for compensation for three off-shore oil platforms in the Persian Gulf destroyed by U.S. warships in 1987 and 1988 is still pending before the International Court of Justice.<sup>44</sup>

Lastly, there were several noteworthy new cases filed before the Tribunal during 1996. For example, on August 13, 1996, Iran filed a claim<sup>45</sup> alleging that the United States had violated the Algiers Accords by instituting a covert action program and by adopting the Iran-Libya Sanctions Act of 1996,<sup>46</sup> which threatens economic sanctions against non-U.S. firms that invest more than \$40 million annually in Iranian-Libyan oil and gas industries. In another case,<sup>47</sup> Iran alleges the United States violated the Algiers Accords by failing to assist Iran in obtaining the return of the Shah's assets.

## V. Claims Against Iraq

As pointed out by Charles Brower at an earlier time,<sup>48</sup> the claims against Iraq arising out of its invasion of Kuwait are pursued through a process that differs markedly from the Iran-U.S.

40. *Islamic Republic of Iran Ry. v. United States*, Award No. 572-B58-2, WL, INT-IRAN Database (Oct. 9, 1996).

41. *Khosravi v. Iran*, Award No. 571-146-3, WL, INT-IRAN Database (June 20, 1996).

42. See, e.g., *Kiaie v. Iran*, Award No. 570-164-3 (May 15, 1996), where the Tribunal concluded that claimant Jacqueline Kiaie was not a U.S. citizen at the time of the alleged expropriation, and her daughter was not a registered owner of the properties.

43. Iran-U.S. Claims Tribunal: Partial Award Containing Settlement Agreements on the Iranian Bank Claims against the United States and on the International Court of Justice Case Concerning the Aerial Incident of July 3, 1988, 35 I.L.M. 553 (1996).

44. Case concerning Oil Platforms (*Iran v. United States*). The jurisdictional issues of this case were recently argued before the International Court of Justice. See Andrew Kelly, *U.S. Urges World Court to Reject Iran Oil-Rigs Case*, REUTER EUR. BUS. REP., Sep. 16, 1996, at 25.

45. See *Iran Files Complaint Against U.S. Sanctions Law*, AGENCE FRANCE PRESS, Aug. 13, 1996.

46. See Pub. L. No. 104-172, 110 Stat. 1541 (1996).

47. See *Iran Files Suit Against U.S. at Hague Tribunal*, REUTERS FIN. SER., Aug. 13, 1996, at 2.

48. Charles M. Brower, *The Lessons of the Iran-United States Claims Tribunal: How May They Be Applied in the Case of Iraq?*, 32 VA. J. INT'L L. 421 (1992). For a later article on the same theme, Charles M. Brower, *The Lessons of Iran-U.S. Claims Tribunal Applied to Claims Against Iraq*, in THE UNITED NATIONS COMPENSATION COMMISSION 15 (Richard B. Lillich, ed. 1995).



Claims Tribunal. While the Tribunal was set up by bilateral agreements, the Security Council created the United Nations Compensation Commission to undertake the task of settling claims against Iraq<sup>49</sup> and imposed it on Iraq against its will. The Governing Council of the Commission has the same makeup as does the Security Council at any given time, operates by majority vote of nine members, and is always subject to the will of the Security Council. The Commission considers "consolidated claims" submitted by governments encompassing all the claims of their respective nationals in categories defined by the Commission.<sup>50</sup> The Commission establishes certain criteria for specific types of claims and then, when a consolidated group of claims in a particular category is submitted by a government, checks them for conformity to Commission guidelines. Once the Commission pays an award out of the U.N. Compensation Fund, the claiming government is responsible for distribution of the award to its nationals whose claims make up the consolidated claim. In the United States, distribution is made by the Foreign Claims Settlement Commission.

By resolution adopted on May 20, 1991,<sup>51</sup> the Security Council decided that monies for the Compensation Fund were to come primarily from: (1) a percentage of exports by Iraq after April 3, 1991, of petroleum and petroleum products; and (2) such products delivered earlier and not received or paid for because of the U.N. trade embargo. On August 15, 1991, the fund's share was set at thirty percent.<sup>52</sup>

Because the embargo remained in place, however, Iraq did not resume exporting oil, and in response the Security Council decided, on October 2, 1992, to finance the Compensation Commission by loans from governments that hold frozen proceeds of Iraqi pre-invasion oil sales or proceeds from the sale of Iraqi-owned oil.<sup>53</sup> Such loans were to be repaid from proceeds of Iraqi oil exports once they were resumed.

On April 14, 1995, the Security Council decided on a limited waiver of the embargo allowing the export of petroleum products not to exceed \$1 billion quarterly, with proceeds deposited by purchasers in a U.N. escrow account.<sup>54</sup> The funds would be used in part to finance the shipment of medicine and other civilian supplies to Iraq, as well as operation of the Compensation

49. S.C. Res. 687 (1991).

50. The Governing Council of the Compensation Commission has established six different categories of claims and identified those that were to be considered urgent and hence to receive priority attention, for both processing and payment. As explained by Carlos Alzamora, the Executive Secretary of the Compensation Commission:

[u]rgent claims are those submitted by individuals who had to leave Iraq or Kuwait between the date of the invasion (2 August 1990) and the end of hostilities (2 March 1991) (Category A), individuals who suffered serious personal injury or lost a family member as a result of the events (Category B), and individuals making claims for amounts up to \$100,000 in personal damages (Category C).

The Governing Council also set fixed amounts for compensation awards in Categories A and B following a simple and rapid procedure. These fixed amounts might appear very small to Western eyes, but may make all the difference when a person has lost everything and has to start again from nothing in a small town in Sri Lanka or Bangladesh.

The other categories related to claims of individuals above \$100,000 (Category D), claims from corporations and other entities (Category E), and claims from governments and international organizations (Category F).

Carlos Alzamora, *The U.N. Compensation Commission: An Overview*, in *THE UNITED NATIONS COMPENSATION COMMISSION* 3, 6 (Richard B. Lillich, ed. 1995).

51. S.C. Res. 692 (1991).

52. S.C. Res. 705 (1991).

53. S.C. Res. 778 (1992).

54. S.C. Res. 986 (1995).

Commission, and to pay commission awards. On May 20, 1996, Iraq and the United Nations concluded a memorandum of understanding regarding the sale of Iraqi oil<sup>55</sup> and, after a few false starts, on December 10, 1996, Iraq began to pump oil to Turkey through a pipeline that had been closed since August 1990.<sup>56</sup>

As of November 6, 1996, the Compensation Commission had issued over 980,000 awards worth approximately \$4 billion.<sup>57</sup> Because of the limited funds available to it, however, the Commission had issued only limited payments for fixed awards for serious personal injury or death.<sup>58</sup>

The Compensation Commission has jurisdiction only over claims resulting from the Iraqi invasion and occupation of Kuwait, and not over claims arising from preexisting obligations. Accordingly, bills<sup>59</sup> have been introduced in Congress that would authorize the vesting of blocked Iraqi assets in the United States for the satisfaction of claims by the U.S. Government and by U.S. nationals that are not within the jurisdiction of the Compensation Commission. These claims would be adjudicated by the Foreign Claims Settlement Commission and paid from vested Iraqi assets. These bills would also provide express authorization to the Commission to allocate among U.S. persons with claims falling within the jurisdiction of the Compensation Commission any lump-sum awards that may be received from the Compensation Commission in due course. At this writing no such legislation has been adopted.

## VI. Miscellaneous

Although the decision in *Banco Central de Reserva del Peru v. The Riggs National Bank of Washington, D.C.*,<sup>60</sup> was handed down on December 12, 1994, it has not previously received much attention. The case is reported in full, however, in the September 1996 issue of *International Legal Materials*, with a helpful introductory note by Georges R. Delaume.<sup>61</sup> The issue in the case, as identified by Delaume, is "Can the Deposit of Banco Central de Reserva del Peru (BCR), a foreign central bank, at the Riggs National Bank of Washington, D.C. (Riggs), an American bank, be set off against the Central Bank's indebtedness, notwithstanding that bank's entitlement to immunity from attachment and execution under Section 1611(b)(1), 28 U.S.C. (U.S. Foreign Sovereign Immunities Act—FSIA)?"<sup>62</sup> The affirmative answer to this question given by the District Court for the District of Columbia, Delaume suggests, "ought to provide comfort to the financial community. However it also raises issues that are not exempt from controversy."<sup>63</sup> Delaume's comments are a good introduction to these issues.

55. Iraq—United Nations: Memorandum of Understanding of the Sale of Iraqi Oil, Implementing Security Council Resolution 986, 35 I.L.M. 1095 (1996).

56. Douglas Jehl, *Iraqis Look Ahead to Fattening of Rations as Part of U.N. Deal*, N.Y. TIMES, Dec. 16, 1996, at A1.

57. THE WHITE HOUSE: Office of the Press Secretary—Text of a Letter from the President to the Speaker of the House of Representatives and the President Pro Tempore of the Senate, Nov. 6, 1996, 1996 WL 14652127.

58. *Id.*

59. The House of Representatives passed a bill, H.R. 3221, on April 28, 1994, but the Senate Committee on Foreign Relations took no further action.

60. 919 F. Supp. 13 (D.D.C. 1994).

61. 35 I.L.M. 1159 (1996).

62. *Id.*

63. *Id.*

