

# International Courts and Tribunals

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This article reviews and summarizes significant developments in 2002 involving international courts and tribunals, particularly events relating to the International Court of Justice, the United Nations Compensation Commission, the Iran-U.S. Claims Tribunal, the Claims Resolution Tribunal, and the International Commission on Holocaust Era Insurance Claims. Significant developments relating to the International Criminal Court, the International Criminal Tribunals for the former Yugoslavia and for Rwanda, proposed additional *ad hoc* international criminal tribunals, the International Tribunal for the Law of the Sea, the World Trade Organization dispute settlement system, and other trade dispute settlement systems are detailed in other articles in this issue.

## I. International Court of Justice<sup>1</sup>

The International Court of Justice (Court) is the principal judicial organ of the United Nations (U.N.). The Court's jurisdiction is two-fold: to deliver judgments in contentious cases submitted by sovereign states and to issue non-binding advisory opinions at the request of certain U.N. organs and agencies. At the close of 2002, the Court's fifty-sixth year since its inaugural sitting on April 18, 1946, twenty-three contentious cases and no requests for advisory opinions were pending. The Court delivered judgment on the merits in three

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The views expressed herein are those of the authors, acting solely in their personal capacities, and do not represent the views of the United Nations, the International Criminal Tribunal for the former Yugoslavia, the U.S. International Trade Commission, the Iran-U.S. Claims Tribunal, or the World Bank.

1. All International Court of Justice decisions, pleadings, and other documents cited in this section are available at the Court's Web site: <http://www.icj-cij.org>.

cases,<sup>2</sup> rejected a request to indicate provisional measures in a fourth,<sup>3</sup> and issued numerous case-management orders. Three new contentious cases were docketed in 2002,<sup>4</sup> two of which will be decided by special chambers.<sup>5</sup> The Court instituted additional measures to improve and expedite Court practice, and announced the composition of the Chamber for Environmental Matters. In October, the U.N. General Assembly and Security Council elected five new members of the Court whose terms will commence in 2003. This section reports briefly on each of these activities as well as the Court's General List and the Court's composition at year-end.

#### A. CONTENTIOUS CASES DURING 2002

##### 1. *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*

On February 14, 2002, the Court delivered its Judgment.<sup>6</sup> It held, by thirteen votes to three, that

the issue against Mr. Abdoulaye Yerodia Ndombasi of the arrest warrant of 11 April 2000, and its international circulation, constituted violations of a legal obligation of the Kingdom of Belgium towards the Democratic Republic of the Congo, in that they failed to respect the immunity from criminal jurisdiction and the inviolability which the incumbent Minister for Foreign Affairs of the Democratic Republic of the Congo enjoyed under international law.<sup>7</sup>

Consequently, Belgium was ordered to cancel the arrest warrant against Mr. Yerodia and to notify the international authorities that had received the warrant.<sup>8</sup> The Court had reached its findings after it determined that it had jurisdiction, that the case was not moot, and that the complaint was admissible.<sup>9</sup>

The facts of the case may be summarized as follows. On April 11, 2000, an investigating judge of the Brussels *tribunal de première instance* issued an 'international arrest warrant *in*

2. Arrest Warrant of 11 April 2000 (Congo v. Belg.), 2002 I.C.J. 121 (Feb. 14); Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nig.: Eq. Guinea intervening), 2002 I.C.J. 94 (Oct. 10); Sovereignty over Pulau Ligitan and Pulau Sipadan (Indon./Malay.), 2002 I.C.J. 102 (Dec. 17).

3. Armed Activities on the Territory of the Congo (New Application: 2002) (Congo v. Rwanda), 2002 I.C.J. 126 (July 10) (also declining to remove the case from the list).

4. Frontier Dispute (Benin/Niger), 2002 I.C.J. 125 (Nov. 27) (noting that the case was filed May 3, 2002); Armed Activities on the Territory of the Congo (Congo v. Rwanda), 2002 I.C.J. 126 (Sept. 18) (noting that Congo filed proceedings May 28, 2002); Application for Revision of the Judgment of 11 September 1992 in the Case Concerning the Land, Island and Maritime Frontier Dispute (El Sal. v. Hond.: Nicar. Intervening), (Sept. 10, 2002).

On December 9, 2002, the Registrar received an application for a fourth new contentious case, Congo against France, which seeks to stop France from trying the Congolese Minister of Justice, Pierre Oba, for crimes against humanity and torture. Jurisdiction is lacking on the face of the application, however, pending France's consent to be sued. See Press Release, International Court of Justice, 2002/37 The Republic of the Congo Seizes the International Court of Justice of a Dispute with France (Dec. 9, 2002), available at <http://www.pict-pcti.org> (last visited Mar. 4, 2003). The case was not docketed by year-end, pending such consent.

5. Frontier Dispute (Benin/Niger), 2002 I.C.J. 125 (Nov. 27); and Application for Revision of the Judgment of 11 September 1992 in the Case Concerning the Land, Island and Maritime Frontier Dispute (El Sal. v. Hond.: Nicar. intervening), 2002 I.C.J. 127 (Nov. 27).

6. Arrest Warrant of 11 April 2000 (Congo v. Belg.), 2002 I.C.J. 121 (Feb. 14). Five separate opinions, one declaration, and three dissenting opinions were appended to the Judgment.

7. *Id.* para. 78.

8. *Id.* The vote on this issue was ten to six.

9. *Id.* The vote on these issues was fifteen to one.

*absentia*' against the Minister for Foreign Affairs of the Democratic Republic of the Congo, Mr. Abdulaye Yerodia Ndombasi.<sup>10</sup> Mr. Yerodia allegedly made various speeches inciting racial hatred during August 1998. He was charged as a perpetrator or co-perpetrator of committing grave breaches of the four 1949 Geneva Conventions and Additional Protocols thereto and crimes against humanity under a Belgian law purporting to give courts of that State universal jurisdiction for such criminal offenses.<sup>11</sup> Shortly thereafter, the Belgian authorities transmitted the warrant to the International Criminal Police Organization (Interpol) and to Congolese officials in the summer of 2000.<sup>12</sup>

Belgium raised several objections to the admissibility of the case and the Court's jurisdiction. First, Belgium argued that the case was moot, since Mr. Yerodia was no longer the Foreign Minister or even a member of the Congolese government when the case was brought.<sup>13</sup> The Court rejected this argument, relying on jurisprudence establishing that the Court's jurisdiction is determined based on the facts at the time the case is referred to it.<sup>14</sup> Second, Belgium argued that because Mr. Yerodia no longer held a government position, the case was without object.<sup>15</sup> Although the Court has relied on this notion in previous cases, it rejected the argument in the present case on the grounds that the Congo asserted that the warrant remained illegal and the object of the case was the allegedly unlawful arrest warrant.<sup>16</sup> Third, Belgium asserted that the Congo's claim was inadmissible because the facts had changed since the time of filing, but the Court rejected Belgium's submission.<sup>17</sup> Fourth, the Court denied Belgium's objections that "the case has assumed the character of an action of diplomatic protection but one in which the individual being protected has failed to exhaust local remedies."<sup>18</sup> Reiterating that the admissibility of a case must be determined at the time of its filing, the Court noted that the Congo had never invoked the individual rights of Mr. Yerodia, and consequently this objection was denied.<sup>19</sup>

As a subsidiary argument, Belgium asserted that the rule of *non ultra petita* limited the Court's jurisdiction to those issues raised in the Congo's final submissions.<sup>20</sup> According to Belgium, since the Congo had not raised the legality of Belgium's assertion of universal jurisdiction *in absentia* in its final submissions, the Court should be precluded from ruling on that issue on the merits.<sup>21</sup> In dealing with this issue, the Court stated that although it is "not entitled to decide upon questions not asked of it, the *non ultra petita* rule nonetheless cannot preclude the Court from addressing certain legal points in its reasoning."<sup>22</sup> Thus, although the Court declined to rule in the operative part of its Judgment on the issue of whether the contested arrest warrant complied with international law on the grounds of universal jurisdiction, that is not to say "that the Court may not deal with

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10. *Id.* para. 13.

11. *Id.* paras. 13, 15.

12. *Id.* para. 14.

13. *Id.* paras. 23–24.

14. *Id.* paras. 26–28.

15. *Id.* paras. 29–30.

16. *Id.* paras. 31–32.

17. *Id.* paras. 33–36.

18. *Id.* para. 37.

19. *Id.* para. 40.

20. *Id.* para. 41.

21. *Id.* The Congo had raised this issue in earlier submissions.

22. *Id.* para. 43.

certain aspects of that question in the reasoning of its Judgment, should it deem this necessary or desirable.”<sup>23</sup>

Dealing with the merits, the Court determined that the issue before it was the immunity from criminal jurisdiction and inviolability of an incumbent Foreign Minister.<sup>24</sup> Despite the fact that the parties cited to several treaties in support of their respective positions, the Court determined that the issue must be decided on the basis of customary international law.<sup>25</sup> Under such law, the immunities accorded to foreign ministers are granted not to provide personal benefit for such officials, but to permit them to perform effectively their duties on behalf of their respective States.<sup>26</sup> The Court concluded that due to the unique nature of the duties of a foreign minister, no distinction could be made between acts performed by such individuals in their “official” capacity and those performed in a “private” capacity, nor between acts committed prior to assuming the responsibilities as a minister and acts committed during the period of office.<sup>27</sup> Consequently, the Court concluded:

the functions of a Minister of Foreign Affairs are such that, throughout the duration of his or her office, he or she when abroad enjoys full immunity from criminal jurisdiction and inviolability. That immunity and that inviolability protect the individual concerned against any act of authority of another State which would hinder him or her in the performance of his or her duties.<sup>28</sup>

Belgium advanced a theory that an exception to this general immunity exists in situations when the foreign minister is suspected of having committed war crimes or crimes against humanity.<sup>29</sup> The Court distinguished the sources relied on by Belgium on the grounds that there was no legal precedent for piercing the immunity of a sitting foreign minister for purposes of criminal proceedings concerning alleged war crimes or crimes against humanity.<sup>30</sup> In making this finding the Court noted that the “rules governing the jurisdiction of national courts must be carefully distinguished from those governing jurisdictional immunities.”<sup>31</sup> Thus, the immunities of a foreign minister remain opposable before national courts where such courts exercise jurisdiction under various conventions requiring States to prosecute or extradite.<sup>32</sup>

Notwithstanding these findings, the Court emphasized the distinction between the concepts of immunity and impunity, stating that while immunity is procedural, criminal responsibility is a substantive matter, and although immunity may bar prosecution, it cannot exonerate an individual from all criminal responsibility.<sup>33</sup> The Court then set forth four

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23. *Id.*

24. *Id.* para. 51.

25. *Id.* para. 52.

26. *Id.* para. 53. The Court then proceeded to define the parameters of these duties under customary international law.

27. *Id.* para. 55.

28. *Id.* para. 54.

29. *Id.* para. 56. In support of this proposition, Belgium cited to the creation of international criminal tribunals, national legislation, and the jurisprudence of national and international courts.

30. *Id.* para. 58.

31. *Id.* para. 59.

32. *Id.*

33. *Id.* para. 60.

circumstances when the immunities of an incumbent foreign minister would not present a bar to criminal prosecution.<sup>34</sup>

On the basis of these findings, the Court found that the issuance of the arrest warrant “represents an act by the Belgian judicial authorities intended to enable the arrest on Belgian territory of an incumbent Minister of Foreign Affairs on charges of war crimes and crimes against humanity.”<sup>35</sup> The Court held that the mere issuance of the arrest warrant violated the immunity to which Mr. Yerodia was entitled and that this act constituted a violation of the obligation Belgium owed the Congo under international law.<sup>36</sup> Turning to the issue of remedies, the Court noted that “‘the situation which would, in all probability, have existed if [the illegal act] had not been committed’ cannot be re-established merely by a finding by the Court that the arrest warrant was unlawful under international law.”<sup>37</sup> Consequently, Belgium was ordered to cancel the arrest warrant and to so inform the authorities to whom the arrest warrant had been transmitted.<sup>38</sup>

## 2. *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*

On October 10, 2002, the Court delivered its Judgment.<sup>39</sup> With respect to the original issue upon which Cameroon had filed the application in 1994, sovereignty over the Bakassi Peninsula, the Court held by a vote of thirteen to three that sovereignty lies with Cameroon.<sup>40</sup> The Court found that the Anglo-German Agreement of March 11, 1913, delimited the boundary in Bakassi, rejecting Nigeria’s claim that title at that time was not Great Britain’s to transfer, and that title lay with the Kings and Chiefs of Old Calabar and was retained by them until the territory passed to Nigeria upon independence in 1960.<sup>41</sup> Regarding the Lake Chad area, the Court held by a vote of fourteen to two that the Franco-British Exchange of Notes of January 9, 1931, delimited the boundary.<sup>42</sup> By a vote of fifteen to one, the Court held that the same exchange of notes, and the Anglo-German Agreements of March 11 and April 12, 1913, delimited the land boundary between Lake Chad and the Bakassi Peninsula.<sup>43</sup> The Court examined each disputed sector point by point, and specified how these various instruments applied in determining the precise course of the land boundary between the two states.

34. *Id.* para. 61. These four instances are: (1) prosecution before the national courts of their own State; (2) if the State that they represent (or represented) waives their immunity; (3) after the person ceases to be foreign minister, he or she may be prosecuted in a third State for acts allegedly committed prior to or subsequent to his or her appointment or for acts committed during his or her tenure for acts committed in a private capacity; and (4) an incumbent or former foreign minister may be subject to prosecution before certain international criminal courts, where such courts have jurisdiction.

35. *Id.* para. 70.

36. *Id.*

37. *Id.* para. 76 (citing *Factory at Chorzów*, 1928 P.C.I.J. (ser. A) No. 17, at 47 (Sept. 13)).

38. *Id.*

39. *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nig.)*, 2002 I.C.J. 94 (Oct. 10). Four separate opinions, two dissenting opinions, and three declarations were appended to the Judgment. Public hearings took place in February and March, 2002.

40. *Id.* para. 325(III)(B).

41. *Id.* paras. 193–225.

42. *Id.* para. 325(I)(A).

43. *Id.* para. 325(II)(A).

With respect to the maritime boundary, the Court stated initially that in fixing the boundary it would not adopt a position, due to jurisdictional limitations, that affected the rights of Equatorial Guinea and Sao Tome and Principe.<sup>44</sup> The Court then rejected Nigeria's contention that the negotiation requirements of articles 74 and 83 of the United Nations Law of the Sea Convention operated to bar Cameroon's claims.<sup>45</sup> On the merits, the Court held by a vote of thirteen to three that the Yaoundé II (1971) and Maroua (1975) Declarations, agreed to by the Heads of State of Cameroon and Nigeria and addressing the maritime boundary separating the territorial seas of the two, created a valid and binding delimitation.<sup>46</sup> In maritime areas in which there was no controlling agreement (areas further out to sea over which the Court had jurisdiction to rule), the Court unanimously drew an equidistant line between Cameroon and Nigeria, finding that this produced an equitable delimitation under the circumstances.<sup>47</sup>

The Court ordered each party to withdraw expeditiously and without condition from any territory over which the Court had determined that the party lacked sovereignty, took note of Cameroon's representation that it would continue to afford protection to Nigerians living in the Bakassi Peninsula and Lake Chad area, and rejected both parties' State responsibility claims.<sup>48</sup>

### 3. *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*

On December 17, 2002, the Court delivered its judgment in the boundary dispute that the parties had submitted by special agreement in 1998.<sup>49</sup> By a vote of sixteen to one, the Court held that sovereignty over Pulau Ligitan and Pulau Sipadan belongs to Malaysia.<sup>50</sup> Indonesia's main claim to title rested with Article IV of a Convention concluded between Great Britain and the Netherlands in 1891.<sup>51</sup> Article IV provided that, "[f]rom 4° 10' north latitude on the east coast the boundary-line shall be continued eastward along that parallel, across the Island of Sebittik: that portion of the island situated to the north of that parallel shall belong unreservedly to the British North Borneo Company, and the portion south of that parallel to the Netherlands."<sup>52</sup>

Applying interpretative principles of the Vienna Convention on the Law of Treaties as a matter of customary international law (Indonesia was not a party to the Vienna Convention),<sup>53</sup> the Court ultimately concluded that Article IV, interpreted in its context and in the light of the object and purpose of the 1891 Convention, determined simply the boundary

44. *Id.* para. 238. The final vote declaring that the Court possessed jurisdiction over Cameroon's maritime delimitation claims and that such claims were admissible was thirteen to three. *Id.* para. 325(IV)(A).

45. The Court reaffirmed its finding from the preliminary phase that negotiations had indeed taken place and further held that Articles 74 and 83 would not, in any event, require a suspension of judicial proceedings for new negotiations in instances in which, following the case's initiation, one party alters its claims. *Id.* para. 244.

46. *Id.* paras. 268, 325(IV)(B).

47. *Id.* paras. 269–307, 325(IV)(C)–(D).

48. *Id.* paras. 308–324, 325(V).

49. *Sovereignty over Pulau Ligitan and Pulau Sipadan*, (Indon./Malay.), 2002 I.C.J. 102 (Dec. 17).

50. *Id.* para. 150.

51. *Id.* para. 34.

52. *Id.* para. 36 (emphasis supplied). The equally authoritative Dutch text used a semicolon in the place of the English version's colon. The Court found that the punctuation distinction did not help elucidate the article's meaning. *Id.* para. 41.

53. *Id.* para. 37.

between the parties up to the eastern extremity of Sebittik Island. The Court was unpersuaded that the Article's use of the preposition "across" ("over" in Dutch) was intended to establish an allocation line further eastward. The Court found that both the *travaux préparatoires* and the conduct of the parties subsequent to the 1891 Convention supported this construction of Article IV.<sup>54</sup>

The Court rejected Indonesia's alternative contention that title to the islands passed to it as successor to the Netherlands and the Sultan of Bulungan. The Court concluded that the Sultanate island possessions, which became the subject of two contracts with the Netherlands East Indies, extended to three named islands and the islets in their immediate vicinity, not Ligitan and Sipadan at a distance of more than forty nautical miles.<sup>55</sup> The Court similarly rejected Malaysia's claim of an uninterrupted series of transfers of title from the alleged original holder, the Sultan of Sulu, ultimately to Malaysia as the present holder. The record failed to establish that Ligitan and Sipadan belonged to the Sultan of Sulu or that any of the alleged subsequent holders had a treaty-based title to these islands.<sup>56</sup>

The Court next considered the evidence of *effectivités*, particularly those predating the crystallization of the dispute.<sup>57</sup> The Court concluded that the activities upon which Indonesia relied did not "constitute acts *à titre de souverain* reflecting the intention and will to act in that capacity."<sup>58</sup> Malaysia's acts, on the other hand, while "modest in number" were "diverse in character and include legislative, administrative and quasi-judicial acts . . . revealing an intention to exercise State functions in respect of the two islands in the context of the administration of a wider range of islands."<sup>59</sup> Based on the evidence of *effectivités*, the Court concluded that Malaysia has title to Ligitan and Sipadan.<sup>60</sup>

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54. *Id.* paras. 39–92.

55. *Id.* paras. 64, 96.

56. *Id.* paras. 108–124.

57. Relying for its analysis in part on *Legal Status of Eastern Greenland* the Court recalled the following quote from the Permanent Court:

It is impossible to read the records of the decisions in cases as to territorial sovereignty without observing that in many cases the tribunal has been satisfied with very little in the way of the actual exercise of sovereign rights, provided that the other State could not make out a superior claim. This is particularly true in the case of claims to sovereignty over areas in thinly populated or unsettled countries.

*Legal Status of Eastern Greenland* (Den. v. Nor.), 1933 P.C.I.J. (ser. A/B) No. 53, at 45–46. Sovereignty over Pulau Ligitan and Pulau Sipadan, (Indon./Malay.), 2002 I.C.J. 102 para. 134 (Dec. 17) (adding that "in the case of very small islands which are uninhabited or not permanently inhabited—like Ligitan and Sipadan, which have been of little economic importance (at least until recently)—*effectivités* will indeed generally be scarce.").

58. Sovereignty over Pulau Ligitan and Pulau Sipadan, (Indon./Malay.) para. 141. Evidence cited by Indonesia included the continuous presence of Dutch and Indonesian navies in the waters around the islands, surveillance of the islands in 1921 to combat piracy in the waters east of Borneo, and the traditional use of the waters around the islands by Indonesian fisherman.

59. *Id.* para. 148. Evidence cited by Malaysia included measures to regulate and control the collecting of turtle eggs, the establishment of a bird reserve, and the construction and maintenance of lighthouses, activities to which neither Indonesia nor its predecessor, the Netherlands, expressed its disagreement or protest. *Id.* paras. 143–146.

60. *Id.* para. 149. Indonesia's *ad hoc* judge appended a dissenting opinion. In Judge *ad hoc* Franck's view, the 1891 Convention intended the two islands to be Dutch and, now, Indonesian. Judge Oda appended a declaration to the Judgment stating that the issue of island sovereignty arose only as a result of the parties' maneuvering for better bargaining positions respecting continental shelf delimitation, a dispute that was not before the Court

4. *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*

On May 28, 2002, the Congo instituted proceedings against Rwanda in a dispute concerning “‘massive, serious and flagrant violations of human rights and of international humanitarian law’ alleged to have been committed ‘by Rwanda on the territory of the Democratic Republic of the Congo in flagrant breach of the sovereignty and territorial integrity [of the latter], as guaranteed by the United Nations and OAU Charters.’”<sup>61</sup> On the same day, the Congo sought provisional measures.<sup>62</sup> The Court heard oral arguments on June 13 and 14, 2002. The Court rejected, by a vote of fourteen to two, the application for provisional measures and, by a vote of fifteen to one, Rwanda’s submissions seeking to have the case removed from the Court’s docket.<sup>63</sup>

With respect to the decision on provisional measures, the Court reiterated that it does not automatically have jurisdiction over legal disputes, but only as to those disputes between States that have accepted the Court’s jurisdiction.<sup>64</sup> Moreover, in deciding whether to grant an application for provisional measures, the Court must satisfy itself that it has *prima facie* jurisdiction on the merits of the case.<sup>65</sup> After undertaking a review of the various potential sources of subject matter jurisdiction,<sup>66</sup> the Court concluded that the *prima facie* jurisdiction necessary to indicate provisional measures was not established.<sup>67</sup> The Court noted that its finding was neither fatal to the Congo’s claims nor indicative of a manifest lack of jurisdiction so as to strike the case from the Court’s list.<sup>68</sup> Following a meeting with the parties, the Court would later order that the briefing of jurisdiction and admissibility take place before any proceedings on the merits.<sup>69</sup>

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under the special agreement. He stated that determining sovereignty over the islands did not necessarily have a direct bearing on the quite different matter of continental shelf delimitation.

61. *Armed Activities on the Territory of the Congo (New Application: 2002)*, (Congo v. Rwanda), 2002 I.C.J. 126 (Sept. 18) (quoting application). In its application, the Congo alleges that Rwanda has been guilty of “‘armed aggression’” from August 1998 to the present day. The Congo asserts that the aggression has resulted in “‘large-scale massacres’” in South Kivu, Katanga Province and the Eastern Province; “‘rape and sexual assault of women;’” “‘murder and abductions of political figures and human rights activists;’” “‘arrests, arbitrary detentions, inhuman and degrading treatment;’” “‘systematic looting of public and private institutions [and] theft of property of the civilian population;’” “‘human rights violations committed by the invading Rwandan troops and their ‘rebel’ allies in the major cities in the eastern [territory]’” of the DRC; and “‘destruction of fauna and flora’” of the country. July 10 Order para. 4 (quoting application).

62. The Congo stated that the purpose of the requested provisional measures was “‘to prevent irreparable harm being caused to its lawful rights and to those of its population as a result of the occupation of part of its territory by Rwandan forces.’” It emphasized that the failure “‘to make an immediate order for the measures sought would have humanitarian consequences which could never be made good again . . . in the short term or in the long term.’” *Id.* paras. 11, 13 (quoting request for indication of provisional measures).

63. *Id.* para. 94.

64. *Id.* para. 57.

65. *Id.* para. 58.

66. Sources included the Convention Against Torture (*id.* paras. 60–61); the Convention on Racial Discrimination (*id.* paras. 64–67); the Genocide Convention (*id.* paras. 68–72); the Vienna Convention on the Law of Treaties (*id.* paras. 73–75); the Convention on Discrimination against Women (*id.* paras. 76–79); the WHO Constitution (*id.* paras. 80–82); the UNESCO Constitution (*id.* paras. 83–85); and the Montreal Convention (*id.* paras. 86–88).

67. *Id.* para. 89.

68. *Id.* paras. 90–91. Four declarations and two separate opinions were appended to the July 10 Order.

69. September 18 Order.



## B. NEW CASES DURING 2002

1. *Frontier Dispute (Benin/Niger)*

On April 11, 2002, pursuant to a special agreement, Benin and Niger jointly requested the Court's determination of the following boundary issues: the course of the boundary in the sector of the Niger River; the ownership of each island in the Niger River, particularly Lété Island; and the course of the boundary in the sector of the Mekrou River.<sup>70</sup> The special agreement provides for the submission of the dispute to a chamber formed pursuant to article 26, paragraph 2 of the Statute of the Court (Statute) and for the choice of a judge *ad hoc* by each party in accordance with article 31 of the Statute.<sup>71</sup>

Following consultation with the parties as to the composition of the proposed chamber and the parties' notification to the Court of their respective, unopposed choice of *ad hoc* judge, the Court formed a chamber of five judges: the parties' *ad hoc* judge selections, ICJ President Guillaume, and Judges Ranjeva and Kooijmans.<sup>72</sup>

2. *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*

The Congo's new application<sup>73</sup> and the provisional measures proceedings that followed its filing are discussed above.

3. *Application for Revision of the Judgment of 11 September 1992 in the Case Concerning the Land, Island and Maritime Frontier Dispute (El Salvador v. Honduras: Nicaragua intervening) (El Salvador v. Honduras)*

On September 10, 2002, El Salvador filed an application pursuant to article 61 of the Statute for revision of one part of the judgment (that concerning the sixth disputed sector of the land boundary) of a chamber of the Court that decided certain boundary disputes between the parties nearly ten years earlier. El Salvador states that decisive factors in the rejection of its claim to a boundary along the old and original riverbed of the Goascorán River and acceptance of Honduras' claim to a boundary that followed the current course of the Goascorán (its purported course at the time of independence in 1821) were: (a) the absence of evidence of an abrupt alteration of the Goascorán during the colonial period, and (b) a chart and descriptive report of the Gulf of Fonseca drawn in 1796 as part of the expedition of the brigantine *El Activo*.<sup>74</sup> El Salvador claims that newly-discovered evidence, unavailable to it at the time of the original judgment, demonstrates the old course of the Goascorán River and its abrupt alteration around 1762, as well as the unreliability of the version of the chart and descriptive report upon which the chamber had relied.<sup>75</sup> El Salvador seeks revision of the original judgment because the new evidence, it contends, shows that "the present-day course of the Goascorán River was not" the river's course in 1821; "that

70. Press Release, International Court of Justice, Benin and Niger jointly submit a boundary dispute to the International Court of Justice (May 3, 2002), available at <http://www.icj-cij.org/icjwww/idocket/ibn/ibnframe.htm>.

71. *Id.*

72. *Frontier Dispute (Benin/Niger)*, 2002 I.C.J. 125 (Nov. 27).

73. By agreement of the parties, an earlier application was discontinued in January 2001.

74. *Application for Revision of the Judgment of 11 September 1992 (El Sal./Hon.: Nicar. Intervening)*, *supra* note 4, para. 5.

75. *Id.* para. 32.

the old riverbed was the recognized boundary,” and “that this riverbed was north of the Bay of La Unión, whose entire coastline belonged to the Republic of El Salvador.”<sup>76</sup>

This is the first time a party has sought the revision of a judgment of a chamber of the Court. Article 100, paragraph 1 of the Rules of the Court provides that when the judgment to be revised was given by a chamber, the request for its revision shall be dealt with by that chamber. The parties requested the formation of a new chamber of five members, of whom two would be *ad hoc* judges of their naming. By order dated November 27, 2002, the Court constituted a chamber consisting of ICJ President Guillaume, Judges Rezek and Buergenthal, and the two *ad hoc* judges.<sup>77</sup>

### C. GENERAL LIST

As of December 31, 2002, the General List of International Court of Justice cases was composed as follows: *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v. United Kingdom) (Libya v. United States)*; *Oil Platforms (Iran v. United States)*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*; *Gabcikovo-Nagymaros Project (Hungary/Slovakia)*; *Abmadou Sadio Diallo (Guinea v. Congo)*; *Legality of the Use of Force (Yugoslavia v. Belgium) (Yugoslavia v. Canada) (Yugoslavia v. France) (Yugoslavia v. Germany) (Yugoslavia v. Italy) (Yugoslavia v. Netherlands) (Yugoslavia v. Portugal) (Yugoslavia v. United Kingdom)*; *Armed Activities on the Territory of the Congo (Congo v. Uganda)*; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Yugoslavia)*; *Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*; *Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, *Preliminary Objections (Yugoslavia v. Bosnia and Herzegovina)*;<sup>78</sup> *Certain Property (Liechtenstein v. Germany)*; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*; *Frontier Dispute (Benin/Niger)*; *Armed Activities on the Territory of the Congo (New Application: 2002) (Congo v. Rwanda)*; and *Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador v. Honduras: Nicaragua intervening) (El Salvador v. Honduras)*.

### D. PROCEDURAL INITIATIVES

The Court promulgated three new practice directions, effective February 7, 2002. Practice Direction VII states that “it is not in the interest of the sound administration of justice that a person sit as judge *ad hoc* in one case who is also acting or has recently acted as agent, counsel or advocate in another case before the Court.”<sup>79</sup> Practice Direction VIII states:

it is not in the interest of the sound administration of justice that a person who until recently was a Member of the Court, judge *ad hoc*, Registrar, Deputy-Registrar or higher official of the

76. *Id.* para. 169(4).

77. Application for Revision of the Judgment of 11 September 1992 in the Case Concerning the Land, Island and Maritime Frontier Dispute (El Sal./Hond.; Nicar. Intervening), 2002 I.C.J. 127 (Nov. 27).

78. The Court took the matter under advisement following public hearings held the first week in November 2002.

79. International Court of Justice, Practice Directions, available at [http://www.icj-cij.org/icjwww/ibasicdocuments/ibasicctext/ibasic\\_PracticeDirection\\_20011030\\_I-VI.html](http://www.icj-cij.org/icjwww/ibasicdocuments/ibasicctext/ibasic_PracticeDirection_20011030_I-VI.html) (last visited May 26, 2003).

Court (principal legal secretary, first secretary or secretary), appear as agent, counsel, or advocate in a case before the Court.<sup>80</sup>

The text of each Direction suggests a benchmark for “recently” of within three years preceding the date of nomination or designation.<sup>81</sup> Practice Direction IX discourages the submission of new documents after the closure of written proceedings and prescribes the limited circumstances under which the Court will accept such documents.<sup>82</sup>

The Court announced additional new measures as part of its ongoing effort to adapt to its increasing workload. These included steps to reduce reply and rejoinder briefing, to shorten oral argument practice, and to simplify the Court’s deliberations.<sup>83</sup>

In March 2002, the Court announced its election of Judge Elaraby to succeed Judge Bedjaoui (who had left office in September 2001) as a member of the Chamber for Environmental Matters, which the Court established pursuant to article 26, paragraph 1 of its Statute in July 1993.<sup>84</sup>

#### E. COMPOSITION OF THE COURT

On October 21, 2002, the U.N. General Assembly and Security Council elected five Members of the Court for nine-year terms, which will commence on February 6, 2003. The new Members will be Hisahi Owada (Japan), Bruno Simma (Germany), and Peter Tomka (Slovakia).<sup>85</sup> Re-elected were Judges Shi Jiuyong (China) and Abdul G. Koroma (Sierra Leone).

As of December 31, 2002, the Court was composed as follows (in order of seniority): Gilbert Guillaume (France), President; Shi Jiuyong (China), Vice-President; Shigeru Oda (Japan); Raymond Ranjeva (Madagascar); Geza Herczegh (Hungary); Carl-August Fleischhauer (Germany); Abdul G. Koroma (Sierra Leone); Vladlen S. Vereshchetin (Russian Federation); Rosalyn Higgins (United Kingdom); Gonzalo Parra-Aranguren (Venezuela); Pieter H. Kooijmans (Netherlands); Francisco Rezek (Brazil); Awn Shawkat Al-Khasawneh (Jordan); Thomas Buergenthal (United States); and Nabil Elaraby (Egypt).

## II. United Nations Compensation Commission

The United Nations Compensation Commission (UNCC), a subsidiary organ of the United Nations Security Council, was established by the Security Council at the end of the Gulf War in 1991 to pay compensation to foreign governments, nationals, and corporations for “any direct loss, damage, . . . or injury . . . as a result of Iraq’s unlawful invasion and

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80. *Id.*

81. *Id.*

82. *Id.*

83. Press Release, International Court of Justice, 2002/12: The International Court of Justice Decides to Take Measures for Improving its Working Methods and Accelerating its Procedure (Apr. 4, 2002), *available at* [http://www.icj-cij.org/icjwww/ipresscom/ipress2002/ipresscom2002-12\\_workingmethods\\_20020404.htm](http://www.icj-cij.org/icjwww/ipresscom/ipress2002/ipresscom2002-12_workingmethods_20020404.htm) (last visited May 19, 2003).

84. Press Release, International Court of Justice, 2002/08: Composition of the Chamber for Environmental Matters (Mar. 4, 2002), *available at* [http://www.icj-cij.org/icjwww/ipresscom/ipress2002/ipresscom2002-08\\_admin\\_20020304.htm](http://www.icj-cij.org/icjwww/ipresscom/ipress2002/ipresscom2002-08_admin_20020304.htm) (last visited May 26, 2003).

85. They will succeed Judges Shigeru Oda (Japan), Carl-August Fleischhauer (Germany), and Geza Herczegh (Hungary).

occupation of Kuwait.”<sup>86</sup> In 2002, the UNCC continued the implementation of its current work program, which contemplates the completion of the last panel reports by mid-2003. The processing of claims will only be completed after the recommendations contained in these final reports have been approved by the Governing Council, which typically meets four times in a year. Significant developments in 2002 included the approval of the first report on overlapping claims as well as the completion of work by the panels reviewing claims in categories E/F, F1, F2, and F3. A project was also commenced that involved the processing of individual claims of Palestinians that were filed after the expiration of the deadline for individual claims. It is uncertain what effect, if any, the review of these claims and the review of overlapping claims would have on the schedule for the completion of claims processing by the Commission.<sup>87</sup>

#### A. PAYMENT OF UNCC AWARDS

Payment of UNCC awards comes from the UNCC-administered United Nations Compensation Fund.<sup>88</sup> The Fund receives 25 percent of the revenue derived from sales of Iraqi petroleum and petroleum products pursuant to Security Council Resolution 1330 (2000).<sup>89</sup> Funds are presently made available to the Compensation Fund under the “oil for food” mechanism established by Security Council resolution 986 (1995) and subsequent resolutions.<sup>90</sup> The exact amount coming into the Compensation Fund each month depends on the quantity of oil sold by Iraq and the price of oil.

The awards approved by the Governing Council at the end of its forty-sixth session on December 12, 2002, brought the total compensation awarded by the Commission as of that date to over U.S.\$43.7 billion, with over U.S.\$16 billion of the amount having been made available to Governments and international organizations for distribution to successful claimants in all categories of claims.<sup>91</sup>

The UNCC makes funds available to the governments or international organizations that originally submitted the claims, which are then responsible for the distribution of compensation to successful claimants within six months of receiving payment and for reporting on payments made to the claimants no later than three months thereafter. The payment reports, which describe the mechanisms for the making of payments to claimants and detail the amount and date of payment, enable the Commission to monitor the distribution of compensation.

#### B. GOVERNING COUNCIL DECISIONS

##### 1. *Forty-Third Session*

At this first session of the Council in 2002, the Council approved eight reports and recommendations of the panels of Commissioners concerning 1,134 claims of individuals,

86. U.N. SCOR, 46th Sess., 2981st mtg., para 16, U.N. Doc. S/RES/687 (1991). For an overview of the structure and jurisdiction of the UNCC, see the UNCC's Web site: <http://www.unog.ch/uncc>.

87. See generally Press Releases of the United Nations Compensation Commission from 2002: Mar. 9 & 15; June 14; July 2, Sept. 27; Oct. 3; Dec. 6 & 12, available at <http://www.unog.ch/uncc> (last visited May 18, 2003).

88. The United States Compensation Commission, Introduction, at <http://www.unog.ch/uncc/introduc.htm> (last visited May 18, 2003).

89. *Id.*

90. *Id.*

91. Press Release, U.N.C.C., Governing Council of the U.N.C.C. Approves Awards of Approximately US\$182 Million for Compensation at Its Forty-Sixth Session (Dec. 12, 2002), available at <http://www.unog.ch/uncc> (last visited May 18, 2003).

298 claims of corporations, and forty-nine claims of governments and international organizations in categories D, E, and F, respectively.<sup>92</sup> Compensation was awarded to 1,424 of those claimants in the sum of approximately U.S.\$1.76 billion.<sup>93</sup>

## 2. *Forty-Fourth Session*

During its second session of the year, the Council approved ten reports and recommendations of the panels of Commissioners concerning claims from individuals in category D, claims from corporations in category E, claims of insurance companies and export credit agencies in category E/F, and claims from Governments in category F.<sup>94</sup> Total compensation in the sum of U.S.\$4.88 billion was recommended for 1,013 of the 1,301 claims covered by those reports.<sup>95</sup>

## 3. *Forty-Fifth Session*

The Council at this session approved seven reports and recommendations of the panels of Commissioners concerning claims from individuals in category D, claims from corporations in category E, claims of insurance companies and export credit agencies in category E/F, and claims from Governments in category F.<sup>96</sup> Total compensation in the sum of nearly U.S.\$995.83 million was recommended for 708 of the 902 claims involved in those reports.<sup>97</sup>

During this session, the Governing Council also approved the "Special report and recommendations made by the 'E4' and 'E4A' panels of Commissioners (E4 Panels) concerning overlapping claims," prepared pursuant to decision 123 of the Council.<sup>98</sup> Decision 123 provides guidance for the review of claims submitted by individuals for direct losses sustained by Kuwaiti companies as a result of Iraq's invasion and occupation of Kuwait, for which claims were also filed by the Kuwaiti company in category E (overlapping claims).<sup>99</sup>

The report covered claims of individuals in categories C and D that contained alleged losses that potentially overlapped with claims by Kuwaiti companies.<sup>100</sup> Based on the result of an initial review of the individual and corporate claims, the E4 Panels found that the potentially overlapping claims fell within one of three fact patterns:

- (a) Some claims were not overlapping claims, as the individual claimant was not claiming for any losses that had been sustained by the E4 claimant.

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92. Press Release, U.N.C.C., Governing Council of U.N.C.C. Approves Awards of US\$1.8 Billion for Compensation at Its Forty-Third Session (Mar. 13, 2002), *available at* [www.unog.ch/uncc](http://www.unog.ch/uncc) (last visited May 18, 2003).

93. *Id.*

94. Press Release, U.N.C.C., Governing Council of U.N.C.C. Approves Awards of Approximately US\$4.9 Billion for Compensation at Its Forty-Fourth Session (July 2, 2002), *available at* <http://www.unog.ch/uncc> (last visited May 18, 2003).

95. *Id.*

96. Press Release, U.N.C.C., Governing Council of U.N.C.C. Approves Awards of Approximately US\$1 Billion for Compensation at Its Forty-Fifth Session (Oct. 3, 2002), *available at* <http://www.unog.ch/uncc> (last visited May 18, 2003).

97. *Id.*

98. *Id.* at 2.

99. *Id.*

100. *Id.*

- (b) Some of the business losses claimed by individual claimants were losses from businesses that were owned solely by the individual claimants. These individual claimants usually operated their businesses either:
  - (i) As sole proprietors, paying an annual rental fee/commission to the E4 claimant for the use of the E4 claimant's name and/or business license; or
  - (ii) Through the E4 claimant as minority shareholders, paying an annual rental fee/commission to the E4 claimant or its Kuwaiti shareholder, effectively renting the company from the nominal, but majority, shareholder.
- (c) The remaining business losses claimed by the individual claimants were losses of a business that was jointly owned by the individual claimant with either the E4 claimant or with the shareholders of the E4 claimant.<sup>101</sup>

The report contains the criteria established for determining the existence of overlapping claims. It is worth noting that this criterion includes the application of a materiality test with respect to category C claims. Hence potentially overlapping category C claims that were not of "material" value were not subject to cross check or review.

#### 4. *Forty-Sixth Session*

In its final session of the year, the Council approved five reports and recommendations of the panels of Commissioners concerning individual claims for losses over U.S.\$100,000 in category D, E3 claims comprising non-Kuwaiti construction and engineering claims, and E/F claims, which are claims filed on behalf of insurance companies and export credit agencies.<sup>102</sup> In the category D report, compensation was recommended for 445 of the 500 claims of individuals for an approximate total of U.S.\$129.12 million.<sup>103</sup> The three category E reports recommended compensation in the sum of approximately U.S.\$50.92 million for twenty of the thirty-eight claims involved in these reports.<sup>104</sup> The category "E/F" report recommended total compensation in the sum of approximately U.S.\$1.51 million for two out of the fifteen claims involved.<sup>105</sup>

The forty-sixth was the last session for the delegations of Colombia, Ireland, Mauritius, Norway, and Singapore, whose terms of office ended on December 31, 2002.<sup>106</sup> As of January 1, 2003, the five new members of the Security Council (Angola, Chile, Germany, Pakistan, and Spain) will be joining the Governing Council for two-year terms.<sup>107</sup>

### III. Iran-United States Claims Tribunal

The Iran-United States Claims Tribunal (Tribunal) was established in 1981 through the Algiers Declarations as part of the resolution of the Iranian hostage crisis.<sup>108</sup> The Tribunal

101. *Special Report and Recommendations Made by the "E4" and "E4A" Panels of Commissioners Concerning Overlapping Claims*, U.N. Comp. Comm., U.N. Doc. S/AC.26/2002/28 (2002).

102. Press Release, U.N.C.C., Governing Council of U.N.C.C. Approves Award of Approximately US\$182 Million for Compensation at Its Forty-Sixth Session (Dec. 12, 2002), available at <http://www.unog.ch/uncc> (last visited May 18, 2003).

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. Iran-United States Claims Tribunal, *Background Information*, at <http://www.iusct.org/background-english.html> (last visited May 18, 2003).

adjudicates disputes between Iran and the United States and their respective nationals. It hears two categories of claims: private claims, which are claims brought by a national of one country against the other country, and government-to-government claims, which are claims brought by one country against the other, alleging either a breach of contract or a violation of the Algiers Declarations.<sup>109</sup> After nearly two decades in operation, the Tribunal has heard virtually all of the private claims, disposing of nearly 4000 cases, and awarding more than U.S.\$2.5 billion to the United States and United States nationals and more than U.S.\$900 million to Iran and Iranian nationals. Its docket now consists primarily of large inter-governmental claims.

The final private case, *Frederica Lincoln Riahi v. The Government of the Islamic Republic of Iran*, occupied much of 2002. Mrs. Riahi alleged that Iran expropriated her shareholdings and debt interests in numerous companies, her ownership interests in an apartment building, her personal property located therein, her two automobiles, four horses, and certain other property.<sup>110</sup> The parties settled a portion of the case relating to jewelry and the contents of a safe-deposit box in 2000. Iran, however, maintained that Mrs. Riahi failed to prove that she owned the remaining properties or that Iran expropriated them. While the parties were preparing their memorials, the Tribunal issued several document-production requests to one or the other party. Iran did not produce all of the requested documents, maintaining that it was unable to locate some of them. Mrs. Riahi has consequently asked the Tribunal to draw an adverse inference from Iran's failure to produce the documents.

According to Tribunal precedent, claimants who are dual American-Iranian nationals must prove their dominant and effective American nationality for the Tribunal to have jurisdiction over their claims. In an earlier award, the Tribunal determined that Mrs. Riahi's dominant and effective nationality was that of the United States.<sup>111</sup> In its dual-nationality decision, the Tribunal also included a caveat, stating that where it "finds jurisdiction based upon a dominant and effective nationality of the claimant, the other nationality may remain relevant to the merits of the claim."<sup>112</sup> Iran relies on this caveat to argue that certain of Mrs. Riahi's claims should be barred because she acquired the relevant properties by use of her Iranian nationality.<sup>113</sup> The Tribunal has decided only a handful of caveat cases over the years, with different chambers adopting different interpretations, so the Tribunal's decision in *Riahi* will provide a welcome addition to the Tribunal's dual-nationality jurisprudence. The Tribunal's award is expected in early 2003 and will be reviewed in next year's article (for 2003 judicial activity).

#### IV. Claims Resolution Tribunal

On February 5, 2001, a claims process was established to provide Nazi victims or their heirs with an opportunity to make claims to assets deposited in Swiss banks in the period before and during World War II. This process grew out of the settlement of the Holocaust

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109. *Id.*

110. *Riahi v. Iran*, Interlocutory Award No. ITL 80-485-11 (June 10, 1992), *reprinted* in 28 *Iran-U.S. Cl. Trib.* 176.

111. *Id.*

112. *Iran v. United States*, Case No. A18, Decision No. DEC 32-A18-FT (Apr. 6, 1984), *reprinted* in 5 *Iran-U.S. Cl. Trib.* 251, 265-66.

113. *See Riahi, supra* note 110.

Victim Assets class action litigation (Settlement), brought in the U.S. District Court for the Eastern District of New York (Court) against certain Swiss banks.<sup>114</sup> Under the Settlement, the Swiss banks agreed to pay U.S.\$1.25 billion, in exchange for the release of the Swiss banks and the Swiss government from, among other things, all claims relating to the Holocaust, World War II, its prelude, and its aftermath. The Settlement later was amended to establish a process to provide compensation for claims concerning World War II-era insurance policies issued to victims or targets of Nazi persecution by certain Swiss insurance companies. The Claims Resolution Tribunal, originally established in 1997 to resolve claims to dormant Swiss bank accounts (CRT I),<sup>115</sup> was designated as the forum (CRT II) for the administration of the claims process for claims to deposited assets and to insurance policies.<sup>116</sup>

Of the Settlement amount, U.S.\$800 million was set aside for awards to claimants for the deposited assets in Swiss banks. Approximately 32,000 deposited assets claims were filed, of which 12,000 have been found to match a published account holder.<sup>117</sup> Through 2002, CRT II had certified and the Court had approved 557 awards totaling U.S.\$64 million. An additional U.S.\$50 million fund was set aside for the settlement of insurance claims.<sup>118</sup> Through 2002, CRT II had received 1,520 claims to insurance policies<sup>119</sup> of which initial screening was completed for 1,162. CRT II found 893 claims eligible for processing and forwarded (or was in the process of forwarding) these claims to the insurance companies.

## V. International Commission on Holocaust Era Insurance Claims

The International Commission on Holocaust Era Insurance Claims (Commission), chaired by former U.S. Secretary of State Lawrence S. Eagleburger, was formed in 1998 to address the issue of unpaid insurance policies issued prior to and during the Holocaust.<sup>120</sup> The Commission's goal is to assure that any insurance claims of Holocaust victims and their heirs are resolved fairly and expeditiously, with consideration given to special circum-

114. The suits alleged that the Swiss banks collaborated with and aided the Nazi regime by knowingly retaining and concealing assets of Holocaust victims and by accepting and laundering illegally obtained Nazi loot and profits of slave labor. The Settlement was for the claims of five represented classes: the deposited asset class; the looted asset class; the refugee class; and two slave labor classes. See Claims Resolution Tribunal, *Overview*, available at <http://www.crt-ii.org>. The U.S. District Court for the Eastern District of New York approved the Settlement in the summer of 2000. See *In re Holocaust Victim Assets Litigation*, 105 F. Supp. 2d 139 (E.D.N.Y. 2000).

115. CRT I completed its review of claims to dormant Swiss accounts on September 30, 2001. For a review of the awards, see Daryl A. Mundis & Mark B. Rees, *International Courts and Tribunals*, 36 INT'L LAW. 549, 564 (2002).

116. For a review of CRT II claims procedure, see Mundis & Rees, *supra* note 115, at 565–67.

117. In addition, the Court decided to treat the 560,000 Initial Questionnaires returned by potential claimants during the class action notification process as deposited assets claims. The Initial Questionnaires are still being analyzed to identify those that can be processed as CRT II claims forms.

118. One-half of the fund comes from the Settlement and one-half from participating companies. A complete list of participating companies is provided on the CRT's Web site (*supra* note 114).

119. Of these claims, 741 came directly from claimants and 779 were transferred from the International Commission on Holocaust Era Insurance Claims.

120. The Commission has jurisdiction only over insurance policy claims on policies issued by the companies participating in the Commission. For a review of the claims procedure, see Pieter H.F. Bekker et al., *International Courts and Tribunals*, 35 INT'L LAW. 595, 610–11 (2001); see also the Commission's Web site at: <http://www.icheic.org> (identifying standards of proof and valuation guidelines).



stances and the passage of time.<sup>121</sup> In October 2002, the Commission reached an agreement with the Foundation Remembrance, Responsibility and Future (German Foundation) and the German Insurance Association under which German insurance companies agreed to participate in the Commission.<sup>122</sup> Under the agreement, an additional EUR 102.26 million (approximately U.S.\$108 million) will be made available to pay valid insurance claims against the German companies and EUR 178.95 million (approximately U.S.\$189 million) will be used for humanitarian purposes.<sup>123</sup>

The Commission reports that, as of the end of 2002, approximately U.S.\$30 million in offers have been made on a total of 2,700 claims. The deadline for filing claims has been extended to September 30, 2003.<sup>124</sup>

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121. *Id.* at 610.

122. As a result, all German insurance companies and their subsidiaries have agreed to process and pay all valid claims against them.

123. The funds intended for humanitarian purposes will be used to pay valid claims on block accounts (insurance claim proceeds confiscated by the German government during the Holocaust era) and for social welfare and educational programs.

124. International Commission on Holocaust Era Insurance Claims, *available at* <http://www.icheic.org/> (last visited June 13, 2003).

