

**FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
UNITED STATES DEPARTMENT OF JUSTICE  
WASHINGTON, D.C. 20579**

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In the Matter of the Claim of

5 U.S.C. §552(b)(6)

Against the Republic of Iraq

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Claim No. IRQ-I-009

Decision No. IRQ-I-004

Counsel for Claimant:

Daniel Wolf, Esq.  
Law Offices of Daniel Wolf

FINAL DECISION

The Proposed Decision in this Claim awarded the Claimant \$1,000,000 for injuries he suffered while being held hostage in Kuwait and Iraq. Claimant objects to the amount awarded and argues that he is entitled to a higher award. He contends that (1) the Commission employed a flawed methodology in its interpretation of the State Department’s letter authorizing this program, and (2) even applying that methodology, the Commission should award him \$1.5 million because his injuries are as severe as any of the other claimants in this program and are more severe than other claimants who received \$1 million awards. Because we conclude that our original interpretation of the State Department’s referral letter was correct and that the award in the Proposed Decision is the appropriate amount for Claimant’s injuries, we affirm the Proposed Decision’s conclusion that Claimant is entitled to an award of One Million Dollars (\$1,000,000).

## BACKGROUND

Claimant brought a claim against the Republic of Iraq (“Iraq”) based on injuries he suffered while being held hostage in Kuwait and Iraq in August and September 1990, including injuries stemming from an incident when Iraqi officials brutally interrogated and sodomized him. Claimant sought \$1.5 million, in addition to the compensation the State Department had previously provided him for his experience as a hostage. In a Proposed Decision entered on February 14, 2014, the Commission concluded that Claimant had met his burden of proving that he had suffered a “serious personal injury,” the severity of which was a “special circumstance” warranting additional compensation under the State Department’s letter to the Commission establishing this program.<sup>1</sup> *See* Claim No. IRQ-I-009, Decision No. IRQ-I-004 (2014) (“Proposed Decision”). Accordingly, the Commission awarded Claimant \$1,000,000 in additional compensation—an amount within the 2012 Referral’s range of recommended compensation, but less than the recommended maximum of \$1.5 million.<sup>2</sup>

The Commission based its determination of the appropriate level of compensation on a variety of factors, including the State Department’s recommendation. Applying these factors, the Commission found that Claimant “suffered a particularly grievous injury, one that required surgery to heal its physical effects and . . . one that seems likely to leave emotional scars for the rest of Claimant’s life.” Proposed Decision at 14. The Commission added, “Claimant’s declaration provides evidence of continuing emotional

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<sup>1</sup> *See Letter dated November 14, 2012, from the Honorable Harold Hongju Koh, Legal Adviser, Department of State, to the Honorable Timothy J. Feighery, Chairman, Foreign Claims Settlement Commission* (“2012 Referral” or “Referral”).

<sup>2</sup> The 2012 Referral states in relevant part, “If the Commission decides to award compensation for claims that meet these criteria, we recommend that the Commission award up to but no more than \$1.5 million per claim.” 2012 Referral, *supra*, ¶ 4.

damage, including anxiety, depression and detachment, that he believes cost him his marriage.” *Id.* For these reasons, the Commission held that Claimant was entitled to \$1 million in additional compensation.

On March 7, 2014, Claimant filed a notice of objection and requested an oral hearing. On May 29, 2014, Claimant submitted a brief containing argument in support of his objection as well as supplementary evidence. The Commission held an oral hearing on July 24, 2014; the hearing consisted solely of argument by Claimant’s counsel, and the Claimant presented no witnesses for examination. On August 22, 2014, Claimant filed a supplemental brief and a further declaration, which provided new information about his post-1990 travel, his second and third marriages, and the four children he is currently raising.

As explained further below, Claimant makes two arguments that he is entitled to an award of \$1.5 million. First, he argues that the Commission employed a flawed methodology in interpreting the State Department’s recommended maximum award of \$1.5 million. Second, Claimant argues that, even accepting the Commission’s methodology, the Commission should award him the State Department’s recommended maximum because his injuries are severe enough to warrant a \$1.5 million award.

## DISCUSSION

### *I. The Proposed Decision’s “Continuum” Approach*

Claimant’s first argument is that the Commission erred by interpreting the State Department’s recommended maximum as establishing a continuum from zero to \$1.5 million based on the relative severity of a claimant’s injuries, rather than a cut-off maximum for all claimants who would, in the absence of the cap, otherwise be entitled to

more than \$1.5 million. As Claimant's counsel states in his objection brief, "the Commission calculated Claimant's award by placing his injuries along a continuum of severity in which: (1) the stratum corresponding to a \$1.5 million award at the top of the continuum is reserved for the one or two claimants who sustained the severest injuries, and (2) the various strata below are occupied with claimants whose injuries are proportionately less severe." According to Claimant, "[i]n using the \$1.5 million capped amount that [other claimants were] awarded—rather than the amount [they] would have been awarded absent that cap—as the benchmark for determining the comparative valuation of [Claimant's] damages, the Commission misapprehended the nature of the [State] Department's recommended cap and committed legal error." Instead, Claimant argues, the Commission should first determine the amount to which he (and, by extension, each of the other claimants in this program) would be entitled in the absence of the cap and then, if that amount is above \$1.5 million, reduce it to \$1.5 million.

Other claimants represented by Claimant's counsel have made the same argument, and in a recent decision, we rejected it. After carefully considering all of the arguments in favor of the proposed cut-off approach, we explicitly reaffirmed the comparative-continuum approach that we had implicitly used in determining Claimant's compensation. *See* Claim No. IRQ-I-003, Decision No. IRQ-I-006, at 8-18 (2014) (Final Decision). In that decision, the Commission held that "the Referral's recommendation to award 'up to but no more than \$1.5 million per claim' is best understood to recommend the creation of a continuum from zero to \$1.5 million, with amounts to be awarded within that range based on an assessment of claimant's injuries within this program." Claim No.

IRQ-I-003, Decision No. IRQ-I-006, *supra*, at 18.<sup>3</sup>

This conclusion applies equally here, and the Commission reaffirms the approach to compensation it implicitly adopted in the Proposed Decision: Claimant is entitled to compensation of an amount somewhere on a continuum from zero to \$1.5 million based on the severity of his injuries relative to all the other successful claimants in this program.

## *II. The Appropriate Amount of Compensation for Claimant's Injuries*

Claimant's second argument focuses on the nature and severity of his injuries. In particular, he argues that the Commission erred in finding that the severity of his psychological injuries is mitigated by the fact that his sodomization experience was a single incidence of limited duration. Specifically, he states that the "fact that [he] was brutally raped on just one occasion does not mitigate the severity of his injury, because the single incident caused him to suffer devastating, continuous and lifelong psychological torment." He also argues that the Commission erred in finding that he has not been permanently incapacitated.

Additionally, in his supplemental brief, Claimant argues that his injuries were more severe than the injuries of two other claimants who also received \$1 million awards in this program. One was the victim of a mock execution who suffered only emotional, not physical, injuries. *See* Claim No. IRQ-I-006, Decision No. IRQ-I-026 (2014). The other was, like Claimant, the victim of a sexual assault, but her physical injuries, Claimant argues, were not as long-lasting as his. *See* Claim No. IRQ-I-026, Decision No. IRQ-I-025 (2015).

Claimant has submitted supplemental evidence supporting his allegations about

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<sup>3</sup> *See also* Claim No. IRQ-I-022, Decision No. IRQ-I-008, at 4-5 (2015) (Final Decision); Claim No. IRQ-I-025, Decision No. IRQ-I-011, at 4-5 (2015) (Final Decision); Claim No. IRQ-I-026, Decision No. IRQ-I-025, at 4-5 (2015) (Final Decision).

the sexual assault and his permanent incapacitation, including a declaration from his treating psychiatrist, Dr. Connie Jenkins; a declaration from a board-certified psychiatric expert on hostages, Dr. Robert Blum; the medical file relating to Claimant's application for disability benefits from the Ohio Public Employees Retirement System (OPERS); a declaration from Claimant's oldest sister; and a declaration from one of Claimant's former friends and work colleagues, Thomas L. Hedrick. Claimant argues that this evidence demonstrates that he has been psychologically disabled from engaging in employment since 2004, when he was in a car accident that allegedly triggered, or exacerbated, the post-traumatic stress disorder ("PTSD") arising from the 1990 sexual assault in Kuwait. He further argues that, "in all likelihood, [Claimant's] incapacity from resuming employment or otherwise from living any semblance of a normal life will prove to be a permanent condition." Based on this evidence and argument, Claimant seeks \$1.5 million, the State Department's recommended maximum award.

We are not persuaded by Claimant's arguments. In determining compensation, our task is to determine where on the continuum from zero to \$1.5 million Claimant's injuries fall, based on the severity of those injuries relative to all other successful claimants in this program,<sup>4</sup> using the factors we have previously articulated,<sup>5</sup> and taking into account the fact that we are making awards in this program in broad categories.<sup>6</sup> The Proposed Decision awarded Claimant \$1 million based on the injuries he suffered as a result of the sexual assault, injuries supported by various medical records and the Commission's own presumption of long-term emotional injury. In at least one other

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<sup>4</sup> See *supra* at 3-5.

<sup>5</sup> See Proposed Decision at 13-14.

<sup>6</sup> See Claim No. IRQ-I-022, Decision No. IRQ-I-008, *supra*, at 9.

claim of sexual assault in this program, we made the same presumption and also awarded \$1 million. *See* Claim No. IRQ-I-026, Decision No. IRQ-I-025 (2015) (Final Decision), at 7. In contrast, the only claimants in this program to have been awarded \$1.5 million—indeed, the only claimants to have been awarded more than Claimant—all suffered weeks of subhuman conditions, repeated merciless beatings, and brutal interrogations.<sup>7</sup> Thus, to show that he is entitled to \$1.5 million, Claimant would have to show that Iraq inflicted injuries on him that are comparable to what it inflicted on those other claimants.

Claimant has failed to do this. Rather than directly comparing his experience and injuries with the most seriously injured claimants in this program, Claimant argues that the mere fact that his injuries stem from a single event does not make them any less severe “than those sustained by many others who have been subjected to more prolonged, more frequent and more intensely painful forms of physical torture.”<sup>8</sup> Claimant also introduces new evidence that the attack led to such severe emotional injuries that he was permanently incapacitated. Therefore, he says, the Commission should raise his award from \$1 million to \$1.5 million.

One key problem with Claimant’s arguments is that they are premised on the notion that we should determine compensation based on a fine-grained comparative assessment of the precise severity of each individual claimant’s particular psychological injuries. We simply cannot engage in such an inquiry in this program. As we noted in this program’s very first claim, to “do an individualized determination of how ‘serious’

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<sup>7</sup> *See* Claim No. IRQ-I-001, Decision No. IRQ-I-005 (2014); Claim No. IRQ-I-002, Decision No. IRQ-I-007 (2014); Claim No. IRQ-I-022, Decision No. IRQ-I-008 *supra*; and Claim No. IRQ-I-018, Decision No. IRQ-I-009 (2015).

<sup>8</sup> The only direct comparison Claimant makes is in his post-hearing Supplemental Brief, which focuses not on those claimants who received the \$1.5 million he seeks, but rather on those who received \$1 million awards. Thus, his primary comparative argument is that his own injuries were worse than those of others who received the same amount that he received.

every claimant's [post-traumatic stress disorder] was" would force us to engage in "an unworkable analysis."<sup>9</sup> This concern is part of what led us to decide to make awards in this program in broad categories.<sup>10</sup>

Indeed, this claim and Claimant's new evidence illustrate exactly why it is important that we not make distinctions based on details about the severity of a claimant's psychological injuries. For one, Claimant's allegations raise extraordinarily difficult questions about causation. Claimant argues that the sexual assault permanently incapacitated him, requiring him to retire from his job after a 2004 car accident. Based on the evidence in the record, however, fourteen years (from 1990 to 2004) elapsed before Claimant's serious mental-health issues manifested themselves. He provided little information about the effects of the incident in Kuwait on his life during the 1990-2004 period,<sup>11</sup> and submitted no concrete evidence, medical or otherwise, of severe mental-health problems prior to 2004. We do know, however, that he continued to work during the entire 1990-2004 period and that he remarried twice (and has now been married to his third wife for more than 18 years) and had four children whom he is currently raising. To support his claim of a causal link between the post-2004 mental-health problems and the 1990 sexual assault, Claimant submitted declarations from a psychiatric expert on ex-hostages, Dr. Robert Blum, and his own treating psychiatrist, Dr. Connie Jenkins, both of whom allege such a link. Yet, both of these declarations, the only evidence linking the

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<sup>9</sup> Claim No. IRQ-I-005, Decision No. IRQ-I-001, at 12; *see also* Claim No. IRQ-I-026, Decision No. IRQ-I-025, at 8.

<sup>10</sup> *See* Claim No. IRQ-I-022, Decision No. IRQ-I-008, *supra*, at 9.

<sup>11</sup> His primary evidence about this period consists of his own declarations and one from a former friend, 5 U.S.C. §552(b) , who stated that Claimant was "a very outgoing, jolly and pleasant fellow" before his 1990 trip to Kuwait, but "was a changed man [,] . . . distant and generally [un]interested and cynical about things," leading to a gradual deterioration of their friendship after Claimant's return.



post-2004 mental-health problems to the 1990 sexual assault, were created after the 2014 Proposed Decision on this claim and well after 2004 when those problems were first diagnosed. Indeed, the contemporaneous evidence Claimant submitted, from the 2004 to 2006 period, contains no indication of a causal link with the sexual assault or any other events in 1990. Finally, neither Claimant nor either of the two psychiatrists testified before the Commission, thereby precluding the Commission from probing this important question about causation. On this record, therefore, we find it difficult to make the causal link Claimant asks us to make.

Second, Claimant's arguments also raise difficult questions of comparative "justice[] and equity" in awarding compensation, which is precisely what Congress has directed the Commission to consider where, as here, international law is silent on a question.<sup>12</sup> In this program, we have awarded several other claimants \$1 million, the same as this Claimant. Each of them also experienced a single extremely traumatic incident and alleged severe long-term psychological harm. In one of those other claims, the claimant was sodomized, like the Claimant here, and we awarded \$1 million, rejecting that claimant's argument seeking \$1.5 million.<sup>13</sup> Another claim in which we awarded \$1 million was based on a mock execution involving an Iraqi firing squad "halo"-ing a claimant with bullets.<sup>14</sup> There we noted that the claimant's "psychological injuries have substantially interfered with his ability to enjoy life and to function at his full professional capability." That particular claimant had extensive contemporaneous

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<sup>12</sup> 22 U.S.C. § 1623(a)(2)(B).

<sup>13</sup> Claimant argues that his injury is more severe than that suffered by the rape victim in that claim, because his *physical* injuries were allegedly longer lasting than hers. See Claim No. IRQ-I-026, Decision No. IRQ-I-025, *supra*.

<sup>14</sup> See Claim No. IRQ-I-014, Decision No. IRQ-I-027 (2014).

medical records “and other evidence to support his claim of severe and long-term psychological injuries,” many of which were identical to the injuries alleged by Claimant here. In a second mock-execution claim involving a similar “halo”-ing incident, we also awarded \$1 million, despite a far more limited record of evidence of psychological injuries, because we presumed that being lined up and sprayed with a “halo” of bullets would almost certainly lead to serious long-term emotional harm.<sup>15</sup> Despite differences in the evidence of long-term psychological injuries, we awarded both of the mock-execution victims the same amount.<sup>16</sup>

Here, Claimant relies on Dr. Blum to argue that his psychological injuries were severe enough to warrant a \$1.5 million award. Dr. Blum suggests that, in some circumstances, a sexual assault can have a more psychologically harmful long-term impact than other forms of assault and torture, even those that last longer, are more frequent, and are more painful. He says that sexual assault, particularly a rape involving sodomy, “is often” more psychologically damaging than other types of assault and “can be” particularly threatening to the victim’s sense of self. At the same time, Dr. Blum notes that “the degree of damage to the victim is the result not only of the duration and severity of the experiences, but also of the specific vulnerabilities of the subjects.” He further states that “the mental/emotional impact of traumatic experiences varies among individuals”: “some who have been held captive for years may not exhibit symptoms as disabling as those who endured a single traumatic capture of only a few days.” Dr. Blum then alleges that Claimant in particular is someone whose “symptoms are as, or more,

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<sup>15</sup> See Claim No. IRQ-I-006, Decision No. IRQ-I-026, *supra*.

<sup>16</sup> In comparing his injuries to one of the “halo”ing victims, Claimant argues that he should be entitled to more compensation because he suffered the same psychological injuries as the “halo”ing victim, but also had physical injuries as well. We address this argument *infra* at 12.

severe and disabling as many of those ... who have been held for much longer periods under severe conditions and torture.” Though not stated in quite these terms, the clear implication is that Claimant’s injuries are thus as severe as those suffered by the victims to whom the Commission has awarded \$1.5 million.

Dr. Blum’s testimony illustrates precisely why it is important that we not determine compensation in this program based on gradations of psychological injury. There is no question that a rape involving sodomy is a horrific experience with potentially lifelong psychological consequences. But individualized determinations along the lines of Dr. Blum’s Declaration would force us to assess “the specific vulnerabilities” (in Dr. Blum’s words) of the various victims who come before us; and to award higher compensation to those who can establish that they have more “vulnerabilities.” Nothing in the State Department’s Referral requires us to undertake such a subjective—and extraordinarily fact-intensive—assessment and one that could unfairly lead to disparities in awards within a single program. In this program, we view such an inquiry as unnecessary and more likely to undermine, rather than promote, the “justice[] and equity” that our enabling statute instructs us to consider.<sup>17</sup>

Finally, Claimant’s *physical* injuries do not entitle him to greater compensation than the mock-execution victims and the other sexual-assault victim. Again Claimant’s argument is premised on the notion that we should create fine-grained distinctions in this program. In essence, Claimant argues that he suffered all the same psychological harm as

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<sup>17</sup> Cf. Claim No. W-1276, Decision No. W-8 (Proposed Decision on May 13, 1964, Supplemental Final Decision on Dec. 8, 1965) (in deciding claims made pursuant to the War Claims Act of 1948, the Commission noted the Act sought to accomplish a “humane purpose” and that to “hold that one life is more valuable than another on the basis of rules that govern tort actions would serve only to defeat that purpose” and therefore awarded a single, fixed amount of \$25,000 per wrongful death without regard to economic damage).

those victims *plus more* (i.e., the physical harm caused by the rape, which the mock-execution victims did not experience and which was allegedly longer lasting than that suffered by the other rape victim). In this program, however, the Commission is making awards in broad categories.<sup>18</sup> We are not saying that the sum total of Claimant's injuries is *identical* to those of the other claimants the Commission has awarded \$1 million, only that the act Iraq committed and the scope of the injuries Claimant suffered place his injuries in the same broad category as those of the mock-execution and other sexual-assault victims in this program.

Claimant has established that he was brutally raped, and as we noted in the Proposed Decision, we presume that he suffered significant long-term emotional harm.<sup>19</sup> Except for claimants who were subjected to weeks of brutal interrogations, beatings, threats, bodily deprivations, and the like, Claimant's award of \$1 million is the highest amount awarded in this program. To the extent that the precise gradation of Claimant's emotional and physical harm might be higher or lower than others who experienced similar attacks or might depend on Claimant's particular vulnerabilities relative to those others, we decline to increase or decrease the award from that amount. Of course, as we have noted in other claims in this program, we recognize that no amount of money can truly "compensate" Claimant in the literal sense of that word.<sup>20</sup> Iraqi officials ruthlessly sodomized him, and we are fully aware that money cannot in any sense make him whole. We conclude only that, in the context of this program, his award should be \$1 million.

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<sup>18</sup> See *supra* at 7; Claim No. IRQ-I-022, Decision No. IRQ-I-008, *supra*, at 8-9.

<sup>19</sup> Proposed Decision at 14.

<sup>20</sup> See Claim No. IRQ-I-026, Decision No. IRQ-I-025, *supra* at 13; Claim No. IRQ-I-022, Decision No. IRQ-I-008, *supra* at 9; Claim No. IRQ-I-001, Decision No. IRQ-I-005, at 20 (2015) (Final Decision); Claim No. IRQ-I-002, Decision No. IRQ-I-007, at 20 (2015) (Final Decision).

CONCLUSION

In sum, for the reasons discussed above and in the Proposed Decision, and based on the evidence and information submitted in this claim, the award entered in the Proposed Decision in this claim is restated below, and will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of Title I of the International Claims Settlement Act (22 U.S.C. §§ 1626-27). This constitutes the Commission's final determination in this claim.

AWARD

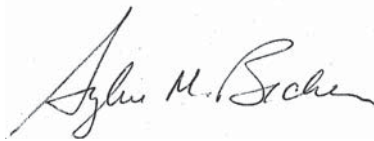
Claimant is entitled to an award in the amount of One Million Dollars (\$1,000,000.00).

Dated at Washington, DC, September 1, 2015  
and entered as the Final Decision  
of the Commission.



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Anuj C. Desai, Commissioner



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Sylvia M. Becker, Commissioner

**FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
UNITED STATES DEPARTMENT OF JUSTICE  
WASHINGTON, D.C. 20579**

In the Matter of the Claim of	}	
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5 U.S.C. §552(b)(6)	}	Claim No. IRQ-I-009
	}	
	}	Decision No. IRQ-I-004
Against the Republic of Iraq	}	
	}	

Counsel for Claimant:	Daniel Wolf, Esq. Law Offices of Daniel Wolf
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PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) based on injuries he suffered while being held hostage in Iraq and Kuwait in August and September 1990. The United States Department of State has already provided him a payment, which compensated him for his experience as a hostage. He now seeks additional compensation based on a claim that Iraqi officials brutally interrogated and sodomized him. We conclude that they did and that the Claimant is thus entitled to \$1 million in additional compensation.

**BACKGROUND AND BASIS OF CLAIM**

Claimant alleges that, in the summer of 1990, he 5 U.S.C. §552(b)(6) travelled to Kuwait to visit family. Following Iraq’s attack on Kuwait in August 1990, he claims that Iraq effectively held him hostage until September 4th of that year, first for a month in hiding in Kuwait and then for three days in the U.S. Ambassador’s residence in Baghdad.

He also states that, on one occasion during that time, Iraqi soldiers sodomized him with a hard object. Claimant's experiences and injuries are detailed in the Merits section below.

Claimant then sued Iraq in federal court in 2001 for, among other things, hostage-taking and wrongful conduct, seeking damages for a variety of injuries including bodily injury and severe emotional distress. *See*, 5 U.S.C. §552(b)(6)

. That case was pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement. *See Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq*, Sept. 2, 2010, T.I.A.S. No. 11-522 ("Claims Settlement Agreement" or "Agreement"). The Agreement, which came into force in May 2011, covered a number of personal injury claims of U.S. nationals arising from acts of the former Iraqi regime occurring prior to October 7, 2004. Exercising its authority to distribute money from the settlement funds, the State Department provided compensation to numerous individuals whose claims were covered by the Agreement, including some, like Claimant, whom Iraq had taken hostage or unlawfully detained following Iraq's 1990 invasion of Kuwait. According to the State Department, this compensation "encompassed physical, mental, and emotional injuries generally associated with" being held hostage or subject to unlawful detention.<sup>1</sup> Claimant states that the amount of the payment he received was based on a formula, consistently applied to all of the hostages, of \$150,000 plus \$5,000 per day of detention. For Claimant, this was \$320,000 total.

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<sup>1</sup> A group of hostages, not including Claimant, received compensation for economic loss. As we explain in more detail below, the hostages that received compensation for economic loss are not before the Commission in this program.

The State Department's Legal Adviser then requested that the Commission commence a claims program for some of the hostages whom the State Department had already compensated. More specifically, the State Department authorized the Commission to award additional compensation to hostages who had suffered a "serious personal injury," when the severity of that injury is a "special circumstance warranting additional compensation." The State Department made its request in a letter dated November 14, 2012 pursuant to its discretionary statutory authority. *See* 22 U.S.C. § 1623(a)(1)(C) (2012) (granting the Commission jurisdiction to "receive, examine, adjudicate, and render a final decision with respect to any claim of the Government of the United States or of any national of the United States . . . included in a category of claims against a foreign government which is referred to the Commission by the Secretary of State"). The letter sets forth the category of claims as follows:

claims of U.S. nationals for compensation for serious personal injuries knowingly inflicted upon them by Iraq<sup>1</sup> in addition to amounts already recovered under the Claims Settlement Agreement for claims of hostage-taking<sup>2</sup> provided that (1) the claimant has already received compensation under the Claims Settlement Agreement from the Department of State<sup>3</sup> for his or her claim of hostage-taking, and such compensation did not include economic loss based on a judgment against Iraq, and (2) the Commission determines that the severity of the serious personal injury suffered is a special circumstance warranting additional compensation. For the purposes of this referral, "serious personal injury" may include instances of serious physical, mental, or emotional injury arising from sexual assault, coercive interrogation, mock execution, or aggravated physical assault.

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<sup>1</sup> For purposes of this referral, "Iraq" shall mean the Republic of Iraq, the Government of the Republic of Iraq, any agency or instrumentality of the Republic of Iraq, and any official, employee or agent of the Republic of Iraq acting within the scope of his or her office, employment or agency.

<sup>2</sup> Hostage-taking, in this instance, would include unlawful detention by Iraq that resulted in an inability to leave Iraq or Kuwait after Iraq invaded Kuwait on August 2, 1990.



<sup>3</sup> The payment already received by the claimant under the Claims Settlement Agreement compensated the claimant for his or her experience for the entire duration of the period in which the claimant was held hostage or was subject to unlawful detention and encompassed physical, mental, and emotional injuries generally associated with such captivity or detention.

*See Letter dated November 14, 2012, from the Honorable Harold Hongju Koh, Legal Adviser, Department of State, to the Honorable Timothy J. Feighery, Chairman, Foreign Claims Settlement Commission (“2012 Referral” or “Referral”) at ¶ 3 & nn.1-3 (footnotes in original). The Commission then commenced the Iraq Claims Program to decide claims under the 2012 Referral. Commencement of Iraq Claims Adjudication Program, 78 Fed. Reg. 18,365 (Mar. 26, 2013).*

Claimant submitted a timely Statement of Claim under the 2012 Referral, along with exhibits supporting the elements of his claim, including evidence of his U.S. nationality, his receipt of compensation from the Department of State for his claim of hostage-taking, and his alleged personal injuries.

## DISCUSSION

### Jurisdiction

The 2012 Referral’s statement of the category of claims defines the Commission’s jurisdiction. *See* 22 U.S.C. § 1623(a)(1)(C). Thus, the Commission has jurisdiction to entertain only claims of individuals who (1) are U.S. nationals; and (2) “already received compensation under the Claims Settlement Agreement from the Department of State<sup>1</sup> for [their] claim of hostage-taking, and such compensation did not include economic loss based on a judgment against Iraq[.]” 2012 Referral, *supra*, ¶ 3. Claimant satisfies both requirements, and the Commission thus has jurisdiction over this claim.

*Nationality*

This claims program is limited to “claims of U.S. nationals.” Here, that means that a claimant must have been a national of the United States at the time the claim arose and continuously thereafter until May 22, 2011, the date the Agreement entered into force. *See* Claim No. IRQ-I-005, Decision No. IRQ-I-001, at 5-6 (2014) (Proposed Decision).

Claimant satisfies the nationality requirement. He has provided a copy of two U.S. passports: one from the time of the hostage-taking (valid from July 1987 to July 1997) and his current one (valid from July 2006 to July 2016).

*Compensation from the Department of State*

The Claimant also satisfies the second jurisdictional requirement. He has submitted a copy of a Release he signed on August 24, 2011, indicating his agreement to accept \$320,000 from the Department of State in settlement of his claim against Iraq. He has also submitted a copy of an electronic notification from the Department of State that he received this sum on October 25, 2011. Claimant further stated under oath in his Statement of Claim, and the Commission has confirmed to its satisfaction, that this compensation did not include economic loss based on a judgment against Iraq.

In summary therefore, the Commission has jurisdiction over this claim under the 2012 Referral.

Merits

To receive compensation in this program, a claimant must satisfy three requirements: (1) he must have suffered a “serious personal injury” (which may be “physical, mental, or emotional”); (2) Iraq (as defined in footnote 1 of the Referral) must

have “knowingly inflicted” the injury on claimant; and (3) the severity of the serious personal injury must constitute a “special circumstance warranting additional compensation.” 2012 Referral, *supra*, ¶ 3.

The Claimant here has satisfied his burden of proof as to these three requirements. First, Claimant has met his burden to show that he suffered a “serious personal injury” within the meaning of the Referral. The 2012 Referral specifically provides that the phrase “serious personal injury” may include injuries arising from sexual assault. Because neither the Claims Settlement Agreement nor the 2012 Referral define sexual assault, the Commission must look to the applicable principles of, in order, international law, justice, and equity. *See* 22 U.S.C. § 1623(a)(2). The Rome Statute of the International Criminal Court defines rape to include any situation in which the “perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of . . . the anal . . . opening of the victim with any object . . . and . . . [t]he invasion was committed by force, or by the threat of force or coercion . . . .” *See* Rome Statute of the International Criminal Court art. 6(b), 2187 U.N.T.S 90 (July 17, 1998). Similarly, the International Criminal Tribunals for the Former Yugoslavia and Rwanda define rape to include “the sexual penetration, however slight . . . of the . . . anus of the victim by . . . any . . . object used by the perpetrator; where such penetration occurs without the consent of the victim. . . .” *See The Prosecutor v. Kunarac, Kovac & Vukovic*, Case No. IT-96-23/1-T, Judgment, ¶ 460 (Feb. 22, 2001). International law also provides that rape is one form of sexual assault. *See The Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Judgment, ¶ 757 (July 31, 2003).

Under these standards, Claimant has established that Iraqi officials raped him, and he thus has shown both that he suffered a “serious personal injury” as expressly defined in the Referral, and that Iraqi officials “knowingly inflicted that injury upon [him].” His evidence suffices to establish that Iraqi officials sodomized him. The evidence consists of his own declaration describing the time he spent in Kuwait and Iraq, including specific details about the Iraqi officials’ interrogation and sodomizing of him; medical records of an anal fistula that he suffered and the subsequent fistulectomy that he underwent; and a declaration from the doctor who performed the operation.

We find Claimant’s declaration to be credible. It describes not only his time in Kuwait and Iraq but also the day on which he was sodomized in some detail. He states that, “on approximately August 7, 1990,” he was driving with 5 U.S.C. §552(b)(6)

when Iraqi soldiers stopped them at a checkpoint. After seeing Claimant’s American passport, an officer then got into Claimant’s car and directed him to drive to a warehouse. After they arrived there, the officer escorted Claimant into a large room inside the warehouse, while 5 U.S.C. §552(b)(6) remained in the car. The officer then told Claimant to sit on a stool, where a higher-ranked officer then interrogated him about his reasons for being in Kuwait and possible connections to the CIA and FBI. After about 10 minutes of questioning, “the officer rose from his chair with a distinct look of disappointment on his face.”

It was at this point that the sexual assault occurred, and claimant describes the attack in vivid and terrifying detail:

As I sat trembling in fear, my captors ordered me to strip naked and then ordered me to sit down atop a tire that was attached to a pair of posts by two chains. Then they flipped me upside down. With my head facing the floor and held in place so that it would not move, they swung the tire in a

very rapid motion, causing me to become highly disoriented. Then, when the tire came to a stop, I felt a surge of intense pain from my backside, as one of the officers jammed a hard object up my rear end. I was repeatedly sodomized in this manner for what may have been five, ten, fifteen minutes or perhaps longer. . . . I could not believe what was happening and felt like I would rather they just kill me and be done with it.

At the end of the ordeal, the officers untied him, let him get dressed and escorted him out of the building and back to his car, where 5 U.S.C. §552(b)(6) were waiting. After returning to 5 U.S.C. §552(b)(6) (where he was staying during his time in Kuwait), he suffered from rectal bleeding and intense pain. He continued to experience pain and intermittent rectal bleeding for the next ten months, when he finally sought medical treatment. The Claimant further states that, though the surgery healed his physical injuries, he continues to suffer various mental and emotional injuries, including feelings of shame and humiliation, anxiety, detachment and depression. He avers that, due to these feelings, he has suffered from insomnia, recurring nightmares, hampered ability to concentrate and a decline in work performance.

The medical evidence that Claimant has provided generally supports the account in his declaration. That evidence consists of medical records (doctor's notes and hospital records) from June and July 1991, along with a 2013 declaration from the doctor who performed surgery on Claimant in July 1991, Dr. 5 U.S.C. §552(b)(6) . Dr. 5 U.S.C. §552(b)(6) declares in unequivocal terms that it is his "opinion to a reasonable degree of medical certainty that [Claimant's] anal fistula ... is consistent with his account of having been brutally sodomized in Kuwait ten months earlier." The medical records further support this conclusion. Those records note that the Claimant complained of "discharge and pain in the rectal area over the last several months" and was diagnosed with having an anal fistula. The records also state that in July 1991 the Claimant underwent a successful

fistulectomy. Dr. <sup>5 U.S.C.</sup> §552(b)(6) further elaborates on his opinion, stating that “it is apparent that the fistula was caused by a traumatic event” and that “review of the records reveals no reason other than trauma that could have accounted for the etiology of the fistula.” The evidence for this was the pathology, “which shows both acute and chronic inflammation and which is indicative of a relatively recent event – that is, only if the pathology had shown purely chronic inflammation could it be surmised that the fistula has been present for a period lasting substantially longer than one year.” Although there is some ambiguity in Dr. <sup>5 U.S.C.</sup> §552(b)(6) declaration, we take this to mean that the acute inflammation indicates both that a traumatic event caused the fistula and that the fistula was less than a year old.<sup>2</sup>

Though the evidence generally supports Claimant’s allegations, it is not entirely conclusive. Though Claimant’s declaration is factually detailed, Claimant offers no corroborating testimonial evidence from anyone else close to the time of the attack (including no supporting testimony from <sup>5 U.S.C. §552(b)(6)</sup> who were present when the Iraqi soldiers took Claimant away for questioning and when he was returned to the car). Moreover, Claimant brought a federal lawsuit against Iraq alleging hostage-taking, and wrongful conduct, including bodily injury and severe emotional distress, *see Vine*, 1:01-cv-02674-HHK (D.D.C. 2005), and yet at no time during that suit did he make any allegations on the record about the sexual assault.

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<sup>2</sup> The medical evidence does not conclusively establish that the anal fistula was caused by the sexual attack alleged by Claimant. Dr. <sup>5 U.S.C.</sup> §552(b)(6) states both that “it is apparent that the fistula was caused by a traumatic event” and that “review of the records reveals no reason other than trauma that could have accounted for the etiology of the fistula.” But he provides little explanation for his conclusion on causation. Moreover, there are minor inconsistencies in the medical record. We are nonetheless convinced of Dr. <sup>5 U.S.C.</sup> §552(b)(6) lesser conclusion, that the anal fistula “is consistent with [Claimant’s] account of having been brutally sodomized in Kuwait ten months earlier.” The overall weight of the medical evidence thus does corroborate the facts alleged in Claimant’s declaration.

Claimant's explanation of these deficiencies is, however, credible. He says he felt "totally humiliated and degraded" and that he "was emotionally paralyzed to the point [he] felt like [he] was going to have a nervous breakdown." He further states that when he sought medical treatment in 1991, he described his symptoms, "but said nothing of the sodomy that had caused them." Additionally, Claimant's counsel states that the Claimant was "so ashamed and humiliated by his sodomization that (outside of these proceedings), the only person he has ever communicated to about this horrific incident is [Claimant's counsel]." This explanation makes sense. It also comports with evidence found by a panel of experts appointed to assist the United Nations Compensation Commission ("UNCC"), which provided compensation to other victims of the Iraqi occupation of Kuwait. That panel noted that "[m]ale claimants may be reluctant to describe sexual assault. . . . Although the sexual assault of male prisoners is not uncommon, most victims are reluctant to discuss such events even with their families." See "Report of the Panel of Experts Appointed to Assist the United Nations Compensation Commission in Matters Concerning Compensation for Mental Pain and Anguish," attached as Annex VI to the UNCC's *Report and Recommendations Made by the Panel of Commissioners Concerning the First Installment of Individual Claims for Damages up to US\$100,000 (Category "C" Claims)* (the UNCC Mental Pain and Anguish Report"), S/AC.26/1994/3 at 262 (December 21, 1994).

The evidentiary burden for a sexual assault claim has generally been quite low. For example, the Rules of Procedure for both the International Criminal Tribunal for The Former Yugoslavia and the International Criminal Tribunal for Rwanda both explicitly state that "[i]n cases of sexual assault . . . no corroboration of the victim's testimony shall

be required.” ICTY, Rules of Procedure and Evidence, IT/42/Rev. 49, R. 96 (May 22, 2013); and ICTR, Rules of Procedure and Evidence, ITR/3/Rev. 21, R. 96 (April 10, 2013). This Commission is not bound by those rules, but given the nature of sexual assaults during the Iraqi military occupation of Kuwait, they make sense: during that occupation, Iraqi military forces did in fact engage in widespread rape. *See*, the UN’s *Report on the Situation of Human Rights in Kuwait Under Iraqi Occupation*, E/CN.4/1992/26 at 28-31 (January 16, 1992) (“Kälin Report”); *Recommendations Made by the Panel of Commissioners Concerning Individual Claims for Serious Personal Injury or Death (Category “B” Claims)*, S/AC.26/1994/1 at 36-37 (May 26, 1994). Although most of the publicly available evidence involves rape of women, there are reports of specific attacks similar to what Claimant describes, including against men. *See* Kälin Report at 30 (“other methods used included sexual torture. . . . [B]oth men and women suffered from the insertion of bottle necks” (emphasis added)). In light of what was happening at the time, we find Claimant’s declaration to be credible and find his medical evidence to be consistent with that declaration, and on that basis, find that Iraqi officials sexually assaulted him.

We thus conclude that Claimant has satisfied all three requirements of the 2012 Referral: (1) he suffered a “serious personal injury” (2) inflicted upon him by Iraq, and (3) given the nature and extent of the injury itself, including the specific act committed by Iraq giving rise to that injury, the severity of his injury constitutes a “special circumstance warranting additional compensation.”



## COMPENSATION

Assessing the value of intangible, non-economic damages is particularly difficult and cannot be done using a precise, mathematical formula. Claim No. LIB-II-002, Decision No. LIB-II-002, at 4-5 (2011) (Final Decision) (citing Claim No. LIB-II-002, Decision No. LIB-II-002, at 9-10 (2009) (Proposed Decision)); *see also* 2 Dan B. Dobbs, *Dobbs' Law of Remedies* ¶ 8.3(6) (2nd ed. 1993); I Marjorie M. Whiteman, *Damages in International Law* 777-78 (1937)). Furthermore, assessing the relative value of personal injury claims is especially challenging where, as here, the claimants have alleged both physical and mental injuries, of varying number and degree, arising from highly individual circumstances.

The Claims Settlement Agreement itself says nothing about the appropriate level of compensation. The Referral sets a recommended maximum of \$1.5 million per claim, but says nothing else. 2012 Referral, *supra*, ¶ 4. The Referral also makes clear that this compensation is not to include compensation for any injuries generally associated with the hostage experience, injuries for which the State Department has already paid the claimant.

Under international law, compensation for personal injuries varies greatly, and there is no consistent formula applied by international courts and tribunals in determining the appropriate amount. Chester Brown, *A Common Law of International Adjudication* 206 (2007). Nonetheless, authorities frequently cite certain factors in assessing the value of such claims. For instance, Whiteman mentions, *inter alia*, “the nature and seriousness of the injury to the claimant [and] the extent of impairment of the health and earning capacity of the claimant . . . .” I Marjorie M. Whiteman, *Damages in International Law*

628 (1937). Awards have generally been higher when the claimant's suffering was permanent or persisted for many years. *See id.* at 588-92. Tribunals have also considered the seriousness and the manner of the wrong committed by the offending state. *See* Dinah Shelton, *Remedies in International Human Rights Law* 295 (2006); A.H. Feller, *The Mexican Claims Commissions* 296 (1935); *M/V Saiga (No. 2) (St. Vincent v. Guinea)*, Case No. 2, Judgment of July 1, 1999, 3 ITLOS Rep. 10, ¶¶ 171-172. Tribunals have also considered the existence of multiple causes of action in a single claim. *See, e.g.,* J.G. de Beus, *The Jurisprudence of the General Claims Commission, United States and Mexico* 271 (1938).

In addition, the factors considered by the United Nations Compensation Commission are particularly instructive here. The UNCC provided compensation to Iraqi victims during the occupation of Kuwait, exactly the situation here. Moreover, the UNCC Governing Council set a range of potential ceilings awards based on different types of injuries suffered. Of specific relevance to this claim, the UNCC set the ceiling for an award for sexual assault as amongst the highest award ceilings, below only two other ceiling awards: for death of a relative and for personal injury involving dismemberment, permanent significant disfigurement, or permanent significant loss of use or permanent limitation of use of a body organ, member, function or system. *See Determination of Ceilings for Compensation for Mental Pain and Anguish, Decisions Taken by the Governing Council of the United Nations Compensation Commission, Decision 8, S/AC.26/1992/8 (Jan. 27, 1992) at 1-3.*

In determining the appropriate level of compensation under the 2012 Referral, the Commission will thus consider, in addition to the State Department's recommendation,

such factors as the severity of the initial injury or injuries; the number and type of injuries suffered; whether the claimant was hospitalized as a result of his or her injuries, and if so, how long (including all relevant periods of hospitalization in the years since the incident); the number and type of any subsequent surgical procedures; the degree of permanent impairment, taking into account any disability ratings, if available; the impact of the injury or injuries on claimant's daily activities; the nature and extent of any disfigurement to the claimant's outward appearance; whether the claimant witnessed the intentional infliction of serious harm on his or her spouse, child or parent; and the seriousness of the degree of misconduct on the part of Iraq.

The Claimant seeks \$1.5 million in additional compensation, the maximum amount recommended by the State Department. Here, Claimant suffered a particularly grievous injury, one that required surgery to heal its physical effects and, though Claimant has no evidence beyond his own declaration to this effect, one that seems likely to leave emotional scars for the rest of Claimant's life. *Cf.* UNCC Mental Pain and Anguish Report at pages 262-266 (sexual assault "very often causes profound and long lasting damages."). In addition, Claimant's declaration provides evidence of continuing emotional damage, including anxiety, depression and detachment, that he believes cost him his marriage. Moreover, Iraqi officials acted with an intentional and calculated brutality. On the other hand, the Claimant has not been incapacitated in any permanent way. He returned to his previous place of employment, where he worked until he retired in 2006. Additionally, he has not alleged, and there is no evidence of, any physical effects (whether impairments or disfigurements) after his July 1991 surgery. Furthermore, this claim does not raise multiple causes of action: it occurred on one

occasion and was not (as is the case with some personal injury claims) inflicted upon him repeatedly over a long period of time. Finally, his claim must be viewed in light of the State Department's recommended maximum and the range of claims that have been filed under the 2012 Referral. *See* Claim No. LIB-II-109, Decision No. LIB-II-112 at 5-6 (2012) (in determining what injuries are a special circumstance, the Commission considers, among other things, the nature of all of the injuries that fall under the referred category of claims). Accordingly, the Commission determines that the Claimant is entitled to an award of \$1,000,000.00 and that this amount, (which is in addition to the amount already received from the Department of State) constitutes the entirety of the compensation that the claimant is entitled to in the present claim.

The Commission enters the following award, which will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of the ICOSA. 22 U.S.C. §§ 1626-27 (2006).

AWARD

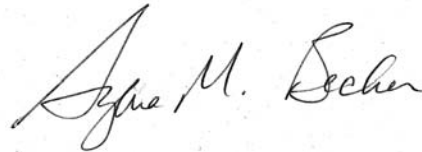
Claimant is entitled to an award in the amount of One Million Dollars (\$1,000,000.00).

Dated at Washington, DC, February 21, 2014  
and entered as the Proposed Decision  
of the Commission.

A handwritten signature in black ink, appearing to read "Anuj C. Desai". The signature is written in a cursive style with a large initial "A" and "D".

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Anuj C. Desai, Commissioner

A handwritten signature in black ink, appearing to read "Sylvia M. Becker". The signature is written in a cursive style with a large initial "S" and "B".

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Sylvia M. Becker, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days of delivery of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after delivery, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2013).