



federal court for, among other things, hostage-taking.<sup>1</sup> Those cases were pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement.<sup>2</sup> The Agreement, which entered 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, including claims of personal injury caused by hostage-taking.<sup>3</sup> Exercising its authority to distribute money from the settlement funds, the U.S. Department of State provided compensation to numerous individuals whose claims were covered by the Agreement, including some whom Iraq had allegedly taken hostage or unlawfully detained following Iraq's 1990 invasion of Kuwait.

Under the International Claims Settlement Act of 1949 ("ICSA"), the Secretary of State has statutory authority to refer "a category of claims against a foreign government" to this Commission.<sup>4</sup> The Secretary has delegated that authority to the State Department's Legal Adviser, who, by letter dated October 7, 2014, referred three categories of claims to this Commission for adjudication and certification.<sup>5</sup> This was the State Department's second referral of claims to the Commission under the Claims Settlement Agreement, the first having been by letter dated November 14, 2012 ("2012 Referral" or "November 2012 Referral").<sup>6</sup>

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<sup>1</sup> See, e.g., *Hill v. Republic of Iraq*, 175 F. Supp. 2d 36 (D.D.C. 2001); *Vine v. Republic of Iraq*, 459 F. Supp. 2d 10 (D.D.C. 2006).

<sup>2</sup> 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").

<sup>3</sup> See *id.* Art. III(1)(a)(ii).

<sup>4</sup> See 22 U.S.C. § 1623(a)(1)(C) (2012).

<sup>5</sup> See *Letter dated October 7, 2014, from the Honorable Mary E. McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission* ("2014 Referral" or "October 2014 Referral").

<sup>6</sup> Although the November 2012 Referral involved claims of U.S. nationals who were held hostage or unlawfully detained by Iraq, it did not involve hostage-taking claims *per se*. Rather, it consisted of certain claimants who had *already received* compensation under the Claims Settlement Agreement from the State Department for their hostage-taking claims, and it authorized the Commission to award additional compensation to those claimants, provided they could show, among other things, that they suffered a "serious

One category of claims from the 2014 Referral is applicable here. That category, known as Category A, consists of

claims by U.S. nationals for hostage-taking<sup>1</sup> by Iraq<sup>2</sup> in violation of international law prior to October 7, 2004, provided that the claimant was not a plaintiff in pending litigation against Iraq for hostage taking<sup>3</sup> at the time of the entry into force of the Claims Settlement Agreement and has not received compensation under the Claims Settlement Agreement from the U.S. Department of State. . . .

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<sup>1</sup> For purposes of this referral, hostage-taking 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>2</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>3</sup> For purposes of this category, pending litigation against Iraq for hostage taking refers to the following matters: *Acree v. Iraq*, D.D.C. 02-cv-00632 and 06-cv-00723, *Hill v. Iraq*, D.D.C. 99-cv-03346, *Vine v. Iraq*, D.D.C. 01-cv-02674; *Seyam (Islamic Society of Wichita) v. Iraq*, D.D.C. 03-cv-00888; *Simon v. Iraq*, D.D.C. 03-cv-00691.

2014 Referral at ¶ 3.

On October 23, 2014, the Commission published notice in the *Federal Register* announcing the commencement of the second Iraq Claims Program pursuant to the ICSA and the 2014 Referral.<sup>7</sup>

On September 2, 2015, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category A of the 2014 Referral, together with exhibits supporting the elements of her claim.

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personal injury” during their detention. The 2012 Referral expressly noted that 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.” *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*, at ¶3 n.3.

<sup>7</sup> *Program for Adjudication: Commencement of Claims Program*, 79 Fed. Reg. 63,439 (Oct. 23, 2014).

## DISCUSSION

### Jurisdiction

This Commission's authority to hear claims is limited to the category of claims referred to it by the United States Department of State.<sup>8</sup> The Commission's jurisdiction under the "Category A" paragraph of the 2014 Referral is limited to claims for hostage-taking of (1) "U.S. nationals," provided that the claimant (2) was not a plaintiff in any litigation against Iraq for hostage taking pending on May 22, 2011 (the "Pending Litigation"), and (3) has not received compensation under the Claims Settlement Agreement from the Department of State. 2014 Referral at ¶ 3.

### *Nationality*

This claims program is limited to claims of "U.S. nationals." Here, that means a claimant must have been a national of the United States when the claim arose and continuously thereafter until May 22, 2011, the date the Agreement entered into force.<sup>9</sup> Claimant satisfies the nationality requirement. Claimant has provided a copy of the identification pages of a U.S. passport that was issued to her in 1987, which shows that she was a U.S. national at the time of the alleged hostage-taking (from August to December of 1990). She has also provided a copy of a recent U.S. passport, which expired in 2014 and establishes that she remained a U.S. national through the effective date of the Claims Settlement Agreement.

### *No Pending Litigation*

Additionally, Category A states that the claimant may not have been a plaintiff in any of the so-called Pending Litigation cases at the time of the entry into force of the Claims

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<sup>8</sup> See 22 U.S.C. § 1623(a)(1)(C) (2012).

<sup>9</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 4-5.

Settlement Agreement.<sup>10</sup> Footnote 3 of the 2014 Referral specifically lists the Pending Litigation cases for purposes of the Referral. Claimant has averred, and the pleadings in the cases cited in footnote 3 confirm, that she was not a plaintiff in any of those Pending Litigation cases. The Commission thus finds that Claimant has also satisfied this element of her claim.

*No Compensation under the Claims Settlement Agreement  
from the Department of State*

The Claimant also satisfies the final jurisdictional requirement. Claimant has stated that she has not “received any compensation under the Claims Settlement Agreement from the Department of State.” Further, we have no evidence that the State Department has provided her any compensation under the Claims Settlement Agreement. Therefore, Claimant meets this element of her claim.

In summary, this claim is within the Commission’s jurisdiction pursuant to the 2014 Referral and is entitled to adjudication on the merits.

Merits

*Factual Allegations*

Claimant states that Iraq held her hostage from August 2, 1990, until December 13, 1990, a total of 134 days. Claimant asserts that she was one of the U.S. diplomats stationed at the U.S. Embassy in Kuwait when Iraq invaded the country on August 2, 1990.<sup>11</sup> She claims that immediately after the invasion, she went to the U.S. Embassy. Claimant further states that she was not among those in the convoy of U.S. Embassy staff and dependents that traveled from Kuwait to Baghdad on August 23, 1990, and that she was on the

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<sup>10</sup> The Agreement entered into force on May 22, 2011. *See* Claims Settlement Agreement, art. IX.

<sup>11</sup> For further factual background regarding the Iraqi government’s treatment of U.S. diplomats and other U.S. nationals employed by the U.S. government at the U.S. Embassy in Kuwait after the August 2, 1990 invasion, *see* Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 5-10.

Embassy's premises when Iraqi soldiers surrounded the compound the following day. Claimant contends that she remained confined in the U.S. Embassy in Kuwait until December 7, 1990, which she asserts was the date on which Iraq released all remaining foreign nationals in Iraq and Kuwait. Claimant flew out of Kuwait (via Baghdad, Iraq) on an evacuation flight chartered by the U.S. government on December 13, 1990.

*Supporting Evidence*

Claimant has supported her claim with, among other things, her sworn Statement of Claim, a declaration that describes the circumstances of her alleged detention and ultimate departure from Kuwait, two news articles dated December 13, 1990, that identify her as a U.S. diplomat and state that she departed Kuwait on a U.S. chartered evacuation flight that same day, a certificate identifying her as the recipient of a State Department award for her service during the Iraqi invasion of Kuwait, and an account of her experiences that she wrote for a book published in 1995.

Claimant has also submitted a number of documents that provide background about the broader geopolitical situation during the First Gulf War in 1990-91, including some that relate specifically to the circumstances faced by U.S. nationals in Iraq and Kuwait at the time. These documents include statements from U.S. and Iraqi officials, resolutions of the United Nations Security Council, newspaper articles, a report from Amnesty International on human rights violations committed by Iraq in 1990, unclassified cables and a memorandum from the U.S. Department of State, and affidavits submitted in two lawsuits brought by other U.S. nationals who were also in Kuwait or Iraq during the First Gulf War.

Additionally, the Commission takes notice of Federal News Service transcriptions of press briefings by U.S. government officials, news articles, and publically available

unclassified State Department documents that provide further information about Iraq's treatment of U.S. diplomatic personnel accredited to the U.S. Embassy in Kuwait and their dependents after the August 2, 1990 invasion.

### *Legal Standard*

To make out a substantive claim under Category A of the 2014 Referral, a claimant must show that (1) Iraq was engaged in an armed conflict and (2) during that conflict, Iraq took the claimant hostage.<sup>12</sup> The Commission has previously held that, to establish a hostage-taking claim under international law in this program, a claimant must show that Iraq (a) seized or detained the claimant and (b) threatened the claimant with death, injury, or continued detention (c) in order to compel a third party, such as the United States government, to do or abstain from doing any act as an explicit or implicit condition for the claimant's release.<sup>13</sup> A claimant can establish the first element of this standard by showing that the Iraqi government confined the claimant to a particular location or locations within Iraq or Kuwait, or prohibited the claimant from leaving Iraq and/or Kuwait.<sup>14</sup> The legal standard we apply in this program applies equally to diplomatic personnel and their families.<sup>15</sup>

### *Application of Standard to this Claim*

(1) Armed Conflict: Claimant alleges that Iraq took her hostage in Kuwait on August 2, 1990, and held her hostage for 134 days, until December 13, 1990, when Iraqi officials allowed her to leave Kuwait. In its first decision awarding compensation for hostage-taking under the 2014 Referral, the Commission held that during this entire period,

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<sup>12</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16. An estate claimant would of course need to make this showing as to its decedent.

<sup>13</sup> See *id.* at 17-20.

<sup>14</sup> See *id.* at 17.

<sup>15</sup> See Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 12.

Iraq was engaged in an armed conflict with Kuwait.<sup>16</sup> Thus, Claimant satisfies this element of the standard.

(2) Hostage-taking: To satisfy the hostage-taking requirement of Category A of the 2014 Referral, Claimant must show that Iraq (a) seized or detained her and (b) threatened her with death, injury, or continued detention (c) in order to compel a third party, such as the United States government, to do or abstain from doing any act as an explicit or implicit condition for her release. Claimant satisfies this standard for the 134-day period from August 2, 1990, to December 13, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of having been detained, her time in Kuwait following the Iraqi invasion can be divided three periods: (i) between the Iraqi invasion on August 2, 1990, and the State Department's August 7, 1990 announcement recognizing that U.S. diplomats in Kuwait were in the same position as "private American citizens"; (ii) between that August 7, 1990 announcement and December 6, 1990—*i.e.*, the period during which Iraq expressly prevented diplomats and staff members of the U.S. Embassy in Kuwait from leaving Kuwait and Iraq; and (iii) from the December 6th announcement authorizing all remaining foreign nationals in Kuwait and Iraq to leave until Claimant's departure on December 13, 1990.<sup>17</sup>

From August 2, 1990, until August 7, 1990, Iraq prevented Claimant from leaving Kuwait. During this period, Iraq made no formal distinction between Claimant and other U.S. nationals, who as we have previously recognized, were threatened with immediate seizure and forcible detention during this period.<sup>18</sup> Although some foreign nationals did

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<sup>16</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16-17.

<sup>17</sup> See Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 13-14.

<sup>18</sup> See *id.* at 14.



manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.<sup>19</sup> Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.<sup>20</sup> Claimant understandably had, as the United Nations Compensation Commission has put it, a “manifestly well-founded fear” of being killed or forcibly detained if she had left the embassy.<sup>21</sup> The Commission has previously recognized that for the purposes of the legal standard applicable here, putting Claimant in this situation in effect amounts to detention.<sup>22</sup> Iraq thus detained Claimant from August 2, 1990, to August 7, 1990.

Between August 7, 1990, and December 6, 1990, Iraqi authorities adopted various policies that prevented Claimant and other U.S. diplomats and embassy staff accredited to the Kuwait Embassy from leaving Kuwait or Iraq.<sup>23</sup> As the Commission has previously recognized, Iraq did not extend assurances that the U.S. government believed to be sufficiently credible to allow Kuwait Embassy staff members and their dependents to depart until August 22, 1990.<sup>24</sup> Iraqi authorities subsequently reneged on those commitments on or around August 24, 1990, before adopting a policy that prohibited the departure of Kuwait Embassy staff and their dependents from Iraq and Kuwait as long as the U.S. embassy in Kuwait remained open.<sup>25</sup> While the U.S. was able to negotiate the release of some dependents on or around August 25, 1990, Iraq refused to release any of the Kuwait embassy staff members who were confined in the Baghdad or Kuwait

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<sup>19</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

<sup>20</sup> See *id.*

<sup>21</sup> Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US \$100,000 (Category “C” Claims), UN Doc. S/AC.26/1994/3 (1994), at 93.

<sup>22</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

<sup>23</sup> See Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 14.

<sup>24</sup> See *id.*

<sup>25</sup> See *id.* at 14-15.

embassies until announcing the release of all foreign nationals on December 6, 1990.<sup>26</sup> Thus, for Claimant, the policy of prohibiting Kuwait Embassy staff members from leaving Iraq and Kuwait lasted until December 6, 1990, when the Iraqi government announced that all remaining foreign nationals in Kuwait and Iraq could leave.<sup>27</sup>

Although Claimant may have been legally permitted to leave Kuwait on December 6, 1990, her detention did not end on that date. As the Commission has previously recognized, a claimant's detention ends only on the date that she is released from the control of the person or entity that detained her.<sup>28</sup> Any attempt "[by the perpetrator] to restrict [the] movements" of a claimant establishes control,<sup>29</sup> whereas a claimant who has a reasonable opportunity to leave the site of his or her captivity is deemed no longer to be under the perpetrator's control.<sup>30</sup>

Under this standard, Claimant remained under Iraq's control until December 13, 1990. The Commission has previously held that Iraq imposed conditions on air travel that limited the ability of foreign nationals, including U.S. nationals, to leave Iraq and/or Kuwait in December 1990.<sup>31</sup> Indeed, the available evidence indicates that Claimant left Iraq at the first reasonable opportunity after the December 6th announcement, on the U.S. government-chartered flight that left Iraq on December 13, 1990. We thus conclude that she was under Iraq's control and thus detained from December 6, 1990, to December 13, 1990.

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<sup>26</sup> See *id.* at 15.

<sup>27</sup> See *id.*

<sup>28</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22; see also Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 13 (2012).

<sup>29</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22 (citing Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 12 (2012)).

<sup>30</sup> See *id.*

<sup>31</sup> See Claim No. IRQ-II-180, Decision No. IRQ-II-140, at 10-11.

In sum, Iraq thus detained Claimant from August 2, 1990, until December 13, 1990.

(b) Threat: The Iraqi government threatened Kuwait Embassy staff members, diplomats, and dependents with continued detention. This included Claimant. Iraqi authorities made clear that Embassy staff members, diplomats, and dependents would not be permitted to leave, notwithstanding Iraq's sporadic and unreliable statements to the contrary during Claimant's period of detention.<sup>32</sup>

In short, the Iraqi government made an unequivocal threat to continue to detain Kuwait Embassy staff members in Kuwait and Iraq. Claimant was a U.S. diplomat accredited to Kuwait at the time. Claimant has thus established that Iraq threatened to continue to detain her.

(c) Third party coercion: The reason Iraq detained Claimant and threatened her with continued detention was to compel the United States government to act in a certain way as an explicit and/or implicit condition for her release. Iraqi authorities informed the U.S. that before it would release detained diplomats, embassy personnel, and their dependents, it wanted the United States to close its embassy in Kuwait.<sup>33</sup> Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.<sup>34</sup>

In sum, this claim meets the standard for hostage-taking within the meaning of the 2014 Referral. Iraq held Claimant hostage in violation of international law for a period of 134 days, and Claimant is thus entitled to compensation.

#### COMPENSATION

Having concluded that the present claim is compensable, the Commission must next determine the appropriate amount of compensation.

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<sup>32</sup> See Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 16.

<sup>33</sup> See *id.*

<sup>34</sup> See *id.* at 16-17.

In its first decision awarding compensation for hostage-taking under the 2014 Referral, the Commission held that successful claimants should be awarded compensation in the amount of \$150,000 plus an additional \$5,000 for each day the claimant was in captivity.<sup>35</sup> Therefore, for the 134 days Iraq held Claimant hostage, she is entitled to an award of \$820,000, which is \$150,000 plus (134 x \$5,000). This amount constitutes the entirety of the compensation to which Claimant is entitled under the Claims Settlement Agreement.

The Commission hereby enters the following award, which will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of the ICSA.<sup>36</sup>

AWARD

Claimant is entitled to an award in the amount of \$820,000.

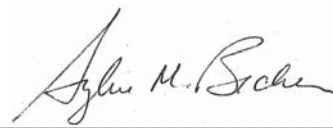
Dated at Washington, DC, March 22, 2018  
and entered as the Proposed Decision  
of the Commission.

**This decision was entered as the  
Commission's Final Decision  
on**

**May 1, 2018**



Anuj C. Desai, Commissioner



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) (2018).

<sup>35</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

<sup>36</sup> 22 U.S.C. §§ 1626-1627 (2012).