

federal court for, among other things, hostage-taking.¹ Those cases were pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement.² 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.³ 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.⁴ 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.⁵ 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").⁶

¹ 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).

² 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").

³ See *id.* Art. III(1)(a)(ii).

⁴ See 22 U.S.C. § 1623(a)(1)(C) (2012).

⁵ 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").

⁶ 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-taking¹ by Iraq² 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 taking³ 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. . . .

¹ 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.

² 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.

³ 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.⁷

On September 3, 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.

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.

⁷ *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.⁸ 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.⁹ Claimant satisfies the nationality requirement. Claimant has provided a copy of her U.S. passport valid in August 1990, which shows that she was a U.S. national at the time of the alleged hostage-taking. She has also provided a copy of her current U.S. passport, which expires in June 2020 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 Settlement Agreement.¹⁰ Footnote 3 of the 2014 Referral specifically lists the Pending

⁸ See 22 U.S.C. § 1623(a)(1)(C) (2012).

⁹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 4-5.

¹⁰ The Agreement entered into force on May 22, 2011. See Claims Settlement Agreement, art. IX.

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 Backdrop to Claimant’s Allegations

Claimant’s hostage-taking claim is based on 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, and their dependents. Claimant’s allegations involve the period after Iraq invaded Kuwait on August 2, 1990, but before a U.S.-led coalition force joined with Kuwaiti forces in January 1991 to expel Iraq from Kuwait.

During the first few days after the invasion, the Iraqi government began seizing and detaining foreign nationals (including U.S. nationals) in Kuwait and relocating many of them to Baghdad against their will.¹¹ When doing so, Iraq gave no indication that it

¹¹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 6, 7, 21.

intended to treat U.S. diplomatic personnel in Kuwait and their dependents any differently from U.S. nationals without official status. It was unclear exactly what the Iraqi policy towards U.S. diplomats was. On August 7, 1990, a U.S. State Department spokesperson stated that U.S. diplomats in Kuwait were in the same position as “private American citizens,” who, despite extensive negotiations between U.S. and Iraqi officials, had not received permission to leave Kuwait at that time.¹² Yet, the next day, August 8, 1990, Iraq informed U.S. officials that diplomats were authorized to leave but that other U.S. citizens could not.¹³ A day later, on August 9, 1990, the Iraqi government sent a diplomatic note to the U.S. Embassy in Baghdad announcing that foreign missions in Kuwait (including the U.S. Embassy) were required to close by August 24, 1990.¹⁴ Iraq further clarified its position on the departure of personnel from the U.S. Embassy in Kuwait in another diplomatic note dated August 13, 1990, that authorized U.S. diplomats in Kuwait and their dependents, all of whom had relocated to the embassy compound by that time,¹⁵ to leave the country.¹⁶ Yet, despite these statements, Iraq did not permit any U.S. diplomats accredited to the Embassy in Kuwait or their dependents to leave. As a State Department spokesperson put it on August 15, 1990, Iraq had issued guidance allowing diplomats and their dependents to depart but “[had] not allowed that to happen.”¹⁷ A week later, however, on August 22, 1990, the State Department announced that Iraq had assured the U.S.

¹² *CB State Department Regular Briefing Briefer: Margaret Tutwiler*, FEDERAL NEWS SERVICE, Aug. 7, 1990, at 10, Lexis.

¹³ *See CB State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Aug. 8, 1990, at 3, Lexis.

¹⁴ *See* Unclassified U.S. State Department cable from U.S. Embassy in Baghdad, Aug. 9, 1990, U.S. Dep’t of State Virtual Reading Room Documents Search, *available at* <http://foia.state.gov/Search/Search.aspx>, Case No. F-2007-03992, Doc. No. C17548047 (released Feb. 18, 2015); Clifford Krauss, *Confrontation in the Gulf; Iraq Orders the Closing of Embassies in Kuwait*, N.Y. TIMES, Aug. 18, 1990, at 9.

¹⁵ *CB (From the State Department)*, FEDERAL NEWS SERVICE, Aug. 13 1990, at 2, Lexis.

¹⁶ *See* Unclassified U.S. State Department cable from U.S. Sec’y of State, Oct. 13, 1990, at 14, U.S. Dep’t of State Virtual Reading Room Documents Search, *available at* <http://foia.state.gov/Search/Search.aspx>, Case No. F-2007-03992, Doc. No. C 17548123 (released Mar. 10, 2015).

¹⁷ *CB (From the State Department)*, FEDERAL NEWS SERVICE, Aug. 15 1990, at 9, Lexis.

government that it could evacuate staff members of the U.S. Embassy in Kuwait and their dependents in an overland convoy that would stop in Baghdad before departing Iraq.¹⁸ The State Department also indicated that despite the Iraqi demand, the U.S. would not close its embassy in Kuwait, and it informed senior Iraqi officials of this policy in meetings held in Baghdad and Kuwait on that same day, August 22, 1990.¹⁹

On August 23, 1990, over 100 members of the embassy staff and their dependents left Kuwait in a diplomatic convoy, traveling for approximately 19 hours from Kuwait to Baghdad.²⁰ As the convoy prepared to leave Baghdad early in the morning on August 24, 1990, Iraq informed State Department officials that a new regulation prohibiting the departure of embassy personnel from countries that had refused to close their embassies in Kuwait was in effect and that, as a result, the staff from the U.S. Embassy in Kuwait and their family members—who were now in Baghdad—would not be permitted to depart.²¹ Later that morning, Iraqi soldiers surrounded the U.S. Embassy in Kuwait and blocked access to the entrance and exit, preventing those remaining in the embassy from leaving.²²

Immediately after the diplomatic convoy was prevented from leaving Baghdad, State Department officials asked Iraq to release the Kuwait Embassy staff members and

¹⁸ See *CB State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Aug. 22, 1990, at 2, 5, Lexis.

¹⁹ See *id.* at 2; Unclassified U.S. State Department cable from U.S. Sec’y of State, Aug. 22, 1990, at 1-3, U.S. Dep’t of State Virtual Reading Room Documents Search, available at <http://foia.state.gov/Search/Search.aspx>, Case No. F-2007-03992, Doc. No. C17548056 (released Feb. 18, 2015); Unclassified U.S. State Department cable from U.S. Embassy Baghdad, Sep. 10, 1990, at 4, U.S. Dep’t of State Virtual Reading Room Documents Search, available at <http://foia.state.gov/Search/Search.aspx>, Case No. F-2007-03992, Doc. No. C17548083 (released Mar. 10, 2015).

²⁰ See *CB State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Aug. 24, 1990, at 4, Lexis.

²¹ See *id.* at 1-2.

²² See *id.* at 5-6. Several U.S. nationals without official status who had taken refuge in the embassy after Iraq were also prevented from leaving. See Unclassified U.S. State Department cable from U.S. Sec’y of State, Aug. 22, 1990, *supra* note 19; Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 7.

their dependents, but Iraq's Foreign Minister at the time, Tariq Aziz, rejected this request.²³ On the very next day, August 25, 1990, however, Iraq's Ministry of Foreign Affairs informed State Department officials that the *dependents* of Kuwait Embassy staffers could leave.²⁴ The following day, August 26, 1990, 55 dependents departed Baghdad for Turkey in another convoy.²⁵ Three of the male dependents in this group, however, were not allowed to cross the Iraqi-Turkish border because they were not minors; these three were forced to return to the U.S. Embassy in Baghdad, where those Kuwaiti Embassy personnel who had not been allowed on the convoy to Turkey remained confined.²⁶

The State Department continued to raise concerns about Kuwait Embassy personnel and dependents who were confined in the U.S. embassies in Kuwait and Baghdad in meetings with Iraqi officials in September and October of 1990. On September 2, 1990, Joseph Wilson, the chargé d'affaires at the U.S. Embassy in Baghdad, met with Nizar Hamdoun, who was undersecretary of Iraq's Ministry of Foreign Affairs, and asked him to "remember his assurances regarding safe conduct for Embassy Kuwait diplomats and

²³ See *CB State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Aug. 24, 1990, at 2, Lexis; Unclassified U.S. State Department cable from U.S. Sec'y of State, Aug. 24, 1990, at 1-2, U.S. Dep't of State Virtual Reading Room Documents Search, *available at* <http://foia.state.gov/Search/Search.aspx>, Case No. F-2007-03992, Doc. No. C17548062 (released Feb. 18, 2015).

²⁴ See Unclassified U.S. State Department cable from U.S. Embassy Baghdad, Aug. 25, 1990, at 2, U.S. Dep't of State Virtual Reading Room Documents Search, *available at* <http://foia.state.gov/Search/Search.aspx>, Case No. F-2007-03992, Doc. No. C17548063 (released Feb. 18, 2015). A news report stated that a spokesperson for the Iraqi government had announced on Baghdad radio that the release applied to female diplomats, but there is no indication in the specific representations that Iraq's Ministry of Foreign Affairs made to the State Department that female diplomats (who were not dependents) could depart. See *id*; Jim Mann, *Iraq Surrounds U.S. Embassy in Kuwait, Detains Evacuees; Gulf Crisis: Detention of American Diplomats Breaks Promise That They Could Leave Baghdad. The Administration Calls It 'Another Stark Example of Iraqi Duplicity'*, L.A. TIMES, Aug. 25, 1990, A1. On August 28, 1990, State Department officials indicated that they intended to raise the issue again in a future meeting with Iraq's Ministry of Foreign Affairs. See Unclassified U.S. State Department cable from U.S. Embassy Baghdad, Aug. 29, 1990, at 2, U.S. Dep't of State Virtual Reading Room Documents Search, *available at* <http://foia.state.gov/Search/Search.aspx>, Case No. F-2007-03992, Doc. No. C17548069 (released Feb. 18, 2015).

²⁵ See *CB State Department Regular Briefing Briefer: Margaret Tutwiler*, FEDERAL NEWS SERVICE, Aug. 27, 1990, at 3, Lexis.

²⁶ See *id*.

dependents out of the country.”²⁷ Similarly, on October 12, 1990, David Mack, then Deputy Assistant Secretary of State for Near Eastern Affairs, met with Mohammed al-Mashat, Iraq’s ambassador to the United States, and communicated to him the U.S. demand that “Iraq . . . rescind its decision to bar the departure of U.S. diplomats accredited to [its] embassy in Kuwait.”²⁸ During that meeting, and on many other occasions, the U.S. also objected to the siege conditions at the U.S. Embassy in Kuwait, which remained surrounded by Iraqi guards who prevented those inside the Embassy from leaving the premises and replenishing the Embassy’s limited food supply, and who refused to restore water and electricity connections to the compound that had been shut off by Iraqi authorities in late August, after the U.S. refused Iraq’s demand to close its embassy in Kuwait.²⁹

Despite these conditions, State Department officials consistently maintained that the U.S. would not close its embassy in Kuwait in response to Iraqi threats and illegal orders concerning, among other things, the departure of its embassy staff.³⁰ Other countries whose diplomats Iraqi authorities also prohibited from leaving Kuwait adopted a similar

²⁷ Unclassified U.S. State Department cable from U.S. Embassy Baghdad, Sep. 3, 1990, at 1, U.S. Dep’t of State Virtual Reading Room Documents Search, *available at* <http://foia.state.gov/Search/Search.aspx>, Case No. F-2007-03992, Doc. No. C17548071 (released Feb. 18, 2015).

²⁸ Unclassified U.S. State Department cable from U.S. Sec’y of State, Oct. 13, 1990, at 15, U.S. Dep’t of State Virtual Reading Room Documents Search, *available at* <http://foia.state.gov/Search/Search.aspx>, Case No. F-2007-03992, Doc. No. C 17548123 (released Mar. 10, 2015).

²⁹ *See id*; *CB State Department Regular Briefing Briefer: Margaret Tutwiler*, FEDERAL NEWS SERVICE, Aug. 27, 1990, at 2-3, Lexis; Unclassified U.S. State Department cable from U.S. Sec’y of State, Sep. 10, 1990, at 3, U.S. Dep’t of State Virtual Reading Room Documents Search, *available at* <http://foia.state.gov/Search/Search.aspx>, Case No. F-2007-03992, Doc. No. C17548082 (released Feb. 18, 2015); *CB State Department Regular Briefing*, FEDERAL NEWS SERVICE, Sep. 12, 1990, at 3, Lexis; Unclassified U.S. State Department cable from U.S. Sec’y of State, Sep. 28, 1990, at 6, U.S. Dep’t of State Virtual Reading Room Documents Search, *available at* <http://foia.state.gov/Search/Search.aspx>, Case No. F-2007-03992, Doc. No. C17548107 (released Feb. 18, 2015); Unclassified U.S. State Department cable from U.S. Embassy Baghdad, Oct. 12, 1990, at 2, U.S. Dep’t of State Virtual Reading Room Documents Search, *available at* <http://foia.state.gov/Search/Search.aspx>, Case No. F-2007-03992, Doc. No. C17548121 (released Feb. 18, 2015); *Press Conference With: President Bush and US Secretary of Defense Cheney The White House Briefing Room*, FEDERAL NEWS SERVICE, Nov. 8, 1990, at 3, Lexis.

³⁰ *See CB State Department Regular Briefing*, FEDERAL NEWS SERVICE, Sep. 12, 1990, at 8, Lexis; Unclassified U.S. State Department cable from U.S. Sec’y of State, Sep. 28, 1990, at 7, *supra* note 29.

policy,³¹ and, in late October 1990, the U.N. Security Council passed a resolution that called on Iraq to allow diplomatic and consular personnel to leave Kuwait and to rescind orders for the closure of foreign missions in Kuwait.³² Yet, Iraq continued to refuse to allow Kuwait Embassy staff members who were confined in the Baghdad and Kuwait embassies to depart, and most were not able to leave until after December 6, 1990, when Iraq authorized all foreign nationals remaining in Kuwait and Iraq to leave.³³

Factual Allegations Specific to Claimant

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. She claims that immediately after the invasion, she reported to her office at the U.S. Embassy. Claimant further states that she was not among those in the convoy of staff and dependents that traveled from Kuwait to Baghdad on August 23, 1990, and that she was on the 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.

³¹ See *CB State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Aug. 22, 1990, at 2, Lexis; Unclassified U.S. State Department cable from U.S. Embassy Baghdad, Oct. 16, 1990, at 2, U.S. Dep't of State Virtual Reading Room Documents Search, available at <http://foia.state.gov/Search/Search.aspx>, Case No. F-2007-03992, Doc. No. C17548128 (released Feb. 18, 2015).

³² See S.C. Res. 674 (Oct. 29, 1990).

³³ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 12. The U.S. was able to negotiate the release of some Kuwait Embassy personnel and dependents from the Kuwait Embassy prior to December 6, 1990. See *CB State Department Regular Briefing Briefer: Margaret Tutwiler*, FEDERAL NEWS SERVICE, Oct. 23, 1990, at 1-2, Lexis.

Supporting Evidence

Claimant has supported her claim with, among other things, her sworn Statement of Claim, a copy of her U.S. passport, which contains an Iraqi exit stamp dated December 13, 1990, a declaration that describes the circumstances of her alleged detention and ultimate departure from Kuwait, a certificate of recognition that she received from an organization for her service in Kuwait from February 1990 to December 1990, a form signed on April 30, 1991, nominating her for a State Department award for her service in Kuwait, a certificate identifying her as a recipient of a different State Department award for her service after Iraq invaded Kuwait on August 2, 1990, and an article published in an undated and unidentified publication that does the same.

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.³⁴ 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.³⁵ 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.³⁶ The legal standard we apply in this program applies equally to diplomatic personnel and their families.³⁷

³⁴ 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.

³⁵ See *id.* at 17-20.

³⁶ See *id.* at 17.

³⁷ The jurisprudence of international tribunals establishes that diplomatic personnel may bring claims for hostage-taking under international law standards applicable during an armed conflict. See *Eritrea-Ethiopia Claims Commission: Diplomatic Claim - Eritrea's Claim 20*, Partial Award, 26 R.I.A.A. 381, 399-400, ¶¶ 48-50, (Dec. 19, 2005); *Eritrea-Ethiopia Claims Commission: Diplomatic Claim - Ethiopia's Claim 8*, Partial Award, 26 R.I.A.A. 407, 415, 420, ¶¶ 11, 31 (Dec. 19, 2005). The United Nations Compensation Commission ("UNCC") also allowed the employees of foreign ministries to submit claims for injuries, which could include "hostage-taking or other illegal detention." See Decision taken by the Governing Council of the United Nations Compensation Commission during its third session, at the 18th meeting, held on 28 November 1991, as revised at the 24th meeting held on 16 March 1992, ¶¶ 7, 22, U.N. Doc. S/AC.26/1991/7/Rev.1, Mar. 17, 1992; Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Claims by Governments and International Organizations (Category "F" Claims), ¶ 9, 30 n.8, U.N. Doc. S/AC.26/1997/6, Dec. 18, 1997. Relevant documents in the Commission's files also support the conclusion that U.S. diplomatic personnel were eligible to submit claims for injuries arising out of "hostage-taking and other illegal detention" before the UNCC. See also 4 Int'l Comm. of the Red Cross, *Commentary: Geneva Convention Relative to the Protection of Civilian Persons in Time of War* 51 (1958) (observing that all diplomatic representatives on enemy territory during armed conflict enjoy at minimum the standards of protection codified in the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War).

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, Iraq was engaged in an armed conflict with Kuwait.³⁸ 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

³⁸ See *id.* at 16-17.

remaining foreign nationals in Kuwait and Iraq to leave until Claimant's departure on December 13, 1990.³⁹

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.⁴⁰ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.⁴¹ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.⁴² 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.⁴³ 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.⁴⁴ 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. The record indicates that 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, and that it subsequently reneged on those commitments on or around August 24, 1990, before

³⁹ *See id.* at 20-21.

⁴⁰ *See id.* at 21.

⁴¹ *See id.*

⁴² *See id.*

⁴³ 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.

⁴⁴ *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

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.⁴⁵ 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 embassies until announcing the release of all foreign nationals on December 6, 1990.⁴⁶ 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.⁴⁷

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.⁴⁸ Any attempt "[by the perpetrator] to restrict [the] movements" of a claimant establishes control,⁴⁹ 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.⁵⁰

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

⁴⁵ See *supra* at 7.

⁴⁶ See *supra* at 7-10.

⁴⁷ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

⁴⁸ 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).

⁴⁹ 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)).

⁵⁰ See *id.*

Kuwait in December 1990.⁵¹ 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.

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.⁵²

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 their 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.⁵³ Indeed, at

⁵¹ See Claim No. IRQ-II-180, Decision No. IRQ-II-140, at 10-11 (2017); Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22.

⁵² See *supra* at 5-10.

⁵³ See *supra* at 7.

the time, the U.S. government itself understood Iraq's actions to be hostage-taking.⁵⁴

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.

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.⁵⁵ 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.⁵⁶

⁵⁴ See *CB State Department Regular Briefing Briefer: Margaret Tutwiler*, FEDERAL NEWS SERVICE, Oct. 31, 1990, at 11.

⁵⁵ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

⁵⁶ 22 U.S.C. §§ 1626-1627 (2012).

AWARD

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

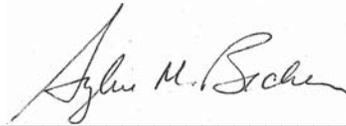
Dated at Washington, DC, March 22, 2018
and entered as the Proposed Decision
of the Commission.



Anuj C. Desai, Commissioner

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

May 1, 2018



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).