



we reverse the denial of the claim and conclude that, because Claimant has established that Iraq held him hostage for 37 days, he is entitled to an award of \$335,000.

#### BACKGROUND

Claimant brought this claim against Iraq alleging that Iraq held him hostage in Kuwait from August 13, 1990, until August 17, 1990, a total of five days. He alleged that on August 13, 1990, he and his brother were inside a shopping center in Kuwait when a group of Iraqi soldiers entered the building and opened fire on a group of armed Kuwaitis. Claimant stated that, in the crossfire, his brother was shot and died several hours later. He further stated that, after the shooting stopped, he and several others were detained by Iraqi soldiers and taken to a nearby army base. Claimant asserted that when he mentioned that he was an American citizen, one of the soldiers told him that if he was indeed American he would be killed. Claimant stated that he remained in custody for four more days, and was released on August 17, 1990. According to Claimant, the soldiers told him “if we catch you again we will kill you . . . .”

Claimant further asserted that, following his brother’s funeral, he decided to leave Kuwait and travel to Jordan. According to Claimant, rather than use his U.S. passport, he obtained paperwork from the Jordanian Embassy in Iraq that enabled him to cross from Iraq into Jordan. (Claimant alleged that he “was not able to present [his] American passport at the time because [he] was told by the Iraqi soldiers that if [he] did have an American passport they would kill [him].”) Claimant stated that he eventually arrived at the border and crossed into Jordan using the paperwork he had obtained at the embassy. Claimant did not specify the precise date that he exited Iraq, although he indicated that “[t]hese incidents took place between August and September of 1990 . . . .”

In support of his claim, Claimant submitted, *inter alia*, two unsworn statements of his own (one dated December 18, 2017, the other undated but received August 14, 2018); a brief, unsworn statement, dated November 9, 2017, from an individual, whose relationship to Claimant was unspecified, who stated that he “witnessed [Claimant] arrived to Jordan on September, 1990”; a brief, unsworn statement dated December 19, 2017, from another individual, whose relationship to Claimant was also unknown, stating that she “witnessed [Claimant] arrive to Jordan from Kuwait on September, 1990”; a translated copy of Claimant’s brother’s death certificate; a translated copy of Claimant’s then-valid Kuwaiti driver’s license; and a translated copy of his then-valid Kuwaiti Civil Identification Card.

Claimant also provided a copy of his U.S. passport from the time of the Iraqi invasion, which contained, *inter alia*, an Iraqi exit stamp dated January 2, 1990, Kuwaiti entry and exit stamps, both dated January 2, 1990, Iraqi entry and exit stamps, both dated February 1, 1990, a Bahraini entry stamp dated February 17, 1990, a Bahraini exit stamp dated February 19, 1990, and a Kuwaiti entry stamp dated February 19, 1990.

The Commission denied the claim in a Proposed Decision entered on April 12, 2019 (“Proposed Decision”) on the ground that Claimant had failed to prove the first element of the Commission’s hostage-taking standard—specifically, the Commission concluded that the “evidence in the record is not sufficient to establish that Claimant was detained by Iraqi authorities or even present in Kuwait or Iraq between the dates alleged.”<sup>2</sup> In this regard, the Commission noted that, although Claimant’s then-current U.S. passport contained a Kuwaiti entry stamp from February 19, 1990, there was no contemporaneous evidence documenting his presence in Kuwait or Iraq in August 1990, or indeed his alleged detention

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<sup>2</sup> See Claim No. IRQ-II-380, Decision No. IRQ-II-337 (2019), at 8-9 (Proposed Decision).

by Iraqi soldiers or his departure from Iraq.<sup>3</sup> We further emphasized that Claimant had failed to submit a copy of the Jordanian travel documentation that he allegedly used to cross into Jordan.<sup>4</sup>

By email dated June 26, 2019, Claimant objected to the Proposed Decision, but did not request an oral hearing.<sup>5</sup> That same day, June 26, 2019, Claimant sent another email to the Commission in which he stated that “you have paid me for the loss of my car and co[n]tract of work when [I] was in Kuwait” and that his “[entry] paper was sent to your office (original ) copy when [I] did apply the first time in year 2000[.]” The email was accompanied by a duplicate copy of his brother’s death certificate (in Arabic), as well as copies of his brother’s Jordanian passport and birth certificate. Shortly thereafter, Claimant also sent via email a translated copy of his brother’s death certificate.

By letter dated June 28, 2019, the Commission advised Claimant that, because he did not request an oral hearing, his objection would be adjudicated on the written record before the Commission, and requested that Claimant submit any further evidence or argument in support of the objection no later than July 29, 2019. Although Claimant did not submit additional materials by the deadline, he authorized the Commission to obtain independently a copy of documents he had provided to the U.S. State Department in March 1992 in support of a claim before the United Nations Compensation Commission

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<sup>3</sup> *Id.* at 9.

<sup>4</sup> *Id.* Likewise, we noted that Claimant’s Kuwaiti identification card and driver’s license, although valid during that time, were insufficient evidence of his physical presence in Kuwait. In addition, the Commission found unpersuasive the two unsworn statements of the individuals who purported to witness Claimant enter Jordan, noting that the declarants’ relationship to Claimant was unclear and that the statements had only been drafted in late 2017, nearly 30 years after the events in question. *Id.* at 9-10.

<sup>5</sup> Claimant noted that he had received the Proposed Decision on June 17, 2019. The cover letter attached to the Proposed Decision was dated June 13, 2019, indicating that the decision had been mailed to Claimant some two months after it was decided.

(“UNCC”) for, *inter alia*, hostage-taking and loss of employment.<sup>6</sup> The Commission received the UNCC materials on July 17, 2019.<sup>7</sup>

As noted above, Claimant did not request an oral hearing with his objection, as authorized under the Commission’s regulations. Therefore, the Commission will consider Claimant’s objection on the basis of the written record now before it.

#### DISCUSSION

To decide this claim, the Commission must determine whether Claimant’s evidence, which now includes the newly-obtained evidence, satisfies his burden to prove the factual allegations of his claim—namely, whether Claimant was seized or detained by Iraq during the dates alleged. Stated differently, the question on objection is whether the additional evidence sufficiently adds to the record such that Claimant has carried his burden of proving his claim. We conclude that it does.

#### *Legal Standard*

As noted in the Proposed Decision, 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>8</sup> The Commission has previously held that, to establish a hostage-taking claim, 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

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<sup>6</sup> The UNCC was created in 1991 as a subsidiary organ of the United Nations Security Council to process claims and pay compensation for losses and damage suffered as a direct result of Iraq’s 1990–1991 invasion and occupation of Kuwait. *See generally* <https://uncc.ch/home>.

<sup>7</sup> Additionally, by email dated August 6, 2019, Claimant submitted further information regarding his brother’s death certificate, birth certificate, and passport.

<sup>8</sup> *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16 (2016).

claimant's release.<sup>9</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>10</sup>

*Application of Standard to this Claim*

The Proposed Decision held that Claimant had satisfied the first element of the Category A standard, namely, that Iraq was engaged in an armed conflict. The only question remaining, therefore, is whether the new evidence is sufficient to prove the second prong of this standard—that Iraq took the Claimant hostage. To satisfy this requirement, Claimant must show that Iraq (a) seized or detained him and (b) threatened him 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 his release. As explained below, Claimant satisfies this standard for the 37-day period from August 2, 1990, to September 7, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of having been detained, the Commission must first determine whether Claimant has carried his burden to prove that he was in Kuwait and/or Iraq for the period between August 2, 1990, and the date Claimant asserts that he escaped to Jordan—September 7, 1990.

The new evidence in the record—consisting primarily of the records from the State Department regarding Claimant's UNCC claim—is sufficient to establish that he was in Kuwait and/or Iraq during this period. This documentary evidence indicates that Claimant had been employed in Kuwait for one year and four months prior to the August 2, 1990

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<sup>9</sup> See *id.* at 17-20.

<sup>10</sup> See *id.* at 17.

invasion of Kuwait. Attached to the UNCC claim form was a copy of Claimant's expired U.S. passport (previously submitted to the Commission), as well as a letter to the State Department containing additional information regarding his claim. In the letter, Claimant stated, among other things, that he had left his uncle's apartment in Kuwait on August 18, 1990, left Kuwait on September 7, 1990, and arrived at the Jordanian border on September 12, 1990. Also attached was a copy of a sales contract for a vehicle, dated May 7, 1990, apparently signed in Kuwait. Most significantly, the claim form included a copy of Claimant's Jordanian *laisser passer*, issued September 4, 1990, which contained an Iraqi exit stamped dated September 7, 1990, and a Jordanian entry stamp, also dated September 7, 1990. Based on this evidence, we conclude that Claimant has established that he was in Kuwait and/or Iraq from August 2, 1990, to September 7, 1990.

Claimant's time in Kuwait and Iraq following the Iraqi invasion can thus be divided into two periods: (i) between the Iraqi invasion on August 2, 1990 and the Iraqi government's formal closing of the borders on August 9, 1990; and (ii) from that August 9th formal closing of the borders until Claimant crossed from Iraq into Jordan on September 7, 1990.<sup>11</sup>

From August 2, 1990, until Iraq formally closed all borders under its control to foreign nationals on August 9, 1990, Iraq confined Claimant to Kuwait by threatening all U.S. nationals with immediate seizure and forcible detention.<sup>12</sup> Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.<sup>13</sup> Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their

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<sup>11</sup> *See id.* at 20-21.

<sup>12</sup> *See id.* at 21.

<sup>13</sup> *See id.*

will.<sup>14</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 he had made any attempt to leave the country.<sup>15</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>16</sup> Iraq thus detained Claimant from August 2, 1990, to August 9, 1990.

From August 9, 1990, until Claimant left Iraq on September 7, 1990, the Iraqi government confined Claimant to Kuwait and Iraq, preventing him leaving these countries by the threat of force. Starting on August 9, 1990, the Iraqi government formally closed all borders under its control, forcibly prohibiting U.S. nationals from leaving.<sup>17</sup> As the Commission has previously held, as of that date, Iraq prohibited Claimant from leaving the country, effectively detaining him within the borders of Kuwait and Iraq through the date of his departure.<sup>18</sup>

Although Claimant has only asserted a claim of hostage-taking for the four days he was detained by Iraqi security officials in Kuwait, his claim does not depend on proof that he was imprisoned and interrogated by the Iraqi government as described in his statements.<sup>19</sup> As noted above, starting on August 2, 1990, Iraq effectively detained all U.S. nationals within Kuwait and/or Iraq by threatening them with immediate seizure and forcible detention; it then formally closed Kuwait’s borders on August 9, 1990, forcibly

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

<sup>15</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>16</sup> *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

<sup>17</sup> *See id.* at 7, 21-22.

<sup>18</sup> *See id.* at 22.

<sup>19</sup> Proposed Decision, *supra* note 2, at 9 n.17.

prohibiting U.S. nationals from leaving.<sup>20</sup> Because Claimant was not among the various categories of foreign nationals who were permitted to leave Kuwait and Iraq on August 28, 1990,<sup>21</sup> he was never legally authorized to leave for the duration of his stay in Kuwait and Iraq. Consequently, the only way Claimant was able to leave Iraq was by using the Jordanian *laissez passer* issued to him on September 4, 1990.<sup>22</sup> Indeed, he claims in one of his statements that he was unable to use his U.S. passport because he “was told by the Iraqi soldiers that if [he] did have an American passport they would kill [him].” For purposes of the Commission’s standard, therefore, we conclude that Claimant was under Iraq’s control and thus detained from August 9, 1990 to September 7, 1990.

In sum, Iraq detained Claimant from August 2, 1990, until September 7, 1990.

(b) Threat: In its first decision awarding compensation for hostage-taking under the 2014 Referral, the Commission determined that the Iraqi government threatened U.S. nationals in Kuwait and Iraq numerous times with continued detention.<sup>23</sup> Both Iraqi President Saddam Hussein and the Speaker of Iraq’s National Assembly Saadi Mahdi made clear that American nationals (as well as those from numerous other countries) would not be permitted to leave.<sup>24</sup> Claimant has thus established that Iraq threatened to continue to detain him.

(c) Third party coercion: The Commission has previously held that Iraq detained all U.S. nationals in Kuwait or Iraq at the time and threatened them with continued

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<sup>20</sup> Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21-22.

<sup>21</sup> *See id.* at 11-12, 22 (discussing Iraq’s August 28, 1990 release of U.S. nationals who were women or minors).

<sup>22</sup> In that sense, this claim is similar to other claims in this program in which U.S. nationals in Kuwait managed to escape into Saudi Arabia, despite not being authorized to do so, by evading Iraqi security forces who otherwise would have prevented them from departing Kuwait or Iraq. *See, e.g.*, Claim No. IRQ-II-170, Decision No. IRQ-II-159 (2017); Claim No. IRQ-II-260, Decision No. IRQ-II-213 (2018).

<sup>23</sup> *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

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

detention in order to compel the United States government to act in certain ways as an explicit and/or implicit condition for their release.<sup>25</sup> Iraq itself stated that it sought three things from the United States government before it would release the detained U.S. nationals; it wanted the United States (i) not to attack Iraq, (ii) to withdraw its troops from Saudi Arabia; and/or (iii) to end the economic embargo imposed on Iraq.<sup>26</sup> Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.<sup>27</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 37 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.<sup>28</sup> Therefore, for the 37 days Iraq held Claimant hostage, he is entitled to an award of \$335,000, which is \$150,000 plus (37 x \$5,000). This amount constitutes the entirety of the compensation to which Claimant is entitled under the Claims Settlement Agreement.

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<sup>25</sup> *See id.*

<sup>26</sup> *See id.* at 23-24.

<sup>27</sup> *See* George H. W. Bush, "These Innocent People . . . Are, In Fact, Hostages" in U.S. Dep't of State, *American Foreign Policy Current Documents 1990* 484 (Sherrill Brown Wells ed. 1991); *see also* 2014 Referral at ¶ 3; *cf.* United Nations S.C. Res. 674 (Oct. 29, 1990) (noting "actions by . . . Iraq authorities and occupying forces to take third-State nationals hostage" and demanding that Iraq "cease and desist" this practice).

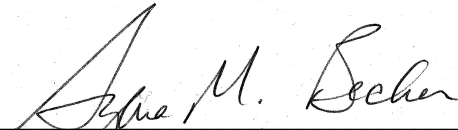
<sup>28</sup> *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

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>29</sup>

AWARD

Claimant is entitled to an award in the amount of \$335,000.

Dated at Washington, DC, March 30, 2020  
and entered as the Final Decision  
of the Commission.

  
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Sylvia M. Becker, Commissioner

  
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Patrick Hovakimian, Commissioner

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<sup>29</sup> 22 U.S.C. §§ 1626-1627 (2012).