

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 November 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.

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 a Consular Report of Birth Abroad issued by the U.S. Department of State, which shows that she was a U.S. national at the time of the alleged hostage-taking (August 1990). She has also provided a copy of her current U.S. passport, which expires in 2023 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

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.

Settlement Agreement.¹⁰ 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 compensation from the U.S. Department of State under the United States-Iraq Settlement Agreement dated September 2, 2010.” 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 Iraq’s treatment of women and minors of U.S. nationality after the Iraqi government announced on August 28, 1990, that women and minors of foreign nationality could leave Iraq and Kuwait.¹¹ Accordingly, the factual backdrop to Claimant’s allegations—including an overview of State Department efforts to evacuate U.S. women and minors from Iraq and Kuwait following Iraq’s August 28 announcement—is provided below.

As the Commission has previously recognized, shortly after Iraq invaded Kuwait

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

¹¹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 11, 22.

on August 2, 1990, Iraqi forces began seizing and detaining U.S. nationals in Kuwait.¹² Within days, the Iraqi military had sealed the border crossings and had set up check points on the roads leading out of Kuwait, making it nearly impossible for U.S. nationals (and those of several other countries) to leave.¹³ Throughout the crisis, the Iraqi government granted some groups of individuals permission to leave Iraq and Kuwait. In particular, Iraqi President Saddam Hussein made an announcement on August 28, 1990, authorizing women and minors of foreign nationality to leave Iraq and Kuwait.¹⁴

On August 29, 1990, Margaret Tutwiler, then Assistant Secretary of State for Public Affairs, stated that due to Iraq's change in policy regarding women and minors of foreign nationality, the State Department had started to make plans to evacuate several hundred women and children of U.S. nationality from Iraq and Kuwait.¹⁵ In early September, the U.S. Embassy in Kuwait issued advisories informing U.S. nationals in Kuwait of Iraq's new policy on the departure of women and children and advising them to contact the Embassy for details about the evacuation.¹⁶ From September 1, 1990, to September 22, 1990, State Department officials in Iraq and Kuwait assisted hundreds women and children

¹² See *id.* at 6.

¹³ See *id.* at 7.

¹⁴ See *id.* at 11.

¹⁵ See *CB State Department Regular Briefing Briefer: Margaret Tutwiler*, FEDERAL NEWS SERVICE, Aug. 29, 1990, at 2-3, Lexis.

¹⁶ See *CB Message from U.S. State Department to American Citizens in Kuwait as Broadcast Via Voice of America*, FEDERAL NEWS SERVICE, Sep. 6, 1990, at 1, Lexis; *CB State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Sep. 11, 1990, at 1, Lexis; *CB State Department Regular Briefing*, FEDERAL NEWS SERVICE, Sep. 12, 1990, at 1-2, Lexis. These advisories, which were broadcast over radio channels operated by the British Broadcasting Corporation and Voice of America, stated that adult males "[remained] subject to detention and arrest." See *CB State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Sep. 11, 1990, at 1, Lexis; *CB State Department Regular Briefing*, FEDERAL NEWS SERVICE, Sep. 12, 1990, at 1-2, Lexis. In addition to these radio communications, the U.S. Embassy maintained contact with U.S. nationals in Iraq and Kuwait via telephone and the warden system. See *CB State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Aug. 20, 1990, at 1, Lexis; *CB State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Aug. 22, 1990, at 1, Lexis.

to depart on evacuation flights, many of which were chartered by the U.S. government.¹⁷ On September 19, 1990, and again on September 20, 1990, Tutwiler announced that a flight departing on September 22, 1990, would “accommodate all Americans and the foreign-born members of their families who [had] been able to get permission to leave . . . and who [wished] to depart” from Iraq and Kuwait.¹⁸ She also stated that some U.S. nationals in Kuwait had decided to stay even though the State Department had made clear that it had no plans to schedule additional evacuation flights at that time.¹⁹

On September 24, 1990, Tutwiler reported that over 1,900 U.S. nationals and their family members had been evacuated from Iraq and Kuwait, leaving 600 to 700 U.S. nationals (including men, women, and children) in Kuwait.²⁰ While she refused to disclose the exact number of U.S. nationals who remained in Kuwait voluntarily, she acknowledged that the State Department would assist with travel arrangements for U.S. citizens in this category if they decided later to leave Iraq and/or Kuwait.²¹

On October 5, 1990, the State Department announced that it had scheduled an evacuation flight on October 10, 1990, for approximately 300 U.S. citizens, including many women and children who initially chose to stay in Kuwait during the mass evacuation in September 1990 but subsequently decided to leave.²² On November 15, 1990, the State

¹⁷ See Memorandum from Elizabeth M. Tamposi to Sec’y of State on American Citizens Evacuated from Iraq/Kuwait (Dec. 18, 1990) (on file with the Commission) [hereinafter “Tamposi Memorandum”]; *CB State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Sep. 11, 1990, at 1, Lexis; *CB State Department Regular Briefing*, FEDERAL NEWS SERVICE, Sep. 12, 1990, at 1, Lexis.

¹⁸ *CB (From the State Department)*, FEDERAL NEWS SERVICE, Sep. 19, 1990, at 1, Lexis; see *CB (CB State Department Regular Briefing Briefer: Margaret Tutwiler)*, FEDERAL NEWS SERVICE, Sep. 20, 1990, at 1, Lexis.

¹⁹ *CB (From the State Department)*, FEDERAL NEWS SERVICE, Sep. 19, 1990, at 1, 5, Lexis; see *CB State Department Regular Briefing Briefer: Margaret Tutwiler*, FEDERAL NEWS SERVICE, Sep. 20, 1990, at 1, 3-4, Lexis.

²⁰ See *CB State Department Regular Briefing Briefer: Margaret Tutwiler*, FEDERAL NEWS SERVICE, Sep. 24, 1990, at 1, Lexis.

²¹ See *id.*

²² See *State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Oct. 5, 1990, at 1, Lexis.

Department announced that it would evacuate another group of U.S. nationals in Kuwait and Iraq, comprised principally of “women and children who [had] been qualified to depart for some time, but [had] only recently decided to leave,” on a flight scheduled for November 18, 1990.²³

After the Iraqi government authorized the departure of all foreign nationals in Iraq and Kuwait on December 6, 1990,²⁴ the U.S. Embassies in Kuwait and Baghdad contacted the U.S. nationals remaining in both countries to inform them that the State Department had chartered evacuation flights for all U.S. nationals who wished to depart.²⁵ On December 11, 1990, the State Department disclosed that while the “overwhelming majority of those American citizens [had] chosen to leave,” 310 U.S. citizens (60 women, 215 children, and 35 adult males) had decided to stay in Kuwait and over 200 had decided to stay in Iraq.²⁶ Most of the U.S. citizens who chose to remain were dependents of “Iraqi, Kuwaiti, or other Arab heads of household who [had] decided not to leave” even though State Department officials “repeatedly urged [all U.S. nationals remaining in Iraq and Kuwait] to take advantage of opportunities to depart.”²⁷

On December 13, 1990, the last U.S. government chartered evacuation flight left Kuwait (via Baghdad).²⁸ That same day, a State Department official stated that all remaining U.S. citizens in Kuwait and Iraq who wished to depart had done so and “that every possible effort to contact and encourage Americans in Kuwait to depart [had] been

²³ See *State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Nov. 15, 1990, at 2, Lexis.

²⁴ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 12.

²⁵ See *State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Dec. 10, 1990, at 1, Lexis.

²⁶ See *State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Dec. 11, 1990, at 1-2, Lexis.

²⁷ See *id.* at 1.

²⁸ See *State Department Regular Briefing Briefer: Margaret Tutwiler*, FEDERAL NEWS SERVICE, Dec. 13, 1990, at 15, Lexis; Tamposi Memorandum, at 4.

done.”²⁹ The State Department also advised U.S. citizens who sought to leave Kuwait after December 13, 1990, that the U.S. Embassies in Baghdad and Amman could assist with travel arrangements for daily commercial flights that Iraq had established between Kuwait City and Baghdad and between Baghdad and Amman.³⁰

Factual Allegations

Claimant states that Iraq held her hostage from August 2, 1990, until February 26, 1991, a total of 209 days. On August 2, 1990, Claimant was six years old and visiting her paternal grandparents in Sabahiya, Kuwait. Her parents were divorced, and Claimant had recently moved to Kuwait to live with her mother, stepfather, and half siblings after spending several months living in the United States with her father. Claimant states that she was not able to contact her parents after the attack because telephone lines to Sabahiya “were cut.” She also alleges that she was unable to leave her grandparents’ residence because traveling was dangerous.

Claimant states that the “Iraqi military presence never stopped” during her extended stay at her grandparents’ residence. At one point, Iraqi police searched the residence but did not find any evidence of her U.S. citizenship because her grandfather had destroyed her U.S. passport. Iraqi forces also apprehended her uncle, who was a member of the Kuwait Army, at a mosque and detained him in a prisoner of war camp in Iraq. Another uncle was injured by an explosive device.

Claimant maintains that she was not aware of the August 28, 1990 announcement authorizing women and children to leave Kuwait. She also argues that she could not have left Kuwait at that time because there was “nowhere safe for [her grandparents] to take

²⁹ See *State Department Regular Briefing Briefer: Margaret Tutwiler*, FEDERAL NEWS SERVICE, Dec. 13, 1990, at 1, Lexis.

³⁰ See *id.*

[her] or way for [her] to fly alone even if they could get [her] to a plane in order to get back to [her] father[.]” Claimant states that she remained at her grandparents’ residence in Sabahiya until February 26, 1991, which is the date she asserts that a U.S.-led coalition force liberated Kuwait. Shortly after Kuwait was liberated, Claimant moved to her aunt’s residence and was eventually reunited with her parents after they returned to Kuwait several months later.

Supporting Evidence

Claimant has supported her claim with two declarations of her own; a declaration from her mother; declarations from two individuals who were neighbors of Claimant’s paternal grandfather at the time of the invasion and who assert that Claimant remained in Kuwait during the entire period it was occupied by Iraq; a declaration from a friend of Claimant’s parents who states that Claimant’s father “was unable to return to Kuwait to [retrieve] her”; and three declarations from family friends who claim to have lived in Kuwait in 1990. The first declarant asserts that she was in Jordan at the time of the invasion but nevertheless claims that Claimant was in Kuwait for the entire period of its occupation by Iraq. The other two declarants state that Claimant visited her grandparents frequently before the invasion and at times stayed with them for extended periods. They also allege that Claimant remained in Kuwait for the entire period of the occupation.

Claimant has also submitted two articles that provide further details about her alleged detention in Kuwait. The first article was published in September 1990 after her mother left Kuwait and returned to the United States on a U.S. government-chartered evacuation flight with her two half siblings. The article, which quotes Claimant’s mother extensively, reports that her oldest child (Claimant) was in the Middle East with her Kuwaiti grandparents and suggests “they could have fled to Saudi Arabia . . . or gone

anywhere.” The second article was published in August 1991. It states that Claimant “[had] to be left behind” in Kuwait when her mother evacuated and that her mother did not discover that she had “survived unharmed” until the end of March in 1991.

The Commission also 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 women and minors of foreign nationality after it authorized them to leave Iraq and Kuwait on August 28, 1990.

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.³¹ 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 claimant’s release.³² 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.³³

³¹ 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.

³² See *id.* at 17-20.

³³ See *id.* at 17.

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 209 days, until February 26, 1991, which is the date that she alleges a U.S.-led coalition force liberated 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.³⁴ 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. Although she alleges that Iraq held her hostage from August 2, 1990, until February 26, 1991, a total of 209 days, Claimant satisfies this standard only for the 27-day period from August 2, 1990, to August 28, 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 into three periods: (i) between the Iraqi invasion on August 2, 1990 and the Iraqi government's formal closing of the borders on August 9, 1990; (ii) from that August 9th formal closing of the borders until the August 28, 1990 announcement that women and minors could leave Iraq and Kuwait; and (iii) from that August 28th announcement until Claimant's alleged release on February 26, 1991.³⁵

³⁴ See *id.* at 16-17.

³⁵ See *id.* at 20-21.

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant to her grandparents' residence in Kuwait by threatening all U.S. nationals with immediate seizure and forcible detention.³⁶ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.³⁷ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.³⁸ Claimant 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 her residence.³⁹ 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.⁴⁰ Iraq thus detained Claimant from August 2, 1990, to August 9, 1990.

From August 9, 1990, until August 28, 1990, the Iraqi government confined Claimant to Kuwait, preventing her from leaving the country by the threat of force. Starting on August 9, 1990, the Iraqi government formally closed Kuwait's borders, forcibly prohibiting U.S. nationals from leaving.⁴¹ As the Commission has previously held, as of that date, Iraq prohibited Claimant from leaving the country, effectively detaining her within the borders of Kuwait and Iraq.⁴² For Claimant, this formal policy of prohibiting

³⁶ *See id.* at 21.

³⁷ *See id.*

³⁸ *See id.*

³⁹ 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.

⁴⁰ *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

⁴¹ *See id.* at 21-22.

⁴² *See id.* at 22.

U.S. nationals from leaving Iraq and Kuwait lasted until August 28, 1990, when the Iraqi government announced that all female and minor U.S. nationals could leave.⁴³

Although Claimant may have been legally permitted to leave Kuwait on August 28, 1990, her detention did not necessarily 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.⁴⁴ In this regard, any attempt by Iraq "to restrict [the] movements" of a claimant establishes control,⁴⁵ whereas a claimant who has a reasonable opportunity to leave the site of his or her captivity is deemed no longer to be under [Iraq's] control.⁴⁶

Here, while Claimant advances several reasons why she remained under Iraq's control after August 28, 1990, only one of these reasons concerns acts allegedly committed by the Iraqi government: Claimant argues that due to several "actions and pronouncements" of the Iraqi government during its occupation of Kuwait it was "not safe" for her to attempt to leave her grandparents' residence prior to February 26, 1991—*i.e.*, the date Kuwait was officially liberated from Iraq.⁴⁷ Claimant's primary contention in this regard is that Iraq continued its policy of seizing and detaining women and children of U.S. nationality even after the August 28, 1990 announcement and, thus, she reasonably feared that Iraq would have seized or detained her had she attempted to leave after that date.

⁴³ *See id.*

⁴⁴ *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).

⁴⁵ *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)).

⁴⁶ *See id.*

⁴⁷ *See* Memorandum In Support of Claim IRQ-II-143 in Response to Commission Request for Information, dated September 19, 2016 ("Claimant Mem."), at 15, 18. Claimant also argues that: 1) she was not aware of the August 28, 1990 announcement; 2) the State Department did not provide her with information about the announcement or evacuation flights chartered by the U.S. government; 3) evacuation via air was impractical because no one was available to accompany her on an evacuation flight; and 4) the only escape route from Kuwait was through the desert. None of these arguments, however, involve an attempt *by Iraq* to restrict Claimant's movements after August 28, 1990. We thus make no findings on these issues.

Claimant, through counsel, has submitted a memorandum contending that Iraq continued its policy of seizing and detaining women and children of U.S. nationality after the August 28, 1990 announcement, that the announcement was a “hollow” and “public relations-driven” promise that Iraq did not apply in practice, and that while Iraq allowed a “few hundred Americans” to leave Iraq “in mid-September,” it did so only “because it was forced to by Rev. Jesse Jackson and the publicity he brought to the dire situation.”⁴⁸ Claimant cites several sources showing that Iraq continued to detain foreign nationals after August 28, 1990.⁴⁹ None of these sources, however, address whether Iraq had a policy of seizing and detaining *women or minors* of U.S. nationality after the August 28, 1990 announcement. They are thus not determinative here.

Claimant also cites a December 7, 1990 *Washington Post* chronology of the Gulf War that states that on or around August 30, 1990, “[d]iplomats in Baghdad [said] Iraq will allow planes to pick up Western women and children only if the aircraft fly food and medicine into Iraq.” While it is clear that Iraq imposed restrictions on air travel that prevented some women and minors from leaving Kuwait and Iraq immediately after

⁴⁸ See Claimant Mem. at 16. See also *id.* at 18 (Iraq’s “actions and statements” during the occupation “strongly tend to undercut and/or belie its alleged ‘open door’ for women and children to depart.”).

⁴⁹ Claimant’s counsel has cited a U.N. Security Council resolution issued on October 29, 1990, in which the Council condemned “the actions by the Iraqi authorities and occupying forces to take third-State nationals hostage”; a 2003 CIA report on Iraq’s use of human shields during the First Gulf War that stated that “[o]n [December 6, 1990], . . . [Iraq] announced that all foreigners could depart unconditionally” and that “almost all did within a matter of days”; a Los Angeles Times news report that discusses Iraq’s practice of using captured prisoners of war as human shields after a U.S.-led coalition force joined with Kuwaiti forces in January 1991 to expel Iraq from Kuwait; proposed decisions issued by the Commission in the First Iraq Claims Program concerning claimants who were seized and detained for several weeks in 1991; and a threat made by Iraqi authorities on September 27, 1990, “to hang diplomats sheltering Westerners in their embassy compounds” that was included in a chronology of the occupation published in a *Washington Post* news report. Claimant has also cited two other events listed in that chronology: Iraq’s offer in November 1990 to release all hostages in exchange for obtaining concessions on the use of force by a coalition of countries that opposed its occupation of Kuwait and Iraq’s release of Soviet nationals on December 4, 1990. Claimant Mem. at 16-17; 25-27.

August 28, 1990,⁵⁰ Claimant cites no evidence to suggest that Iraq, in practice, enforced the conditions noted in the August 30 account. To the contrary, Claimant's contention in this regard directly contradicts contemporaneous statements and communications from State Department officials, none of which indicate that women or minors of U.S. nationality were prevented from leaving Iraq and/or Kuwait because Iraq imposed restrictions on air travel related to the import of food and medicine.

As noted above, statements made by senior State Department officials in September 1990 establish that, as a result of the August 28, 1990 announcement, the vast majority of U.S. nationals in Kuwait—including several hundred women and children—left on evacuation flights between September 1, 1990, and September 22, 1990. These statements indicate that women and children of U.S. nationality who remained in Kuwait after September 22, 1990, chose to stay in the country.

State Department communications also show that Iraq continued to allow women and children to leave on evacuation flights in October 1990, November 1990, and December 1990. According to Tutwiler and other State Department officials, the 285 women and children of U.S. nationality who, like Claimant, remained in Kuwait after the last U.S. government chartered evacuation flight departed on December 13, 1990, had decided to stay despite having had many opportunities to leave, and in most cases, were dependents of Kuwaiti, Iraqi, or Arab nationals who had also decided not to leave.⁵¹

⁵⁰ For example, Iraq required U.S. nationals seeking to leave after the August 28 announcement to obtain exit visas, and otherwise required States seeking to repatriate their nationals to charter evacuation flights through its national carrier, Iraqi Airways. *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 12, 22.

⁵¹ We also reject Claimant's contention that she was detained by virtue of the continued "Iraqi military presence" in Kuwait after August 28, 1990. Under the international law applicable to armed conflict, neither the presence of an occupying force nor the persistence of an armed conflict between two countries is a sufficient ground for establishing the injury of detention.

We conclude that Claimant has failed to establish that Iraq acted to restrict her movements after August 28, 1990. She has therefore failed to establish that Iraq detained her after August 28, 1990.

In sum, Iraq thus detained Claimant from August 2, 1990, to August 28, 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.⁵² 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 have been permitted to leave Kuwait and/or Iraq at that time.⁵³ Claimant has thus established that Iraq threatened to continue to detain her.

(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 detention in order to compel the United States government to act in certain ways as an explicit and/or implicit condition for their release.⁵⁴ 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.⁵⁵ Indeed, the U.S. government itself understood Iraq's actions to be hostage-taking.⁵⁶

⁵² See *id.* at 23.

⁵³ See *id.*

⁵⁴ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

⁵⁵ See *id.* at 23-24.

⁵⁶ 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).

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 27 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.⁵⁷ Therefore, for the 27 days Iraq held Claimant hostage, she is entitled to an award of \$285,000, which is \$150,000 plus (27 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.⁵⁸

⁵⁷ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

⁵⁸ 22 U.S.C. §§ 1626-1627 (2012).

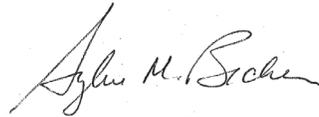
AWARD

Claimant is entitled to an award in the amount of \$285,000.

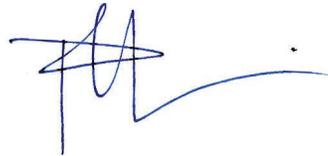
Dated at Washington, DC, November 29, 2018
and entered as the Proposed Decision
of the Commission.

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

January 31 2019



Sylvia M. Becker, Commissioner



Patrick Hovakimian, 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) (2017).