

UN Compensation Commission, Recommendations

[Source: UN Doc. S/AC.26/1994/1 (May 26, 1994); footnotes omitted. Available on <http://www.uncc.ch/sites/default/files/attachments/documents/r1994-01.pdf>]

RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING INDIVIDUAL CLAIMS FOR SERIOUS PERSONAL INJURY OR DEATH (CATEGORY “B” CLAIMS)

[...]

II. LEGAL ISSUES

[...]

A. Jurisdiction

The claims before this Panel are claims for fixed amounts by individuals who have suffered serious personal injury or whose spouse, child or parent died, as a direct result of Iraq's unlawful invasion and occupation of Kuwait.

[...]

2. *Ratione personae* (eligible claimants)

[...]

b) *Claims submitted by/for members of the Kuwaiti Armed Forces or the Allied Coalition Armed Forces*

Decision 11 of the Governing Council states that

“ ...members of the Allied Coalition Armed Forces are not eligible for compensation for loss or injury arising as a consequence of their involvement in Coalition military operations against Iraq, except if the following three conditions are met:

- a. the compensation is awarded in accordance with the general criteria already adopted; and

- b. they were prisoners of war as a consequence of their involvement in Coalition military operations against Iraq in response to its unlawful invasion and occupation of Kuwait; and
- c. the loss or injury resulted from mistreatment in violation of international humanitarian law (including the Geneva Conventions of 1949)".

The organization of the Allied Coalition Armed Forces began a few days after the occupation of Kuwait by Iraq, and continued with the placement of armed forces and air and naval military units from 28 countries, including Kuwait, in the Persian Gulf region.

Among the claims submitted for serious personal injury or death suffered by members of the Kuwaiti Armed Forces, several were put forward for events that occurred during the day of the invasion (August 2, 1990) or during the days immediately following. The Panel concludes that the exclusion from compensation stated in Decision 11 is not applicable to these claimants because the Allied Coalition Armed Forces did not exist at that time. In the Panel's view, these claims are compensable since the serious personal injury or death was the direct consequence of Iraq's invasion and occupation of Kuwait.

Claims were also submitted with respect to serious personal injury or death suffered by Kuwaiti military personnel, including members of the Kuwaiti resistance, at the end of the relevant time period. The Panel considers that the exclusion from compensation stated in Decision 11 of the Governing Council is applicable only to members of the Kuwaiti Armed Forces that were integrated as units under the command of the Allied Coalition Armed Forces. For this reason, Decision 11 is not applicable to Kuwaiti members of the resistance or other military personnel who remained within Kuwaiti territory and suffered personal injury or death due to the Iraqi invasion and occupation of Kuwait. Therefore, the Panel recommends the payment of compensation also in these cases. [...]

d) Missing persons

Some death claims were submitted by families for relatives who seemingly disappeared during the invasion and occupation of Kuwait by Iraq. These families made inquiries or tracing requests to the International Committee of the Red Cross, but were unable to locate their relatives. The Panel recommends that compensation be awarded where from the documentation submitted it could be presumed that the "missing" person is deceased.

In instances where it could not conclude that the "missing" person is deceased, the Panel holds that compensation cannot be recommended at this stage and that a new claim can be submitted if the family ever receives confirmation of the death. [...]

B. Attribution of Losses and Damages to Iraq [...]

5. Injury or death related to authorities other than Iraqi

The Panel had before it a number of claims submitted by persons who were allegedly arrested in Kuwait by Kuwaitis during the days immediately preceding March 2, 1991 and were then interned in Saudi Arabia in camps for Iraqi prisoners of war. Some of these claimants were allegedly tortured by those who were in control of the camps. All such claimants had Jordanian passports.

A number of other claims were from Jordanian nationals who had been living in Kuwait before Iraq's invasion and whose personal statements indicated that the injuries or death suffered were the result of actions by Kuwaiti nationals or authorities, in particular mistreatment during detention. The issue was raised in article 16 reports in the following terms:

"A substantial number of claimants in category 'B' have put forward claims in which they assert that they were kept in detention or mistreated in Kuwait after March 2, 1991".

The Panel considered comments made on this issue by several Governments, including the Government of Iraq.

All these claims raise the issue as to whether the losses and damages can be considered as a "direct" result of Iraq's invasion and occupation of Kuwait, or in other words, are attributable to Iraq.

The Panel determines that in such cases there is no "direct" link to the invasion and occupation of Kuwait because these acts were accomplished by authorities or persons and in places out of the control of the Iraqi authorities.

Moreover, in the view of the Panel, these acts are not covered by para. 18 of Decision 1 which states that claimants may be compensated for serious personal injuries suffered as a result "of military operations or threat of military action by either side during the period August 2, 1990 to March 2, 1991," since the acts that caused the injuries cannot be considered "military operations."

Therefore, while the Panel recognizes that the claimants in this group presented well-substantiated claims, and that under general principles of law these claimants would be entitled to claim for compensation for the injuries or death suffered, the Panel cannot recommend the payment of compensation from the Compensation Fund for them. [...]

Discussion

1. According to IHL, who must provide compensation and when? Who is entitled to receive compensation? (Hague Convention IV, Art. 3; GC I-IV, Arts 51/52/131/148 respectively; P I, Art. 91)
2.
 - a. According to the UN Compensation Commission, who must provide compensation and when? Who is entitled to receive compensation? Is Decision 11 consistent with IHL?
 - b. Should compensation be paid to families for the death of a relative but not for a missing relative?

Have not families in both situations suffered a loss? What if no proof of the death of a missing relative ever emerges? Should a family in such a situation thus never receive compensation? (P I, Arts 32 and 33)

3.

- a. According to IHL, is compensation due only for those IHL violations committed by the aggressor State? Are not all States party to a conflict (and to the Conventions) bound to respect IHL and liable to pay compensation for violations thereof?
- b. Do you agree with the Commission that no “direct” link exists between the injuries of Jordanians and the invasion and occupation of Kuwait? Would e.g. the camps for Iraqi prisoners, where the Jordanians were interned and suffered injuries, have existed if Iraq had not invaded Kuwait?
- c. Is para. 18 of Decision 1, cited by the Commission, consistent with IHL? What constitutes a “military operation”? Do IHL provisions only cover “military operations”?
- d. The Commission recognized the Jordanians’ claims as well-substantiated, so does not IHL entitle them to compensation? If so, from whom?

4. Does compensation appropriately redress the wrongful taking of life? How does one assess a just and appropriate amount?