

International Courts and Tribunals

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This article reviews and summarizes significant developments in 2000 concerning international courts and tribunals, particularly events relating to the International Court of Justice, the United Nations Compensation Commission, the Iran-U.S. Claims Tribunal, the Claims Resolution Tribunal for Dormant Accounts in Switzerland, and the International Commission on Holocaust Era Insurance Claims. Significant developments relating to the creation of the permanent International Criminal Court, the International Criminal Tribunals for the former Yugoslavia and Rwanda, efforts to establish additional *ad hoc* international criminal tribunals, the International Tribunal for the Law of the Sea, and the World Trade Organization dispute settlement system are detailed in other articles in this issue.

I. International Court of Justice

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It is endowed with a dual task, namely, to deliver judgments in contentious cases submitted to it by sovereign states and to issue non-binding advisory opinions at the request of certain U.N. organs and agencies. The Court began and ended the year 2000 (the 54th since its inaugural sitting on April 18, 1946) with a record number of twenty-four contentious cases. One new case was introduced and no cases were discontinued in 2000. The Court issued one judgment.¹ Hearings were held in five cases at the Peace Palace in The

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1. See *Aerial Incident of 10 August 1999 (Pakistan v. India)*, June 21, 2000 (rejecting jurisdiction). The text of this decision is available on the ICJ website: <http://www.icj-cij.org>.

Hague, The Netherlands.² The full Court issued four Orders, and the Court's president and vice-president each issued eight. No advisory or chamber proceedings were brought or pending in 2000. This section reports briefly on the main judicial activity and most important decisions rendered in 2000.

A. CONTENTIOUS CASES DURING 2000

1. *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*³

One new contentious case was docketed in 2000: the Democratic Republic of the Congo (DRC) filed an Application in the ICJ Registry on October 17, 2000. On that same date, the DRC filed a request for the indication of provisional measures, a form of interim relief. The request asked for an Order against Belgium effecting the immediate discharge of an arrest warrant that a Belgian investigating judge issued against the DRC's acting Minister for Foreign Affairs, Mr. Yerodia Abdulaye Ndombasi (Ndombasi), on April 11, 2000. The arrest warrant sought Ndombasi's provisional detention pending a request for extradition to Belgium for alleged "crimes of international law committed by action or omission against persons or property protected by the Geneva Conventions of 12 August 1949 and the Additional Protocols I and II to those Conventions"⁴ and crimes against humanity by inciting the Congolese population to kill Tutsis at the beginning of the rebellion against Congolese President Laurent-Desire Kabila in August 1998.

The Court held public sittings (hearings) on the DRC's request for provisional measures on November 20–21, 2000. By its Order of December 8, 2000,⁵ the Court, by fifteen votes to two, found that the circumstances of the DRC's request were not such as to require the exercise of the Court's power to indicate provisional measures. At the same time, the Court unanimously rejected Belgium's request to remove the case from the General List.

Given that a Cabinet reshuffle that occurred on the first day of the hearings had re-assigned Ndombasi to the Congolese Ministry of Education, a post involving less frequent foreign travel, the Court concluded that the DRC had not established that irreparable prejudice might be caused in the near future to its rights or that the degree of urgency was such that those rights needed to be protected by the indication of provisional measures. Urgency and the existence of irreparable prejudice to rights that are the subject of the dispute are two essential conditions that need to be fulfilled before the Court can indicate provisional measures. However, notwithstanding its finding that these conditions were not fulfilled in the circumstances of the case, the Court rejected Belgium's request to dismiss the case *in limine* and remove it from the General List. Because the arrest warrant against Ndombasi remained in place and in light of the DRC's insistence on its original claims during the hearings (including the alleged continued enjoyment of immunities by Ndombasi), the Court concluded that the Cabinet reshuffle had not deprived the DRC's Application of its object.

2. See *Pakistan v. India*, *supra* note 1 (April 3–6, 2000); *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)* (May 29–June 29, 2000); *LaGrand Case (Germany v. U.S.)* (Nov. 13–17, 2000); *Armed Activities on the Territory of the Congo (Dem. Rep. of the Congo v. Uganda)* (June 26 and 28, 2000); and *Arrest Warrant of 11 April 2000 (Dem. Rep. of the Congo v. Belgium)* (Nov. 20–21, 2000), available at <http://www.icj-cij.org>.

3. *Arrest Warrant of 11 April 2000 (Dem. Rep. of the Congo v. Belgium)* (2000), available at <http://www.icj-cij.org>.

4. *Id.*

5. See ICJ Communiqué 2000/40 (Dec. 8, 2000) and 2000/40bis (Dec. 8, 2000). The texts of ICJ Orders are available on the ICJ website: <http://www.icj-cij.org>.

As regards the fundamental condition of the Court's *prima facie* jurisdiction over the case, the Court concluded that the parties' declarations accepting the Court's compulsory jurisdiction (filed by the DRC on February 8, 1989 and by Belgium on June 17, 1958) satisfied the requisite *prima facie* showing. Even though the DRC had not invoked those declarations until the second round of the hearings and the Application lacked precision on the point of jurisdiction (the Application merely referred to the acceptance of the Court's jurisdiction by Belgium), the Court did not agree with Belgium that this seriously jeopardized the principle of procedural fairness and the sound administration of justice. The declarations were within the knowledge both of the Court and the parties (including through reproduction in the Court's *Yearbook*) and Belgium could readily expect that they would be taken into consideration as a basis for the Court's jurisdiction in this case.

The Court rejected proposals put forward by both parties during the hearings for formulating certain provisional measures, finding that the hearings had shown that the positions of both parties regarding their respective rights were still a long way apart, notwithstanding ongoing negotiations between the DRC and Belgium.

2. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*⁶

The DRC requested that the Court, almost a year after the submission of its Application on June 23, 1999, indicate provisional measures to protect it against the seizure of its natural resources and its population against the commission of war crimes allegedly perpetrated by Ugandan troops on Congolese territory. The Court heard the parties' arguments on the DRC's request on June 26 and June 28, 2000. In its Order of July 1, 2000,⁷ the Court ruled unanimously that, pending final judgment in the case, both parties were to refrain from any armed action that might aggravate or extend their territorial dispute or make it more difficult to resolve. The Court also ruled that both parties were to take all measures necessary to comply with all of their obligations under international law, and were to ensure full respect within the zone of conflict for fundamental human rights and applicable provisions of humanitarian law. The Court's ruling was based on its general power under Article 75, paragraph 2, of the Rules of Court to indicate provisional measures that, in whole or in part, are different from those requested. Notwithstanding active Security Council involvement and pronouncements in the dispute, the Court concluded that the Council had taken no decision that would *prima facie* preclude the rights claimed by the DRC from being regarded as appropriate for protection by way of provisional measures.

3. *Aerial Incident of 10 August 1999 (Pakistan v. India)*⁸

The Court held hearings on jurisdiction on April 3–6, 2000. The case involved a claim by Pakistan for U.S.\$60 million in reparations for the alleged shooting down by India of a Pakistani military aircraft over Pakistani territory. On June 21, 2000, the Court found, by fourteen votes to two, that it lacked jurisdiction to adjudicate the dispute between Pakistan and India.⁹ The Court based its judgment principally on a reservation contained in India's

6. *Armed Activities on the Territory of the Congo (Dem. Rep. of the Congo v. Uganda)* (2000), available at <http://www.icj-cij.org>.

7. See *Dem. Rep. of the Congo v. Uganda*, Order of July 1, 2000, available at <http://www.icj-cij.org>.

8. *Pakistan v. India*, *supra* note 1.

9. See *id.*; see also ICJ Communiqués 2000/19–19bis (June 21, 2000). For a more detailed summary and commentary of this decision, see Pieter Bekker's case note in 94 AM. J. INT'L L. 707 (2000).

declaration of September 18, 1974 accepting the Court's compulsory jurisdiction under Article 36, paragraph 2 of the ICJ Statute (the "Optional Clause"). According to India's reservation, "disputes with the government of any State which is or has been a Member of the Commonwealth of Nations" are excluded from the Court's jurisdiction (the so-called "Commonwealth reservation").¹⁰ The Court thereby affirmed the wide discretion of States parties to the ICJ Statute to limit the scope *ratione personae* of their acceptance of the Court's compulsory jurisdiction.

As an additional basis of jurisdiction, Pakistan invoked Article 17 of the 1928 General Act for the Pacific Settlement of Disputes,¹¹ which it claimed was still in force for both parties and conferred jurisdiction, in conjunction with Article 37 of the ICJ Statute,¹² on the ICJ through its predecessor, the Permanent Court of International Justice (1922–1945). Pursuant to Article 17, all disputes between parties to the General Act were to be submitted to the Permanent Court. In reply, India invoked a communication that it submitted to the U.N. Secretary-General on September 18, 1974, stating that India never regarded itself as bound by the General Act since its independence in 1947. Based on India's communication, the Court concluded that India could not be regarded as having been a party to the General Act at the date on which Pakistan filed its Application (September 21, 1999). The Court declined to answer the question whether the General Act must be regarded as a "convention in force" for the purpose of Article 37 of the ICJ Statute.

Finally, the Court held that the U.N. Charter and certain agreements between India and Pakistan that Pakistan had invoked as additional bases of jurisdiction under Article 36, paragraph 1 of the ICJ Statute do not contain any specific provision conferring compulsory jurisdiction on the Court in relation to disputes between Pakistan and India. The Court reminded both parties that, notwithstanding the Court's lack of jurisdiction over the present dispute, they still were obligated under international law to seek a peaceful settlement of their dispute in good faith.

4. *Maritime Delimitation and Territorial Questions Between Qatar and Bahrain* (*Qatar v. Bahrain*)¹³

Hearings on the merits of this case, which was filed by Qatar on July 8, 1991, were held between May 29 and June 29, 2000.¹⁴ The parties presented oral arguments relating to the disputed rights to sovereignty over the Hawar Islands, sovereign rights over the shoals of Dibal and Qit'at Jaradah and the delimitation of the maritime areas of Qatar and Bahrain. As of December 31, 2000, the Court was still deliberating the outcome.

5. *LaGrand Case (Germany v. U.S.)*¹⁵

On November 13–17, 2000, the Court held hearings on the merits of this case concerning alleged breaches of the 1963 Vienna Convention on Consular Relations in connection with

10. Declaration Recognizing as Compulsory the Jurisdiction of the Court, India, Sept. 18, 1974, available at <http://www.icj-cij.org/icjwww/basicdocuments/basicdecs/ibasicdecs/ibasicdeclarations.htm>.

11. General Act for Pacific Settlement of International Disputes, Sept. 26, 1928, 93 L.N.T.S. 343.

12. Statute of the International Court of Justice, art. 37, available at <http://www.icj-cij.org>. According to Article 37, "[w]henever a treaty or convention in force provides for reference of a matter to . . . the Permanent Court of International Justice, the matter, shall, as between the parties to the present Statute, be referred to the International Court of Justice."

13. *Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar v. Bahrain)* (2000), available at <http://www.icj-cij.org>.

14. For the prior history of this case, see the commentary of KEITH HIGHEE & PETER BEKKER, in *COMMENTARIES ON WORLD COURT DECISIONS (1987–1996)* 191 (Peter H.F. Bekker, ed. 1998).

15. *LaGrand Case (Germany v. U.S.)* (2000), available at <http://www.icj-cij.org>.

the execution of two German nationals in the U.S. State of Arizona in early 1999. As of December 31, 2000, the deliberations in this case, which was filed by Germany on March 2, 1999, were ongoing.

6. General List¹⁶

As of December 31, 2000, the General List of ICJ cases was composed as follows: *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v. United Kingdom) (Libya v. United States)*;¹⁷ *Oil Platforms (Iran v. United States)*;¹⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v. Yugoslavia)*; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*;¹⁹ *Gabcikovo-Nagymaros Project (Hungary v. Slovakia)*; *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v. Malaysia)*;²⁰ *Abmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*;²¹ *LaGrand Case (Germany v. United States)*;²² *Legality of Use of Force (Yugoslavia v. Belgium) (Yugoslavia v. Canada) (Yugoslavia v. France) (Yugoslavia v. Germany) (Yugoslavia v. Italy) (Yugoslavia v. Netherlands) (Yugoslavia v. Portugal) (Yugoslavia v. United Kingdom)*;²³ *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Burundi) (Democratic Republic of the Congo v. Rwanda) (Democratic Republic of the Congo v. Uganda)*;²⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Yugoslavia)*;²⁵ *Aerial Incident of 10 August 1999 (Pakistan v. India)*;²⁶ *Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*;²⁷ and *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*.²⁸

B. COMPOSITION OF THE COURT

The Court elected Judge Gilbert Guillaume (France) as president and Judge Shi Jiuyong (China) as vice president for three-year terms on February 7, 2000. On February 10, 2000,

16. All cases in this section may be found on the ICJ website: <http://www.icj-cj.org>.

17. Libya filed a Reply in both cases on June 29, 2000. The Court's President issued Orders fixing time limits on September 6, 2000.

18. The Court's President issued an Order extending time limits in this case on September 4, 2000.

19. Cameroon filed a Reply in this case on April 4, 2000.

20. Indonesia and Malaysia each filed a Counter-Memorial in this case on August 2, 2000. The Court's President issued an Order extending time limits on May 11, 2000, followed by one fixing time limits on October 19, 2000.

21. The Court's President issued an Order extending time limits in this case on September 8, 2000.

22. On March 27, 2000, the United States filed preliminary objections in this case.

23. On January 5, 2000, Yugoslavia filed its Memorial in each of these cases. On July 5, 2000, preliminary objections were filed by Belgium, Canada, France, Germany, Italy, the Netherlands, Portugal, and the United Kingdom. The Court's Vice President issued eight separate Orders fixing time limits in these cases on September 8, 2000.

24. Burundi and Rwanda each filed a Memorial on jurisdiction in their respective cases on April 21, 2000, followed by the DRC's Counter-Memorial on October 23, 2000. On July 21, 2000, the DRC filed its Memorial in the case against Uganda.

25. On March 10, 2000, the Court's President issued an Order extending time limits. See 2000 ICJ REP. 3. The full Court issued an Order extending time limits on June 27, 2000.

26. Pakistan filed its Memorial on jurisdiction in this case on January 10, 2000, followed by India's Counter-Memorial on February 28, 2000.

27. The Court issued an Order fixing time limits in this case on March 21, 2000. See 2000 ICJ REP. 6.

28. The Court's President issued an Order fixing time limits on December 13, 2000.

the newly composed Court elected Philippe Couvreur (Belgium) to succeed Eduardo Valencia-Ospina (Colombia) as Registrar for a seven-year term. On March 2, 2000, the U.N. General Assembly and Security Council elected Thomas Buergenthal (United States) to hold office for the remainder of Judge Stephen Schwebel's term expiring on February 5, 2006. As of December 31, 2000, the Court was composed as follows (in order of seniority): Gilbert Guillaume (France), President; Shi Jiuyong (China), Vice-President; Shigeru Oda (Japan); Mohammed Bedjaoui (Algeria); Raymond Ranjeva (Madagascar); Géza Herczegh (Hungary); Carl-August Fleischhauer (Germany); Abdul Koroma (Sierra Leone); Vladlen Vereshchetin (Russian Federation); Rosalyn Higgins (United Kingdom); Gonzalo Parra-Aranguren (Venezuela); Pieter Kooijmans (the Netherlands); Francisco Rezek (Brazil); Awn Shawkat Al-Khasawneh (Jordan); Thomas Buergenthal (United States).

C. PRESIDENT'S REMARKS

In October 2000, the newly elected President of the ICJ, Judge Guillaume, addressed both the General Assembly²⁹ and the Sixth Committee of the General Assembly³⁰ regarding the proliferation of international judicial bodies and the lack of resources plaguing the ICJ. President Guillaume noted that international judicial bodies have multiplied in the past two decades, reflecting recent developments in the international community.³¹

President Guillaume highlighted the negative consequences of this expansion in judicial settlement mechanisms, and in particular the fact that this proliferation was "influencing the operation of international law, both in procedural terms and as regards the actual content of that law."³² He pointed to two primary problems: forum shopping and inconsistent decisions. Regarding forum shopping, he pointed out the inherent problems of "inter-institutional 'competition'" and cited as a perfect example the overlapping jurisdiction of the Law of the Sea Tribunal and the ICJ to adjudicate disputes arising out of the law of the sea regime.³³

Regarding the consequences of conflicting judgments, President Guillaume cited to the International Criminal Tribunal for the former Yugoslavia (ICTY) Appeals Chamber Decision in the *Tadić* case,³⁴ wherein the ICTY judges disregarded the case law of the ICJ and adopted a less strict standard for establishing State responsibility for military actions occurring on foreign territory.³⁵ He also noted that domestic systems (which have similar problems) have solved this situation by two methods. First, there is a clear hierarchy among courts and, second, the formulation of rules and jurisprudence governing the principles of

29. H.E. Judge Gilbert Guillaume, President of the International Court of Justice, Address at the United Nations General Assembly (Oct. 26, 2000), available at http://www.icjciij.org/icjwww/ipresscom/SPEECHES/iSpeechPresident_Guillaume_GA55_20001026.htm [hereinafter Guillaume General Assembly Speech].

30. H.E. Judge Gilbert Guillaume, President of the International Court of Justice, Address at the Sixth Committee of the General Assembly of the United Nations (Oct. 27, 2000), available at http://www.icjciij.org/icjwww/ipresscom/SPEECHES/iSpeechPresident_Guillaume_SixthCommittee_20001027.htm [hereinafter Guillaume Sixth Committee Speech]. The Sixth Committee is the General Assembly's standing committee on legal issues.

31. See *id.*

32. *Id.*

33. *Id.*

34. Prosecutor v. Dusko Tadić, Case No. IT-94-1-A, Judgement, Appeals Chamber, July 15, 1999, available at <http://www.un.org/icty>.

35. Guillaume General Assembly Speech, *supra* note 29.

litispendency and *res judicata*. He went on to say that, “by contrast, the international system is sadly lacking in this regard.”³⁶

He then suggested that the various international courts should coordinate the exercise of their jurisdiction in order to limit future problems. As an example of when such cooperation would have been preferable, he cited to the first decision of the ICTY Appeals Chamber, in which the ICTY judges, in facing a challenge to the legality of the creation of the ICTY, decided the issue affirmatively.³⁷ He suggested that perhaps the ICTY should have requested the Security Council to seek an advisory opinion from the ICJ on this appeal.³⁸

He also proposed that when two competent courts are seized of the same dispute, one of them should withdraw. He acknowledged, however, that this raises a host of other potential problems, such as the criteria for determining which court should do so and what happens in the event that some of the issues fall outside of the exclusive jurisdiction of one or the other of the competing fora.³⁹

Finally, President Guillaume proposed a significant increase in the budget for the ICJ in order to hire additional staff. He proposed a budget of U.S.\$26 million for the 2002–2003 period, as compared to the current annual budget of approximately U.S.\$10 million. Moreover, he said he would like to add thirty-eight new employees, increasing the ICJ staff from sixty-one to ninety-nine.

II. United Nations Compensation Commission

The United Nations Compensation Commission (UNCC), a subsidiary organ of the United Nations Security Council, was established by the Security Council at the close of the Gulf War in 1991 to pay compensation to foreign governments, nationals, and corporations for any “direct loss, damage, . . . or injury . . . as a result of Iraq’s unlawful invasion and occupation of Kuwait.”⁴⁰ The UNCC continued the diligent implementation of its current work program, which contemplates the completion of the last panel reports by July 2003. Significant developments in 2000 included the completion of the second phase of payments made available to successful claimants, the establishment of the payment mechanism for the third phase, the approval of twenty-three panel reports that decided 2,454 claims (among them the single largest award to date), and the adoption of new measures for the handling of certain claims.

A. PAYMENT OF UNCC AWARDS

Payments for awards come from the UNCC-administered United Nations Compensation Fund. The fund receives 30 percent of the revenue derived from sales of Iraqi

36. *Id.*

37. Prosecutor v. Dusko Tadić, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Appeals Chamber, Oct. 2, 1995, available at <http://www.un.org/icty>.

38. Guillaume Sixth Committee Speech, *supra* note 30.

39. *Id.*

40. S.C. Res. 687, U.N. SCOR, 46th Sess., 2981st mtg., ¶ 16, U.N. Doc. S/RES/687 (1991). For a concise overview of the structure and jurisdiction of the UNCC, see John R. Crook, *The United Nations Compensation Commission—A New Structure To Enforce State Responsibility*, 87 AM. J. INT’L L. 144 (1993). For some historical perspective, see David J. Bederman, *The United Nations Compensation Commission and the Tradition of International Claims Settlement*, 27 N.Y.U. J. INT’L L. & POL. 1 (1994). The UNCC’s website, <http://www.unog.ch/uncc>, includes a bibliography of resources that are published in a number of languages.

petroleum and petroleum-products pursuant to the "oil-for-food" mechanism established by Security Council resolution 986 (1995)⁴¹ and subsequent resolutions. The UNCC completed the second phase of payments on September 6, 2000.⁴² Total payments in 2000 under the second phase exceeded U.S.\$2.59 billion, bringing the final amount made available during phase two to over U.S.\$4.8 billion for more than 870,000 successful claimants.

The UNCC commenced the third phase of payments on October 26, 2000, pursuant to which successful claimants in the remaining categories, "D," "E," and "F," receive an initial amount of U.S.\$5 million (minus amounts, if any, received during the second phase) or the unpaid principal amount if less.⁴³ The third phase thereafter calls for payments of U.S.\$10 million to successful claimants in each of the remaining categories. At the close of 2000, including third phase payments, the overall amount of compensation made available by the UNCC to successful claimants in all categories stood at approximately U.S.\$9.5 billion.

B. GOVERNING COUNCIL DECISIONS

1. *Thirty-Fifth Session*

The Council considered and approved nine panel reports⁴⁴ (with the exception of one withdrawn claim),⁴⁵ each of which decided corporate claims:⁴⁶ 586 "E1," "E2," "E3," and "E4" claims that alleged U.S.\$5.58 billion in damages. The reports recommended the payment of 403 of the claims in the amount of U.S.\$964.2 million.

41. S.C. Res. 986, U.N. SCOR, 3519st mtg., U.N. Doc. S/RES/986 (1995).

42. Individual claimants received priority in the first phase, Governing Council decision 17, U.N. SCOR, Comp. Comm., 41st mtg., U.N. Doc. S/AC.26/Dec.17 (1994), which involved the initial payment of U.S.\$2,500 to each successful claimant in categories "A" (claims of individuals for departure from Kuwait or Iraq) and "C" (claims of individuals up to U.S.\$100,000) and payment in full to successful claimants in category "B" (claims of individuals for death or serious personal injury).

The Governing Council (the Council) maintained prioritization for awards in categories "A" and "C" in the second phase of payments while providing "meaningful compensation" for successful claimants in categories "D" (claims of individuals for damages above U.S.\$100,000), "E" (corporate claims), and "F" (government claims). Governing Council decision 73, U.N. SCOR, Comp. Comm., 88th mtg., U.N. Doc. S/AC.26/Dec.73 (1999). Transfers were made for approved claims in all categories when there were sufficient funds to make payment to each of U.S.\$25,000. Once that amount was paid for "all awards of claims in categories 'A' and 'C' and all approved claims in categories 'D,' 'E,' and 'F,'" the amount for further payments on all claims increased to U.S.\$75,000. The second phase resulted in making payment in full available to successful claimant in categories "A" and "C."

43. Governing Council decision 100, U.N. SCOR, Comp. Comm., 36th Sess., 96th mtg., U.N. Doc. S/AC.26/Dec.100 (2000).

44. Governing Council decisions 86-94, U.N. SCOR, Comp. Comm., 35th Sess., 94th mtg., U.N. Docs. S/AC.26/Decs.86-94 (2000). UNCC panel reports analyze the merits of each claim and thus (as approved) reflect, to the richest extent, the UNCC's body of law. The reports, which are quite voluminous, are posted on the UNCC website, *supra* note 40.

45. The claim was withdrawn after the report's submission. The information about the report that follows does not include the withdrawn claim.

46. Corporate claims are grouped into four subcategories: "E1" refers to oil sector claims; "E2" refers to non-Kuwaiti corporate claims, excluding oil sector, construction/engineering, and export guarantee claims; "E3" refers to non-Kuwaiti construction/engineering claims; and "E4" refers to Kuwaiti corporate claims, excluding oil sector claims.

2. *Thirty-Sixth Session*

The Council considered and approved three panel reports that decided a total of 713 claims in the "D" and "F1"⁴⁷ categories.⁴⁸ Six hundred and ninety-seven "D" claims, the subject matter of two of the reports, alleged damages totaling U.S.\$193.4 million; the reports recommended the payment of 655 of the claims in the amount of U.S.\$103.5 million. The third report recommended the payment of ten of sixteen "F1" claims (the sixteen claims sought U.S.\$425.1 million in damages) in the amount of U.S.\$44.5 million.

3. *Thirty-Seventh Session*

The Council considered and approved eight panel reports.⁴⁹ The first concerned 223 "A" claims submitted for individuals by the Government of Bosnia and Herzegovina that met the criteria for late-filed claims due to (1) the existence of a war situation or civil disorder and (2) evidence of a prior attempt to file the claims within the limitations period. The report recommended the payment of 203 of the claims (some upon the filing of further documentation) in the amount of U.S.\$812,000. Six of the approved reports addressed claims in the "E2," "E3," and "E4" categories, a total of 344 claims that alleged U.S.\$2.8 billion in damages. The reports recommended the payment of 284 of the claims in the amount of U.S.\$294.3 million.

The final report, which addressed four claims in the "E1" category, resulted in the UNCC's single largest award to date.⁵⁰ Employing the full range of investigative tools available to it under UNCC procedural rules, including secretariat support, site and document inspections, witness interviews, document requests, interrogatories, and the retention of independent experts in accounting, petroleum engineering, and petroleum economics, the panel, following multiple written submissions and replies and a formal oral proceeding, found three of the four claims compensable. The Kuwait Petroleum Corporation (KPC) asserted two claims for losses totaling U.S.\$21.61 billion: (1) it sought damages for the loss of production and sales between 2 August 1991 and the date it resumed production at pre-invasion rates; and (2) it alleged that well fires and oil spills resulted in the loss of millions of barrels of reservoir fluids, including crude oil and associated natural gas. The panel found that KPC's capacity to produce and sell oil was, as alleged, drastically reduced for a period and that this reduced capacity was the direct result of Iraq's invasion and occupation of Kuwait and the subsequent well blowouts and damage to Kuwait's oil fields and related facilities for which Iraq was responsible.⁵¹ Because the losses of reservoir

47. "F" claims are grouped into three subcategories: "F1" refers to government claims for losses relating to departure and evacuation costs or damage to physical property and claims filed by international organizations; "F2" refers to claims of Jordan and Saudi Arabia, excluding claims for environmental damages; and "F3" refers to claims of Kuwait, excluding claims for environmental damages.

48. Governing Council decisions 96-98, U.N. SCOR, Comp. Comm., 36th Sess., 96th mtg., U.N. Docs. S/AC.26/Decs.96-98 (2000).

49. Governing Council decisions 101-108, U.N. SCOR, Comp. Comm., 36th Sess., 99th mtg., U.N. Docs. S/AC.26/Decs.101-108 (2000).

50. *Report and Recommendations Made by the Panel of Commissioners Concerning the Fourth Installment of "E1" Claims*, U.N. Doc. S/AC.26/2000/16 (2000).

51. A December 1996 report by the same panel, discussed in Roger P. Alford et al., *International Courts and Tribunals*, 32 INT'L LAW. 499, 503 (1998), addressed Iraq's responsibility for the well blowouts and damage to Kuwait's oil fields and related facilities. See *Report and Recommendations Made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim*, S/AC.26/1996/5/Annex (1996).

fluids were the product of the well blowouts, the panel determined that these losses were also compensable. The panel found that the evidence before it substantiated losses for the two claims in the amounts of U.S.\$14.75 billion and U.S.\$1.17 billion, respectively, and therefore recommended the payment of compensation to KPC in the total amount of U.S.\$15.92 billion. With respect to the third claim, that of sales losses of the Arabian Oil Company Ltd. (AOC) allegedly amounting to U.S.\$562.67 million, the panel found that AOC suffered a loss following the decline in production of crude oil and refined oil products in the offshore area of the Partitioned Neutral Zone between Saudi Arabia and Kuwait as a result of the Iraqi invasion and occupation. The panel determined that the loss amounted to U.S.\$21.97 million and recommended payment in this amount. The panel recommended the denial of the fourth claim, in which the Saudi Arabian Oil Company alleged U.S.\$749.4 million in damages incurred as a result of a requirement by the Council of Ministers of Saudi Arabia that the company supply fuel oil and other refined petroleum products to the Saudi Arabian and other military forces for the "enhanced defense of Saudi Arabia." The panel found that such costs were properly characterized as Allied Coalition Forces costs that are non-compensable under Governing Council decision 19.⁵²

4. *Thirty-Eighth Session*

The Council considered and approved three panel reports that decided 784 "D" and "F2" claims.⁵³ Seven hundred and sixty "D" claims, the subject matter of the first two of the reports, alleged damages totaling U.S.\$354.86 million; the reports recommended payment of 663 of the claims in the amount of U.S.\$175.23 million. The third report recommended payment of twenty-two of twenty-four "F2" claims (the twenty-four claims sought U.S.\$288.96 million in damages) in the amount of U.S.\$33.5 million.

The Council's final decision of the session (and year) approved the conclusions reached by the Working Group that is reviewing current UNCC procedures.⁵⁴ The Working Group agreed upon measures including: (1) the circulation of panel reports to Governing Council members three months in advance of the session for reports that (a) recommend payments in excess of U.S.\$100 million, (b) apply new methodologies, or (c) contain significant legal, factual, and technical issues; (2) the preparation of a separate report for each claim for which a panel recommends an award of or exceeding U.S.\$1 billion; and (3) for claims not yet taken up by panels in which the amount in controversy equals or exceeds U.S.\$1 billion, extending by six months the deadline by which Iraq must submit its response. The Working Group agreed that the determination whether to schedule oral proceedings lies within the discretion of panels and endorsed the practice of scheduling such proceedings when the amount in controversy equals or exceeds U.S.\$1 billion, the claim contains significant legal, factual, and technical issues, or the claim involves substantive "F4" issues. The Working Group continued its efforts to formulate recommendations concerning possible technical assistance to Iraq for responding to claims and it specifically recommended that the "F4"

52. Governing Council decision 19, U.N. SCOR, Comp. Comm., 37th Sess., 41st mtg., U.N. Doc. S/AC.26/Dec.19 (1994) ("costs of the Allied Coalition Forces, including those of military operations against Iraq, are not eligible for compensation").

53. Governing Council decisions 110–112, U.N. SCOR, Comp. Comm., 38th Sess., 101st mtg., U.N. Docs. S/AC.26/Decs.110–112 (2000).

54. Governing Council decision 114, U.N. SCOR, Comp. Comm., 38th Sess., 101st mtg., U.N. Doc. S/AC.26/Dec.114 (2000) (annexed to which is the Working Group's report).

panel use experts to insure the full development of facts and technical issues and to obtain the full range of views.

III. Iran-United States Claims Tribunal

The Iran-United States Claims Tribunal (Claims Tribunal), established in 1981, hears disputes between the Governments of Iran and the United States (and their respective nationals) that arose as a result of the 1979 Iranian Revolution. Claims before the Claims Tribunal are categorized as either interpretive ("A" or "B" claims) or private, involving the nationals of one State against the Government of the other. Very few claims remain outstanding and, to date, the amount awarded to U.S. claimants exceeds U.S.\$2.1 billion, while Iranian claimants have been awarded in excess of U.S.\$1 billion. Three cases were decided during 2000.⁵⁵

A. "SHAH'S ASSETS" CASE, AWARD NO. 597-A11-FT⁵⁶

On April 7, 2000, the Claims Tribunal⁵⁷ found that the United States had failed in its obligations, pursuant to the Algiers Declarations,⁵⁸ to freeze and require reporting about the assets of several close relatives of the former Shah of Iran. However, the Claims Tribunal dismissed other claims advanced by Iran in the case concerning the estate of the former Shah of Iran. Because the case had previously been bifurcated into liability and remedies phases, the amount of damages awarded to Iran, if any, will be determined after subsequent hearings are held.

This case was brought before the Claims Tribunal after the dismissal of all Iranian lawsuits in the United States seeking to recover the assets of the former Shah of Iran. The basis for the claims before the Claims Tribunal was that the United States allegedly had failed to meet its international obligations pursuant to Point IV of the Algiers Declarations. Paragraph 12 of the General Declaration required that the United States freeze any property or assets in the United States under the control of the estate of the former Shah of Iran or of any close relative of the Shah of Iran who is served as a defendant in litigation brought by Iran to recover such property or assets. Paragraph 13 of the General Declaration required that the United States order persons possessing information concerning such property or assets to report such information. Pursuant to Paragraph 14, the United States undertook to inform all U.S. courts that any Iranian suits brought to recover such property or assets were not to be barred on the grounds of sovereign immunity principles or the Act

55. Moreover, one case, *Frederica Lincoln Riahi v. Iran*, Iran Award No. 596-485-1 (Iran-U.S. Cl. Trib. 2000), was partially settled on February 24, 2000, by means of a Partial Award on Agreed Terms. The remaining issues in contention in this case went to trial in May 2000. In addition, on June 13, 2000, Judge Aghahosseini filed a dissent *in toto* against the Award rendered by Chamber Three on November 18, 1999, in the *Bank Markazi Iran v. Federal Reserve Bank of New York* (Award No. 595-823-3) case. This Award was summarized in Roger P. Alford et al., *International Courts and Tribunals*, 34 INT'L LAW. 651, 665-66 (2000).

56. *Iran v. U.S.*, Iran Award No. 597-A11-FT (Iran-U.S. Cl. Trib. 2000).

57. All nine judges heard this case sitting as the Full Tribunal. As of December 31, 2000, the judges of the Claims Tribunal are Krzysztof Skubiszewski (President), Mohsen Aghahosseini, George H. Aldrich, Koorosh H. Ameli, Gaetano Arangio-Ruiz, Bengt Broms, Charles T. Duncan, Richard M. Mosk and Assadollah Noori. Charles N. Brower has recently been re-appointed to the Claims Tribunal to replace Judge Duncan, who is retired.

58. Settlement of the Hostage Crisis, Jan. 1981, U.S.-Iran, 20 I.L.M. 223, 230.

of State doctrine. Moreover, the United States agreed that any decrees or judgments in favor of Iran with respect to the property or assets of the former Shah of Iran would be enforceable in U.S. courts pursuant to U.S. law.

Iran prevailed in showing that the United States had failed in its obligations pursuant to Paragraphs 12 and 13 of the General Declaration. Iran had filed lawsuits in U.S. courts against the former Shah's wife and three of his sisters. Iran duly served these individuals and, in accordance with the agreement, Iran had asked the United States to freeze their assets (pursuant to Paragraph 12) and require reporting about their assets (pursuant to Paragraph 13). The United States, however, took the position that the defendants in these suits were not properly served unless the service was uncontested (which it was not) or until that service was upheld by the highest court presented with the issue. On the basis of this interpretation, the United States had failed both to freeze the assets of the Pahlavi family members concerned and to require the necessary reporting.

The Claims Tribunal rejected the U.S. interpretation of the word "served," holding that all that that term requires is reasonable compliance with the laws of service of the forum concerned. The Claims Tribunal further held that the United States had an implied obligation to freeze assets and require reporting after the conclusion of the Algiers Declarations if the United States had knowledge that a defendant had been previously served in any of the suits concerning the Pahlavi family assets.

On the basis of these legal findings, the Claims Tribunal found that the United States had failed to meet its obligations with respect to the former Shah's wife and one of his sisters, on the grounds that they had been served in a lawsuit, notwithstanding the fact that such service was prior to the conclusion of the Algiers Declarations. Moreover, the Claims Tribunal found that the United States was in non-compliance with respect to the former Shah's other two sisters since it had failed to freeze and require reporting concerning their assets after they had contested Iran's service upon them.

The remaining claims advanced by Iran, however, were dismissed. Before the Claims Tribunal, Iran asserted that Point IV obligated the United States to return to Iran all of the assets controlled by the Pahlavi family. Since all such lawsuits brought in the United States to recover those assets had been dismissed, Iran claimed that the United States was in violation of its obligations. The Claims Tribunal rejected this assertion on the grounds that neither the language of the agreement nor its preparatory work evidenced an intention to impose an affirmative obligation upon the United States to return the assets or property in question to Iran.

Concerning the "estate" of the former Shah, Iran asserted that Paragraph 12 required the United States to freeze the assets within the control of the former Shah's estate on the date that the Algiers Declarations were signed. The United States argued that because no personal representative of the former Shah was ever appointed, there was no "estate" pursuant to the applicable U.S. municipal law, and thus the U.S. obligations under Paragraphs 12 and 13 were never triggered. The Claims Tribunal held that no estate was ever constituted (since no personal representative was ever appointed) and thus the Paragraph 12 obligation never arose. Consequently, the Claims Tribunal declined to decide whether Paragraph 12's service requirement applied to the estate of the former Shah, an issue that the parties disputed.

Several of Iran's lawsuits against the Pahlavi family had been dismissed on the grounds of *forum non conveniens*. Before the Claims Tribunal, Iran had asserted that these dismissals violated the U.S. obligation to make its courts available to Iran to pursue its claims

against the Pahlavi family assets. The Claims Tribunal rejected these claims on two grounds. First, the Claims Tribunal found no evidence in the agreement that could be reasonably interpreted as requiring the United States to provide a forum for the advancement of Iran's claims on the merits regarding the former Shah's family assets. Second, relying on the maxim *expressio unius est exclusio alterius*, the Claims Tribunal noted that the United States had agreed in Paragraph 14 to inform its courts about the inapplicability of the principle of sovereign immunity and the Act of State doctrine, while that paragraph was silent as to the forum non conveniens and any other defenses.

All nine Judges signed the Award, although Judge Mosk filed a separate opinion, Judge Broms filed a concurring and dissenting opinion, and Judges Noori, Ameli and Aghahosseini dissented with respect to several points in the Award.

B. "SABET COMPANIES" CASE, AWARD NO. 598-815/816/817-2⁵⁹

In a previous Award,⁶⁰ the Claims Tribunal held that Iran was liable for expropriating the ownership interests of three Sabet brothers, the grandchildren of the late Iranian industrialist Habib Sabet, in six Sabet family-owned companies. On November 28, 2000, Chamber Two of the Claims Tribunal awarded the brothers approximately U.S.\$2.41 million plus interest for their shares in the companies. In reaching this figure, the Chamber (as in previous cases) used the standard of compensation set forth in the 1955 Treaty of Amity between Iran and the United States⁶¹ and disregarded any diminution in value of the companies as a result of the expropriation and excluded consideration of any events thereafter that might have affected the value of the shares. The Chamber did consider, however, "changes in the general political, social and economic conditions"⁶² in Iran, to the extent that such conditions reasonably affected the value of the assets of the companies.

Chairman Skubiszewski and Judges Aldrich and Ameli signed the Award. Judge Ameli concurred with respect to three of the companies involved and dissented with respect to the other three companies concerned.

C. "REPLENISHMENT OF THE SECURITY ACCOUNT" CASE, DECISION NO. 130-A28-FT⁶³

On December 19, 2000, in *United States and The Federal Reserve Bank of New York v. Iran and Bank Markazi*, the Claims Tribunal⁶⁴ held that Iran's failure to replenish the Security Account established to pay awards of the Claims Tribunal after the balance fell below the minimum set forth in the General Declaration constituted non-compliance with Iran's obligations. The Claims Tribunal stated that both parties were expected to comply with their obligations under the Algiers Declarations and could not "anticipate continued non-compliance by Iran."⁶⁵

Paragraph 7 of the General Declaration established a Security Account to hold Iranian funds of U.S.\$1 billion in escrow for the sole purpose of satisfying any claims against Iran

59. *Sabet v. Iran*, Iran Award 598-815, 816, 817-2 (Iran-U.S. Cl. Trib. 2000).

60. *Sabet v. Iran*, Iran Award 593-815/816/817-2 (Iran-U.S. Cl. Trib. 1999) (Partial Award).

61. Treaty of Amity, Aug. 15, 1955, U.S.-Iran, 8 U.S.T. 899.

62. *Sabet*, Iran Award 598-815, 816, 817-2 (2000).

63. *Iran v. Bank Markazi Iran*, Case No. A28, Award No. 130-A28-FT, (Iran-U.S. Cl. Trib. 2000).

64. All nine judges heard this case sitting as the Full Tribunal.

65. *Bank Markazi Iran*, Case No. A28, Award No. 130-A28-FT.

by the Claims Tribunal. In the event that the funds in that account dipped below U.S.\$500 million, Iran had agreed to replenish promptly the account to insure a constant minimum balance of U.S.\$500 million. In November 1992, the balance fell below the U.S.\$500 million threshold and Iran failed to make the necessary deposits into the account to meet its obligations. The Claims Tribunal rejected several arguments advanced by Iran and held that the obligations that Iran had voluntarily undertaken were clear from a textual interpretation of Paragraph 7.

The United States had requested that the Claims Tribunal order Iran to replenish immediately the account and maintain the agreed upon minimum balance. In addition, the United States requested that the Claims Tribunal allow the United States to satisfy any awards rendered in favor of Iran by paying such awards into the Security Account until such time as the minimum balance were reached. Iran argued that the Claims Tribunal lacked the authority to grant either remedy proposed by the United States and suggested that the Claims Tribunal accept Iran's pledge to provide any funds required to satisfy future awards. Alternatively, Iran asked the Claims Tribunal to encourage the parties to negotiate a settlement of the issue or to ask the Claims Tribunal to decide the issue on equitable grounds.

Having found Iran in non-compliance, the judges determined that the remedies suggested by both parties were either inadequate or not necessary, in light of the expectation that Iran would promptly comply with its obligation to replenish the Security Account.

All nine members of the Claims Tribunal signed the Award, although four judges filed concurring opinions,⁶⁶ one judge filed a concurring and dissenting opinion,⁶⁷ and one judge appended a statement to the Award in which he indicated his concurrence but set forth several grounds on which he dissented from the majority's reasoning.⁶⁸ Judge Ameli has not yet filed his opinion explaining his concurrence in part and dissent in part. President Skubiszewski took the unusual step of filing a statement commenting on the concurring and dissenting opinion of Judge Broms.

IV. Claims Resolution Tribunal for Dormant Accounts in Switzerland

The Claims Resolution Tribunal for Dormant Accounts in Switzerland (CRT) was established in 1997 to resolve claims relating to Holocaust-era dormant Swiss bank accounts. The CRT's jurisdiction covers Swiss bank accounts opened by non-Swiss nationals or residents that have been inactive since the end of the Second World War (May 9, 1945) and that were made public by the Swiss Bankers Association in 1997 or at a later date.⁶⁹

The CRT has published procedures by which it reviews submitted claims.⁷⁰ Claims first go through an "initial screening" process that is designed to determine whether the claimant has a valid claim to a dormant account. If the claimant has not submitted evidence sufficient

66. Judges Aghahosseini, Aldrich, Duncan and Mosk.

67. Judge Broms.

68. Judge Noori.

69. The CRT's jurisdiction also extends to accounts opened by Swiss nationals if it can be shown that the accounts were held by a Swiss intermediary for a victim of Nazi persecution (and have been dormant since May 9, 1945 and were made public by the Swiss Bankers Association in 1997 or later).

70. These rules are available on CRT's website. See *Rules of Procedure for The Claims Resolution Process*, at <http://www.crt.ch>.

to demonstrate entitlement to the dormant account, the CRT will decline to disclose details about the account and, subject to a request for reconsideration; the claim will not proceed to arbitration. As of December 31, 2000, more than ninety percent of the claims submitted did not pass the initial screening process and did not proceed to arbitration.

Once a claim passes the initial screening process, the CRT reviews it under either a "fast track" or "ordinary" procedure. The fast track procedure is used when the bank offers to settle the claim and the offer complies with the CRT's rules and the CRT is able to evaluate the claim based on simple legal and factual inquiries. All claims that are not approved under the fast track procedure are resolved under the ordinary procedure. In contrast to the fast track procedure, the ordinary procedure involves a full review of the claim. The CRT renders its decision within six months of submission of the claim. As of December 31, 2000, the majority of the claims were resolved under the fast track procedure.

Under both procedures, claims are reviewed under a relaxed standard of proof. The claimant must show that it is "plausible in light of all the circumstances that he or she is entitled, in whole or in part, to the dormant account."⁷¹ In reviewing the claim, the arbitrators assess the information submitted by the claimant taking into account the difficulties of proving a claim due to the lapse of time since the account was opened and the possible destruction of relevant documents during the War and the Holocaust.

In addition to the value of the dormant account, a claimant may be entitled to interest accrued on the account and the reimbursement of fees and charges assessed against the account. If the claimant can show that the account holder was a victim of Nazi persecution and the account was opened during the period January 1, 1933 to December 31, 1945, the claimant is entitled to these additional monies.⁷² (Claimants of dormant accounts of persons who were not victims of Nazi persecution are not entitled to such adjustments.) The rules governing the calculation of interest, fees, and charges are identified on the CRT's website and were promulgated in order to provide a uniform calculation method.⁷³ As of December 31, 2000, the CRT rendered 10.6 million Swiss Francs (approximately U.S.\$6.6 million) to claimants of a victim account, including adjustments for interest and fees, and 44.4 million Swiss Francs (approximately U.S.\$27.75 million) to claimants of a non-victim account.⁷⁴

The CRT's website also posts a useful sampling of CRT decisions.⁷⁵ Through 2000 and the first month of 2001, the CRT has issued decisions in 9,488 of the 9,762 claims. Claims

71. *Rules of Procedure for The Claims Resolution Process*, Section VIII, Art. 22, at <http://www.crt.ch>. A finding of plausibility requires, *inter alia*, (1) that all documents and other information have been submitted by the claimant regarding the relationship between the claimant and the published account holder that can reasonably be expected to be produced in view of the particular circumstances, including, without limitation, the history of the claimant's family and whether or not the published account holder was a victim of Nazi persecution; and, (2) that no reasonable basis exists to conclude that fraud or forgery affect the claim or evidence submitted, or that other persons may have an identical or better claim to the dormant account. *Id.*

72. A victim of Nazi persecution is defined as "any individual, corporation, partnership, sole proprietorship, unincorporated association, community, congregation, group, organization, or other entity persecuted or targeted for persecution by the Nazi Regime because they were or were believed to be Jewish, Romani, Jehovah's Witness, homosexual, or physically or mentally disabled or handicapped." *Rules on Interest, Charges, and Fees for Arbitral Decisions of the Claims Resolution Tribunal*, Section 2(I), at http://www.crt.ch/rules_interest.html.

73. These rules also govern the calculation of account values when there is no information about the original account values.

74. See Progress Report, <http://www.crt.ch/statistics.html> (last updated Feb. 5, 2001).

75. See Claims Resolution Tribunal, <http://www.crt.ch>.

have been approved in 2,909 cases and dismissed in 6,579 cases. The CRT has yet to rule on 274 cases.⁷⁶

V. International Commission on Holocaust Era Insurance Claims

The International Commission on Holocaust Era Insurance Claims (Commission), chaired by former U.S. Secretary of State Lawrence S. Eagleburger, was formed in 1998 to address the issue of unpaid insurance policies issued prior to and during the Holocaust. The Commission is composed of U.S. insurance commissioners, representatives of the State of Israel, international Jewish and Holocaust survivor organizations, and representatives of major European insurance companies. Observers include the United States and other governments and several European and Israeli insurance regulators.

The Commission's goal is to assure that any insurance claims of Holocaust victims and their heirs are resolved fairly and expeditiously, with consideration given to special circumstances and the passage of time. The insurance companies participating in this process have agreed to resolve all outstanding claims that are submitted by February 1, 2002. Claims relating to policies issued by insurance companies that are not part of the Commission will be sent to those companies with a request that they review and honor the claims in accordance with the Commission's standards. A separate Humanitarian Fund will address claims for policies issued by insurance companies no longer in existence.

During 2000, the Commission established an outreach program through which it coordinated a worldwide effort to help potential claimants become aware of and understand the Claims Resolution Process. To this end, the Commission advertised in mainstream and Jewish publications, held press conferences, and worked with Jewish religious, social, and cultural organizations. The Commission also established toll-free numbers manned by operators trained to answer questions and assist in completing the necessary forms. The Commission's website provides a Training Manual⁷⁷ that explains the application and evaluation process and identifies sources and contacts. The website also provides a list of policyholders that may be entitled to payment. The current list contains over 30,000 names.

Pursuant to the Commission's rules of procedure, once a claim is received the Commission will forward the claim to the named insurance company. The company will make its findings within ninety days of receiving the claim or, if it cannot resolve the claim in time, it will provide the claimant with a status report. If the claim does not identify a specific insurance company, the Commission will forward the claim to all member companies to investigate.⁷⁸ Once the investigation is complete, the insurance company evaluating the claim provides the claimant with a written decision. If the claimant disagrees with the insurance company's decision, the decision may be appealed to a panel established by the Commission, although there is no right to appeal a decision made by a company that is not a member of the Commission.

76. See <http://www.crt.ch/statistics.html>.

77. See Training Manual: International Commission on Holocaust Era Insurance Claims, <http://www.icheic.org> (Jan. 2000).

78. If the claim cannot be matched to any policy or if the claim is against an insurance company that is no longer in existence, the claimant may be eligible for a payment from a specific fund established by the Commission. See *The Claims Resolution Process*, at <http://www.icheic.org/eng/claims.htm>.

Under the Commission's procedures, the member insurance companies review claims pursuant to a relaxed standard of proof based on the information provided by the claimant, information found in the insurer's files, and any additional information discovered by the Commission. In addition to filing specific documents, a claimant must show that it is plausible, in the light of all the special circumstances involved, that the claimant is entitled, in whole or in part, to the benefits of the policy. Once an insurance company determines that a claimant is entitled to the policy, the company follows the uniform valuation guidelines issued by the Commission to determine the value of the policy. The intention of the valuation guidelines is to give a present day value to the policies. The present day value is based on the base value of the policy (the value that the policy would have had at the date of death of the insured or the maturity date) plus an increase to allow for changes in currency, economic circumstances, and interest.⁷⁹ The Commission reports that as of the end of 2000, approximately U.S.\$3 million had been paid to claimants.

79. The specific calculation method is provided on the Commission's website. See *Valuation of Unpaid Policies*, at <http://icheic.org>.

