International Courts and Tribunals

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This article reviews and summarizes significant developments in 2003 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 and the Claims Resolution Tribunal. Other articles in this issue detail significant developments relating to the International Criminal Court, the International Criminal Tribunals for Rwanda and the former Yugoslavia, the proposed additional ad hoc international criminal tribunals, the International Tribunal for the Law of the Sea, the World Trade Organization dispute settlement system, and other trade dispute settlement systems.

I. International Court of Justice[1]

The International Court of Justice (the Court or ICJ) is the principal judicial organ of the United Nations (U.N.). The ICJ's jurisdiction is two-fold: (1) to deliver judgments in contentious cases submitted to it by sovereign states; and (2) to issue non-binding advisory opinions at the request of certain U.N. organs and agencies. At the close of 2003, the ICJ's fifty-seventh year since its inaugural sitting on April 18, 1946, twenty-one contentious cases and one request for an advisory opinion were pending. The Court delivered its judgment in three cases, ruled on two requests for the indication of provisional measures, and issued numerous other orders in the nature of specific case management. Three new contentious cases and the General Assembly's request for an advisory opinion were docketed in 2003.[2]

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The views expressed herein are those of the authors, acting solely in their personal capacities, and do not represent the views of the Iran-U.S. Claims Tribunal, the U.S. International Trade Commission, or the World Bank.

1. All International Court of Justice decisions, pleadings, and other documents cited in this section are available at the Court's website: http://www.icj-cij.org (last visited May 16, 2004).

This section reports briefly on each of these activities as well as the Court's year-end composition.

A. Contentious Cases During 2003

1. *Oil Platforms (Iran v. U.S.)*

On November 6, 2003, the Court rejected on the merits competing claims for reparations by Iran and the United States under the parties' 1955 Treaty of Amity, Economic Relations, and Consular Rights (Treaty), and in the process found that the use of force by the United States was contrary to international law.[3] Iran initiated the case in 1992 based on the attack and destruction of certain Iranian oil platforms by U.S. warships in 1987 and 1988. Two shipping incidents were a focal point of the case. First, a Kuwaiti tanker named the Sea Isle City, re-flagged to the United States, was struck by a missile near Kuwait Harbor on October 16, 1987. The United States attributed the attack to Iran and three days later, claiming to act in self-defense, launched an attack against the Iranian offshore oil production complexes of Reshadat and Resalat, destroying certain platforms. Second, on April 14, 1988, the USS Samuel B. Roberts (Roberts) was struck by a mine in international waters near Bahrain while returning from an escort mission. Asserting the right of self-defense, the United States attacked and destroyed the Iranian oil complexes of Nasr and Salman on April 18, 1988.[4]

Iran claimed that the attacks were in breach of article X, paragraph 1 of the Treaty.[5] The United States denied any violation of that article's terms and further claimed that its actions were justified under article XX, paragraph 1(d) of the Treaty and thus could not be deemed a violation of the Treaty.[6] In its counterclaim, the United States asserted that Iran was in breach of article X, paragraph 1 of the Treaty "in attacking vessels in the Gulf with mines and missiles and otherwise engaging in military actions that were dangerous and detrimental to commerce and navigation between the territories of the United States and the Islamic Republic of Iran."[7] Iran denied responsibility for the alleged attacks and further claimed

2. In addition, two cases were discontinued with prejudice and removed from the Court's list at the joint request of the parties. Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v. U.K.) (Libya v. U.S.), 2003 I.C.J. Nos. 88, 89 (Orders of Sept. 10).

3. Oil Platforms (Iran v. U.S.), 2003 I.C.J. No. 90 (Nov. 6), ¶ 125. The votes respecting the reparations claims were fourteen to two and fifteen to one, respectively. The rationale for deciding Iran's claim generated more controversy than the fourteen to two vote on the *dispositif* would suggest, however. *See, e.g.*, Separate Opinions of Judges Higgins, Parra-Aranguren, Kooijmans, Buergenthal, and Owada (rejecting Court's consideration or treatment of the issue of legality of the use of force by the United States). The Court's decision is summarized below. Eleven judges appended declarations, separate opinions, or dissents to the judgment.

4. *Id.* ¶ 25. In its report to the Security Council at the time, the United States stated that each shipping incident was the latest in a series of offensive attacks and provocations by Iranian naval forces and that the response of the United States was directed at legitimate military targets. *Id.* ¶¶ 48, 67.

5. The text reads as follows: "Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation." Treaty of Amity, Economic Relations, and Consular Rights, Aug. 15, 1955, U.S.-Iran, art. X, § 1, 8 U.S.T. 899, *available at* http://www.parstimes.com/law/iran_us_treaty.html (last visited May 16, 2004).

6. Under this provision, the Treaty "shall not preclude the application of [certain] measures," including those "necessary to fulfill the obligations of a High Contracting Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests." *Id.* art. XX, § 1.

7. *Oil Platforms* (Iran v. U.S.), ¶ 26.

that its naval operations in the Persian Gulf throughout this period were purely defensive in nature.

To uphold Iran's claim, the Court noted that it would have to be proved that the attacks on the oil platforms infringed article X, paragraph 1 of the Treaty and, further, that such attacks were not justified as measures necessary to protect the essential security interests of the United States under article XX, paragraph 1(d). The Court found factors militating in favor of considering the latter issue first, stating that the original dispute concerned the legality of the use of force by the United States, and the parties had ascribed the topic importance during litigation. The Court then found, insofar as article XX, paragraph 1(d) is invoked to justify the use of armed force in self-defense, the proper interpretation of the article requires applying the conditions for self-defense under the relevant rules of international law, i.e., the U.N. Charter and customary law. As a result, the Court determined that the jurisdiction conferred by article XXI, paragraph 2 of the Treaty (to decide any question of interpretation or application of the Treaty) applied to the contested actions considered in light of the provisions of the U.N. Charter and customary international law.[8]

The Court thus proceeded to determine whether the United States could rely on article XX, paragraph 1(d) as a defense to Iran's claim under article X, paragraph 1. The Court stated that in order to prove it was legally justified in attacking the Iranian platforms in the exercise of the individual right of self-defense, the United States had to show that Iran was responsible for the attacks on the United States; "that those attacks were of such a nature as to be qualified as armed attacks within the meaning of that expression in Article 51 of the U.N. Charter, and as understood in customary law"; that the responses were "necessary and proportional to the armed attack made on [the United States]"; and "that the platforms were a legitimate military target."[9]

Upon consideration of the record, the Court found the United States failed to demonstrate Iranian responsibility for the missile attack on the Sea Isle City.[10] The Court further stated that the attack on the Sea Isle City, and other attacks alleged by the United States to have preceded the Sea Isle City attack, even taken cumulatively, did not seem to constitute an armed attack on the United States.[11] With respect to the mining of the Roberts, the Court found the evidence of Iranian responsibility "highly suggestive, but not conclusive" and stated that, in view of all the circumstances, it was unable to hold that the attacks on the Salman and Nasr platforms were justifiably made in response to an "armed attack" on the United States by Iran.[12]

The Court found that the attacks on the oil platforms in 1987 and 1988, respectively, did not satisfy the requirement of necessity as responses to the attack on the Sea Isle City and the mining of the Roberts.[13] With respect to the requirement of proportionality, the Court stated that the 1987 attack on oil platforms might have been considered proportionate had it been necessary as a response to the missile incident as an armed attack carried out by Iran.[14] The 1988 attacks, on the other hand, were part of a more extensive military

8. *Id.* ¶¶ 35–42.
9. *Id.* ¶ 51.
10. *Id.* ¶ 61.
11. *Id.* ¶ 64.
12. *Id.* ¶ 71–72.
13. *Id.* ¶ 76.
14. *Id.* ¶ 77.

operation. In the Court's view, neither the operation as a whole, nor that part of it that destroyed the Salman and Nasr platforms were a proportionate use of force in self-defense.[15] Accordingly, the Court concluded that the U.S. actions against Iranian oil installations on October 19, 1987 and April 18, 1988, were not justified under international law and thus did not fall within the category of measures contemplated by article XX, paragraph 1(d) of the Treaty.[16]

Turning to the question of whether the oil platform attacks infringed on the freedom of commerce between the territories of Iran and the United States, as guaranteed by article X, paragraph 1 of the Treaty, the Court studied the effects of the attacks on oil exports from Iran to the United States. The Court underlined that the commercial activity protected by this article needs to occur between the territories of the parties to the Treaty. The Court found that the 1987 attacks were directed against oil platforms undergoing repair, and consequently these platforms were not involved in commerce between Iran and the United States.[17] Thus, these attacks did not infringe the rights of Iran under article X, paragraph 1.[18] Regarding the 1988 attacks on Iranian oil platforms, the Court noted that they occurred after the issuance of U.S. Executive Order 12613, which imposed an embargo on, *inter alia*, Iranian crude oil.[19] Accordingly, the Court held that the effect of these attacks was not to infringe on the freedom of commerce between Iran and the United States.[20] The Court also found that transactions involving intermediaries, through whom petroleum products derived from Iranian crude oil reached the United States during the embargo, did not amount to commerce between Iran and the United States.[21] In conclusion, the Court found that it could not uphold the submissions of Iran and, as a result, rejected the Iranian claim for reparations.

The final issue concerned the counterclaim of the United States for reparations. Having disposed of Iranian objections to the jurisdiction of the Court to hear the counterclaim and to its admissibility,[22] the Court stated that in order for the counterclaim to succeed, the United States had to show that its freedom of commerce or navigation was impaired and that the impairing acts were attributable to Iran.[23]

The Court proceeded to examine each of the alleged Iranian attacks, recalling that U.S. vessels allegedly attacked by Iran are covered by article X, paragraph 1 of the Treaty only if they were engaged in commerce or navigation between the territories of the United States and Iran.[24] The Court concluded that "none of the vessels described by the United States as being damaged by Iran's alleged attacks was engaged in commerce or navigation" between the territories of Iran and the United States.[25] Noting that the United States had also presented its claim in a generic sense (essentially claiming that Iran's cumulative conduct had made the Gulf unsafe in violation of article X), the Court stated that the United States

15. *Id.*
16. *Id.* ¶ 78.
17. *Id.* ¶ 92.
18. *Id.* ¶ 98.
19. *Id.* ¶ 94.
20. *Id.* ¶ 98.
21. *Id.* ¶¶ 96–97.
22. *Id.* ¶¶ 103–18.
23. *Id.* ¶ 119.
24. *Id.* ¶ 120.
25. *Id.* ¶ 121.

still had to show that there was an actual impediment to commerce or navigation between the two states. Because it had not, and the Court's findings regarding the specific alleged incidents revealed no interference with commerce or navigation under the Treaty, the Court rejected the generic claim as well.[26] The Court thus concluded that there had not been a violation of the Treaty and found it unnecessary to reach the separate contested issue of attributing the various alleged incidents to Iran.[27] Therefore, the Court rejected the counterclaim of the United States for reparations.[28]

2. *Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Yugoslavia v. Bosn. & Herz), Preliminary Objections (Yugoslavia v. Bosn. & Herz.)*

Pursuant to article 61 of the Statute of the Court, the Federal Republic of Yugoslavia (FRY) sought revision of the Court's 1996 judgment on preliminary objections in an ongoing case involving claims of the violation of the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention). In the disputed judgment, the Court ruled that the compromissory clause (article IX) of the Genocide Convention, to which the Court found both parties were bound, conferred jurisdiction on the Court and that the case was admissible. In its application for revision, FRY took the position that its admission to the U.N. in 2000 was a new fact that proved that it was not a member of the U.N., a party to the Statute of the Court or a party to the Genocide Convention at any time prior to the 1996 judgment, and therefore the Court lacked jurisdiction over the dispute.[29]

The Court rejected the application for revision on February 3, 2003.[30] The Court held that the sort of fact required to trigger article 61 revision considerations is a fact that existed at the time of the disputed judgment, yet went undiscovered.[31] The fact that FRY was admitted to the U.N. by the General Assembly more than four years *after* the 1996 judgment did not constitute such a fact.[32] The Court further noted that at the time of the 1996 judgment, the parties and the Court were aware that General Assembly resolution 47/1 required FRY to submit a request for admission to the U.N. rather than accepting any claim of automatic succession to the membership of the former Yugoslavia. The Court stated that resolution 47/1 did not affect FRY's right to appear before the Court, its right to be party to a dispute before the Court under the Statute, or its position in relation to the Genocide Convention.[33] The Court also stated that General Assembly resolution 55/12—the General Assembly's decision to admit FRY to membership in 2000—"cannot have changed retro-

26. *Id.* ¶ 123.

27. *Id.*

28. *Id.* ¶ 124.

29. Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugoslavia), Preliminary Objections (Yugoslavia v. Bosn. & Herz.), 2003 I.C.J. No. 122 (Feb. 3) ¶ 7. FRY refined its theory at oral argument, contending that the new facts upon which the application for revision was based were its not being a party to the Court's Statute or to Article IX of the Genocide Convention, facts it contended were not revealed until its admission to U.N. membership in 2000. *Id.* ¶¶ 19–20.

30. *Id.* ¶ 75. The vote was ten to three. Two of the ten judges in favor appended separate opinions. The three judges voting against appended either a declaration or dissenting opinion.

31. *Id.* ¶ 67.

32. *Id.* ¶ 68.

33. *Id.* ¶ 70.

actively" FRY's status before the U.N. or FRY's position in relation to the Court's Statute or the Genocide Convention.[34] The Court concluded that no facts within the meaning of article 61 had been discovered since 1996, which was one of the conditions for admissibility of an application under article 61. Thus, the Court found the application inadmissible and declined to analyze whether it otherwise satisfied the conditions for demonstrating admissibility under article 61.[35]

3. *Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Sal./Hond.: Nicar. intervening) (El Sal. v. Hond.)*

El Salvador's application under article 61 of the statute, requesting revision of one aspect of a 1992 judgment that decided certain boundary disputes between the parties, met a similar fate as that of FRY, albeit on different grounds. The Chamber that was formed to adjudicate the application found it inadmissible on December 18, 2003, on the basis that the alleged new facts did not amount to "decisive factors" within the meaning of article 61.[36] El Salvador previously claimed in the underlying dispute that the boundary in the sixth sector should follow an old course of the Goascorán River, which had been abandoned through a process of avulsion prior to independence in 1821. El Salvador contended that avulsion would not bring about a change in the boundary; instead, the boundary would continue to follow the old channel under Spanish colonial law and international law. In its application for revision, El Salvador contended that decisive factors in the rejection of its boundary claim included: (1) the absence of evidence of an abrupt alteration of the river during the colonial period; and (2) a chart and a report of the expedition of the brigantine El Activo in 1794 offered by Honduras.[37] El Salvador alleged that newly discovered evidence, unavailable to it at the time of the 1992 judgment, demonstrated the original riverbed and its abrupt alteration around 1762, as well as the unreliability of the version of the chart and descriptive report upon which the 1992 judgment rested.

The Chamber found that El Salvador's alleged new facts, which included expert reports from 2002 and different versions of the chart and expedition report from those proffered in the original proceeding, provided no basis for calling into question the decision made by the Chamber in 1992. Specifically, the Chamber stated that the 1992 Chamber had rejected El Salvador's claim that the boundary in 1821 did not follow the course of the river at that date, but did so based on El Salvador's conduct during the 19th century rather than on a rejection of the avulsion theory espoused by El Salvador.[38] Thus, the Chamber held that, even if avulsion were proved and its legal consequences were those proposed by El

34. *Id.* ¶ 71.

35. *Id.* ¶ 73. The opinion identifies five conditions for admissibility under article 61 of the Statute: (a) the application should be based upon the 'discovery' of a 'fact'; (b) the fact, the discovery of which is relied on, must be 'of such a nature as to be a decisive factor'; (c) the fact should have been 'unknown' to the Court and to the party claiming revision when the judgment was given; (d) ignorance of this fact must not be 'due to negligence'; and (e) the application for revision must be 'made at latest within six months of the discovery of the new fact' and before ten years have elapsed from the date of the judgment. *Id.* ¶ 16.

36. Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Sal./Hond.: Nicar. intervening) (El Sal. v. Hond.) 2003 I.C.J. (Dec. 18). The vote was four to one.

37. *Id.* ¶¶ 26, 41.

38. *Id.* ¶ 40.

Salvador, the facts asserted were not decisive factors regarding the challenged judgment.[39]

With respect to the chart and expedition report, whose credibility El Salvador disputed, the Chamber found that the versions presented by El Salvador did not differ in material respects from those introduced in connection with the original proceeding and relied upon by the Chamber in reaching its 1992 judgment.[40] Indeed, the Chamber found that the newly offered documents supported the conclusions arrived at by the Chamber in 1992.[41] Accordingly, the Chamber ruled that these facts were not decisive factors in the 1992 judgment.[42] The Chamber found the application inadmissible upon its failure to adequately satisfy all conditions of article 61 revision procedure, and declined to consider whether El Salvador's application satisfied the other conditions of article 61.[43]

4. *Certain Criminal Proceedings in France (Congo v. Fr.)*

On June 17, 2003, the Court rejected a request for the indication of a provisional measure submitted by Congo in its 2002 application against France.[44] Congo's application sought the annulment of the investigation and prosecution measures taken by French judicial authorities in connection with a 2001 complaint filed on behalf of certain human rights organizations. The complaint alleged crimes against humanity and torture committed in the Congo against individuals of Congolese nationality by Congolese officials, including the President, Minister of the Interior, Inspector-General of the Congolese Armed Forces, and Commander of the Presidential Guard.[45] Congo's claims against the French judicial activity were two-fold. First, Congo claimed that France was violating international law in its purported exercise of universal jurisdiction under the circumstances. Second, Congo claimed that France was violating the international customary rule granting criminal immunity to a foreign head of state.[46]

In its application, Congo proposed to base jurisdiction, as contemplated by article 38, paragraph 5 of the Rules of the Court, on France's then yet-to-be-given consent.[47] This provision creates a vehicle for one party to invite acceptance of the Court's jurisdiction for purposes of the specific dispute; the case is not docketed and will not commence unless and until the defending party consents to jurisdiction. For the first time in the provision's application, the defending party consented to jurisdiction,[48] opening the door for the Court's prompt consideration of the requested interim relief.

Congo requested an interim order from the ICJ for the "immediate suspension" of proceedings being conducted by the French investigating judge.[49] France argued, *inter alia*,

39. *Id.*
40. *Id.* ¶ 52.
41. *Id.* ¶¶ 53–54.
42. *Id.* ¶ 55.
43. *Id.* ¶ 59.
44. Certain Criminal Proceedings in France (Congo v. Fr.), 2003 I.C.J. No. 129 (Apr. 11), ¶ 41. The vote was fourteen to one.
45. *Id.* ¶ 10.
46. *Id.* ¶ 23.
47. *Id.* ¶ 21.
48. France's acceptance prompted ICJ President Jiuyong to remark later that, "since France was free to disregard the application, the fact that it chose to accept jurisdiction, to appear and defend the case, is an encouraging tribute to the value of judicial proceedings as a means of pacific settlement of disputes." H.E. Judge Shi Jiuyong, President of the International Court of Justice, Speech to the General Assembly of the United Nations (October 31, 2003).
49. Certain Criminal Proceedings in France (Congo v. Fr.), 2003 I.C.J. No. 129 (Apr. 11), ¶ 24.

that French law embodies the principle of immunity of foreign heads of state, that all steps taken by the French courts were strictly in conformity with French law, and that those courts had respected the limits of their jurisdiction.[50] On the facts presented, which included France's representation that a judicial request for the written deposition of Congo's President had been retained by the French Ministry of Foreign Affairs, the Court found that Congo had not demonstrated the risk of irreparable prejudice required to warrant indicating provisional measures.[51] The Court also noted its power to indicate provisional measures in appropriate circumstances to prevent the aggravation or extension of a dispute, but did not find such circumstances here.[52]

5. *Avena and Other Mexican Nationals (Mex. v. U.S.)*

Mexico filed an application on January 9, 2003, alleging that fifty-four Mexican nationals have been sentenced to death in the states of California, Texas, Illinois, Arizona, Arkansas, Florida, Nevada, Ohio, Oklahoma, and Oregon for criminal convictions in violation of the Vienna Convention on Consular Relations (Vienna Convention).[53] Mexico claims that, pursuant to article 36 of the Vienna Convention, the United States is under an international legal obligation to ensure that Mexico can communicate with and assist an arrested national prior to trial. Mexico further claims that, by failing to comply with the notification provisions of the Vienna Convention in each instance, the United States has prevented Mexico from exercising its right to carry out consular functions contemplated by the Vienna Convention, thereby injuring Mexico as a state entity, and its nationals.[54]

Mexico concurrently filed a request for the indication of provisional measures. Mexico asked the Court to order the United States to: take all measures necessary to ensure against the setting of an execution date or the execution of any Mexican national; submit a compliance report to the Court; and guarantee that no action is taken that might prejudice the rights of Mexico or its nationals pending the Court's resolution of the case on the merits.[55] The United States responded that, following the Court's judgment in *LaGrand*, it had put in place a vast program to ensure compliance with the notification obligation under article 36 of the Vienna Convention, and that it had also taken measures to ensure review and reconsideration in all death penalty cases in which the obligation had been breached.[56] The United States contended that Mexico's request was not consistent with the *LaGrand* judgment, that the request was too sweeping and would prejudice its sovereign right to operate

50. *Id.* ¶ 33.

51. *Id.* ¶¶ 31, 35, 37–38.

52. *Id.* ¶ 39.

53. Avena and Other Mexican Nationals (Mex. v. U.S.), 2003 I.C.J. (Jan. 9), ¶¶. 1–2.

54. *Id.* ¶¶ 272, 280. Mexico contends that the legal issues are largely controlled by the Court's decision in *LaGrand* (F.R.G. v. U.S.), 2001 I.C.J. No. 104 (Oct. 23), whose holding on the issue of remedy it paraphrased as follows:

> If the receiving State fails to comply with Article 36, and the sending State's national has been subjected to 'prolonged detention or convicted and sentenced to severe penalties', . . . the receiving State must 'allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in the Convention' . . . .

Id. ¶ 18, quoting *LaGrand* ¶ 125.

55. *Id.* ¶ 18.

56. *Id.* ¶¶ 30, 36. On the latter point, the United States stated: "[C]lemency proceedings provide a flexible process that is best suited for achieving, without procedural obstacles, the review and reconsideration this Court called for" in *LaGrand*. *Id.* ¶ 37.

its criminal justice system, and that the requirements of irreparable prejudice and urgency for the indication of provisional measures were not established.[57]

The Court found that three of the fifty-four Mexican nationals were at risk of execution in the coming weeks and their execution would cause irreparable prejudice to any rights the Court might ultimately determine belong to Mexico.[58] Accordingly, the Court unanimously ordered the United States to take all measures necessary to ensure the three individuals were not executed pending final judgment.[59]

B. New Cases Or Advisory Opinion Requests During 2003

1. *Avena and Other Mexican Nationals (Mex. v. U.S.)*

Mexico's application and the Court's granting in part of its request for the indication of a provisional measure are discussed above.

2. *Certain Criminal Proceedings in France (Congo v. Fr.)*

Congo's application and the Court's denial of its request for the indication of a provisional measure are discussed above.

3. *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malay./Sing.)*

On July 24, 2003, Malaysia and Singapore submitted a boundary dispute for the Court's adjudication by special agreement. They requested the Court's binding determination on whether sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks, and South Ledge belonged to Malaysia or Singapore. In their special agreement, the parties also proposed the procedure they wished to follow in the conduct of the proceedings.[60]

4. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Request for Advisory Opinion)*

In a letter dated December 8, 2003, from the U.N. Secretary-General to the President of the Court, the General Assembly requested that the Court urgently render an advisory opinion on the following question.

> What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?[61]

57. *Id.* ¶¶ 29, 31–32, 36.

58. *Id.* ¶ 55.

59. *Id.* ¶ 59. The Court further ordered the United States to inform it of all measures taken to implement its order. The Court also indicated that further provisional relief could be warranted if the status of the other fifty-one individuals on death row referred to in the application were to change prior to the Court's judgment on the merits. *Id.* ¶¶ 56, 59.

60. Special Agreement for Submission to the International Court of Justice of the Dispute between Malaysia and Singapore concerning Sovereignty Over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge, 2003 I.C.J. No. 130 (Feb. 6).

61. Request for Advisory Opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 2003 I.C.J. No. 131 (Order of Dec. 19), para. 2.

The request for the advisory opinion was set out in General Assembly resolution A/RES/ES-10/14, adopted on December 8, 2003, at the 23rd Meeting of the Resumed Tenth Emergency Special Session, with ninety votes in favor, eight against, and seventy-four abstentions. The report of the Secretary-General (A/ES-10/248) referenced in the question to the Court was submitted to the General Assembly pursuant to General Assembly resolution A/RES/ES-10/13 of October 21, 2003. In paragraph 1 of that resolution, the General Assembly demanded that Israel "stop and reverse the construction of the wall in the Occupied Palestinian Territory" and, in paragraph 3 of the same resolution, the General Assembly requested the Secretary-General to report periodically on compliance with the resolution.[62] The Secretary-General's report concluded that Israel was not in compliance with the General Assembly's demand. Annexed to report A/ES-10/248 are summaries of the legal positions of the Government of Israel and of the Palestine Liberation Organization, respectively.

The Secretary-General's December 8 letter indicated that materials for submission to the Court were being prepared pursuant to article 65 of the Statute of the Court and would be submitted to the Court as soon as possible.[63]

C. General List

As of December 31, 2003, the General List of ICJ cases was composed of the following: Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.); Gabcikovo-Nagymaros Project (Hung./Slovk.); Ahmadou Sadio Diallo (Guinea v. Congo); Legality of the Use of Force (Serb. & Mont. v. Belg.), (Serb. & Mont. v. Can.), (Serb. & Mont. v. Fr.), (Serb. & Mont. v. F.R.G.), (Serb. & Mont. v. Italy), (Serb. & Mont. v. Neth.), (Serb. & Mont. v. Port.), (Serb. & Mont. v. U.K.); Armed Activities on the Territory of the Congo (Congo v. Uganda); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croat. v. Serb. & Mont.); Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (Nicar. v. Hond.); Certain Property (Liech. v. F.R.G.); Territorial and Maritime Dispute (Nicar. v. Colom.); Frontier Dispute (Benin/Niger); Armed Activities on the Territory of the Congo (New Application: 2002) (Congo v. Rwanda); Avena and Other Mexican Nationals (Mex. v. U.S.); Certain Criminal Proceedings in France (Congo v. Fr.); Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malay./Sing.); and Request for Advisory Opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.[64]

D. Composition Of The Court

As of December 31, 2003, the Court was composed as follows: Shi Jiuyong (China), President; Raymond Ranjeva (Madagascar), Vice-President; Gilbert Guillaume (France);

62. G.A. Res. ES-10/13, U.N. GAOR, 10th Emergency Spec. Sess., 23rd mtg. at 2, U.N. Doc. A/RES/ES-10/13 (2003).

63. The Court issued a procedural order in the case on December 19, 2003 that fixed the time limit for the filing of written statements at January 30, 2003, and scheduled the hearing to open on February 23, 2004. Request for Advisory Opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 2003 I.C.J. No. 131 (Order of Dec. 19).

64. Current docket of the Court, International Court of Justice, *available at* http://www.icj-cij.org (last visited May 16, 2004).

Abdul G. Koroma (Sierra Leone); Vladlen S. Vereshchetin (Russian Federation); Rosalyn Higgins (United Kingdom); Gonzalo Parra-Aranguren (Venezuala); Pieter H. Kooijmans (Netherlands); Francisco Rezek (Brazil); Awn Shawkat Al-Khasawneh (Jordan); Thomas Buergenthal (United States); Nabil Elaraby (Egypt); Hisahi Owada (Japan); Bruno Simma (Germany); and Peter Tomka (Slovakia). Judges Jiuyong and Ranjeva were elected to their respective leadership positions for three-year terms in February 2003. In the same month, the judges elected members of the Court's Chamber of Summary Procedure, Chamber for Environmental Matters, and the Court's various committees.[65]

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 end of the first 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."[66] Under its long established work program, the processing of claims by several of the Commission's panels of Commissioners was concluded in 2003. Work of the "D" Panels continued and is expected to conclude in 2004. Other panels, including the Palestinian Claims Panel and the Panel for Overlapping ("E4") claims, continued work that arose well after the work program was put in place. Other work of the Commission, including payment of awards and archiving, is expected to continue for some time. It is unclear what effect any agreement by governments to forgive Iraq's debts, following the fall of the Saddam Hussein regime, will have on the remaining work of the Commission. One immediate effect on the Commission has been the reduction of the amount that is made available for compensation to successful claimants as a result of the recent events in that country.[67]

Previously, funds were made available to the Compensation Fund from the proceeds of the "oil-for-food" mechanism established by Security Council Resolution 986 (1995) and subsequent resolutions. The revenue derived from the oil sales authorized by resolution 986 (1995) was deposited in a specially created UN escrow account. The funds in the escrow account were used to meet the humanitarian needs of the Iraqi population and to provide income into the Compensation Fund. The exact amount entering the Compensation Fund each month depends on the quantity of oil sold by Iraq and the price of oil; however, prior to Security Council Resolution 1483, the fund received 25 percent of the proceeds of such sales, which was a reduction from the 30 percent rate when the Fund was established.

Following the passing of Security Council resolution 1483[68] on May 22, 2003, which provides that the Compensation Fund shall receive 5 percent of all export sales of petroleum, petroleum products, and natural gas from Iraq, the UNCC Governing Council at its forty-eighth session in June 2003, adopted Decision 197, establishing a temporary payment

65. *See* Press Release, International Court of Justice, The judges of the International Court of Justice elect members of the Court's Chambers and Committees, 2003/11 (Feb. 11, 2003).

66. S.C. Res. 687, U.N. SCOR, 46th Sess., 2981st mtg., para. 16, U.N. Doc. S/RES/687 (1991). For an overview of the structure and jurisdiction of the UNCC, see the UNCC website: http://www.unog.ch/uncc (last visited May 16, 2004).

67. Funds to pay the awards of compensation are drawn from the United Nations Compensation Fund, as are funds to meet the operating costs of the Commission.

68. Pursuant to the same resolution, sanctions imposed against Iraq under resolution 661 (1990) were lifted.

mechanism in light of the reduction in the Fund's income. Under this temporary mechanism, $200 million from the Compensation Fund will be made available for the payment of claims every quarter. Successful claimants in all categories will receive an initial amount of the lesser of $100,000 or the unpaid principal amount of the award, with the disbursement of subsequent rounds of payments of $100,000 to successful claimants in all categories in the order in which they have been approved, until the available funds for distribution are exhausted. Another significant development in 2003 was the decision by the Governing Council to allocate an amount not exceeding $5 million to continue funding the provision of technical assistance to Iraq in the review of "F4" environmental claims under the terms of its decision 124 of 2002.

A. Payment of UNCC Awards

The UNCC makes funds available to governments or international organizations that originally submitted claims and who are then responsible for both the distribution of compensation to successful claimants within six months of receiving payment and reporting on payments made to the claimants no later than three months thereafter. The payment reports, which describe the mechanisms for the making of payments to claimants and detail the amount and date of payment, enable the Commission to monitor the distribution of compensation. Funds that are not distributed to claimants are to be returned to the Commission.

In June 2003 the Governing Council, while considering the transparency of the distribution process of funds to successful claimants, decided that for future payments, governments should also be required to provide audit certificates to accompany reports on the distribution of payments to successful claimants.

The awards approved by the Governing Council at the end of its fiftieth session on December 18, 2003, brought the total compensation awarded by the Commission to date to over $48 billion, with approximately $18 billion of that amount having been made available to governments and international organizations for distribution to successful claimants in all categories of claims.

B. Governing Council Decisions

1. *Forty-Seventh Session*

At the first session of the Council in 2003, the Council approved four reports and recommendations of the panels of Commissioners concerning 286 claims of individuals and 223 claims of corporations. Compensation was awarded to 258 of the individual claimants and ninety-six corporate claimants. The total amount of compensation approved by the Council to these claimants was approximately $223.2 million.

2. *Forty-Eighth Session*

During its second session of the year, the Council approved nine reports and recommendations of the panels of Commissioners concerning claims from individuals in category "D," claims from corporations in category "E," and claims from a Government in category "F." Compensation in the sum of $2.27 billion was recommended for 1048 of the 1276 claims covered by those reports.

3. *Forty-Ninth Session*

In this session, the Council approved seven reports and recommendations of the panels of Commissioners concerning claims from individuals in category "D" and claims from corporations in category "E." The Council approved compensation in the sum of $195,717,734 for 687 category "D" claims and $119,395,351 was recommended for 346 corporate claims in categories "E1," "E2," and "E4."

4. *Fiftieth Session*

In its final session of the year, the Council approved a total compensation of about $1.4 billion for successful claims in six reports and recommendations of the panels of Commissioners concerning claims from individuals in category "D," claims from corporations in category "E," and claims from Governments in category "F."

The Report and Recommendations (Report) made by the Panel of Commissioners concerning the First Installment of Palestinian "late claims" for damages up to $100,000 (category "C" claims) (S/AC.26/2003/26) was also approved.[69] The Report covered 1,691 claims out of which the Panel of Commissioners determined that 883 satisfied the threshold eligibility requirement for review, namely whether the claimant had a full and effective opportunity to file their claim, as set out by the Governing Council. Of these 883 eligible claims, 852 were recommended for compensation, with the total award valued at $15,768,454. The Report also covered the Panel's eligibility assessment in respect of 70 category "D" Palestinian late claims.

The Report included the threshold eligibility assessment directed by the Governing Council in respect to all Palestinian late claims, requiring the Panel to determine whether claimants have demonstrated that they did not have a full and effective opportunity to file claims during the regular filing period. The Report also reviewed the merits of the category "C" claims that satisfied the threshold eligibility requirement. The category "D" claims that satisfied the threshold eligibility requirement were deferred for review separately by the two category "D" Panels of Commissioners.

The Panel used these claims, together with other sample claims, as a pilot group to elaborate guidelines for the threshold eligibility assessment of all Palestinian late claims. Only those claims that the Panel determines satisfy the threshold eligibility requirement will be considered on their merits. The Panel has also used the category "C" claims in the pilot group to determine whether modifications to the established methodologies for category "C" claims are required to take into account the unique or specific characteristics of category "C" Palestinian late claims.

The Panel developed a two-step process for conducting the threshold eligibility assessment and elaborated guidelines for the assessment of whether claimants had a full and effective opportunity to file claims during the regular filing period. The first step in the

69. At its forty-second session on December 11–13, 2001, the Governing Council established a late claims program for Palestinians who can demonstrate that they did not have a full and effective opportunity to file claims with the UNCC during the Commission's filing period for individual claims from January 1, 1992 to January 1, 1996. At its forty-fourth session on June 18, 2002, the Governing Council extended the deadline for the Commission's receipt of Palestinian late claims from July 1 to September 30, 2002. A total of 46,160 claims were filed by the Palestinian Authority under the late claims program, 43,806 claims in category "C" and 2,354 claims in category "D," as well as a few claims were filed in categories "A" and "B," which are to be processed as category "C" claims.

eligibility assessment consists of identifying the claims filed under the late claims program by claimants who had previously filed claims during the regular filing period. The Panel identified over 4,000 confirmed matches. The Panel concluded that the existence of a previously filed claim in another claim category could, but did not necessarily, indicate that the claimant had a full and effective opportunity to file a claim with the Commission during the regular filing period. Because in certain circumstances, claim forms for particular claim categories were not available during the regular filing period, claimants had the ability to file claims in some claim categories but not in others. Such cases were, therefore, considered on a case-by-case basis to determine their eligibility to participate in the project.

For claims found to be eligible on the basis of matching, the second step included reviewing the reasons proffered by each claimant as to why he or she failed to file a claim during the regular filing period. The Panel's starting premise was that only stateless Palestinians are eligible to participate in the late-claims program. In determining whether a stateless Palestinian claimant had a full and effective opportunity to file claims with the Commission during the regular filing period, the Panel considered the particular circumstances of each claimant, the efforts made by the claimant to file a claim during the regular filing period, and the explanation provided by the claimant as to why he or she was unable to do so. The Panel required each claimant to submit a reasons statement with the claim form describing his or her circumstances during the regular filing period and an explanation as to why he or she alleges the lack of a full and effective opportunity to file claims during that period. The Panel also required each claimant to submit documentation to support the assertions contained in the reasons statement. The Panel concluded that claimants who failed to provide a reasons statement with their claim form failed to meet their burden of demonstrating the lack of a full and effective opportunity to file claims during the regular filing period and were, therefore, ineligible to participate in the late claims program.

In processing the eligible claims, the Panel adopted the legal framework and general issues relating to the processing of category "C" claims previously established by the category "C" Panel of Commissioners; in particular its final report, the "Report and recommendations made by the Panel of Commissioners concerning the seventh installment of individual claims for damages up to $100,000 (category 'C' claims)," which provides the most comprehensive discussion by the category "C" Panel of the processing of category "C" claims submitted during the regular filing period. The Panel, however, made modifications to the "C" methodology to take into account the possible advantage that claimants in the late claims program may have had over claimants that did not have the advantage of knowing the methodology contained in the "C" reports.

With regard to category "D" claims, the Panel determined that forty-seven, with a total claimed amount of $229,233,760.30, were eligible for inclusion in the late claims program. These claims will be transferred to the category "D" Panels of Commissioners for review. The Panel also determined that twenty-three category "D" claims, ineligible for inclusion in the late claims program, totaled $197,694,763.60.

III. Iran-U.S. Claims Tribunal

The Iran-United States Claims Tribunal (Tribunal) was established in 1981 through the Algiers Declarations as part of the resolution of the Iranian hostage crisis. The Tribunal adjudicates disputes between Iran and the United States and their respective nationals. It hears two categories of claims: private claims, which are claims brought by a national of one country against the other country, and inter-governmental claims, which are claims

brought by one country against the other, alleging either a breach of contract or a violation of the Algiers Declarations.[70] After nearly two decades in operation, the Tribunal has heard virtually all of the private claims, disposing of nearly 4000 cases, and awarding more than $2.5 billion to the United States and its nationals and more than $900 million to Iran and Iranian nationals. Its docket now consists primarily of large inter-governmental claims.

The Tribunal's Chamber One decided the final private case, *Frederica Lincoln Riaha and The Government of the Islamic Republic of Iran*, in February 2003.[71] Riahi sought more than $33 million in compensation, claiming that Iran expropriated various real property, personal property, and shareholdings and debt interests in a number of companies.

Riahi, the American-born wife of an Iranian man, is of dual nationality. According to Tribunal precedent, claimants who are dual American-Iranian nationals must prove that they are dominant and effective American nationals for the Tribunal to have jurisdiction over their claims. In an earlier interlocutory award, Chamber One determined that Riahi's dominant and effective nationality was that of the United States. The Tribunal's dual-nationality precedents also recognize a caveat, which states that when the Tribunal "finds jurisdiction based upon a dominant and effective nationality of the claimant, the other nationality may remain relevant to the merits of the claim."[72] Chamber One noted the potential relevance of the caveat in its interim decision in *Riahi*, and in its final decision, the Chamber concluded that the caveat barred Riahi from recovering for her expropriated interest in an apartment building and for her expropriated contractual rights to purchase two other apartment buildings. The Chamber concluded, "the right to acquire real property in Iran by contract, apart from certain limited exceptions not relevant here is a benefit reserved for Iranian nationals."[73] The Chamber determined that Riahi had acquired her interest in the apartment building by use of her Iranian nationality, and because she did, the Chamber went on to conclude that the caveat prevents her from invoking her American nationality before the Tribunal to recover compensation.

The Chamber rejected seven amendments to Riahi's Statement of Claim that had sought more than $1.1 million in compensation, finding that they constituted new claims filed after the jurisdictional cut-off date. With respect to the expropriated companies, the Chamber determined that Riahi failed to prove that she owned the vast bulk of the shares that she claimed to own. To determine the appropriate compensation for the properties that the Tribunal determined Riahi did own, the Chamber considered several valuation reports that the parties submitted, but generally made its own equitable approximations of the value of the various companies based on the evidence appearing in the record. In sum, the Chamber awarded Riahi $1,673,151 plus approximately seven percent per annum simple interest and $70,000 for her partial costs of arbitration.

70. The term Algiers Declarations refers to the Declaration of the Government of the Democratic and Popular Republic of Algeria (General Declaration), Jan. 19, 1981, *reprinted in* 1 Iran-U.S.C.T.R. 3, and the Declaration of the Government of the Democratic and Popular Republic of Algeria concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran (Claims Settlement Declaration or CSD), Jan. 19, 1981, *reprinted in* 1 Iran-U.S.C.T.R. 9.

71. Frederica Lincoln Riahi v. the Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 80–485–1 (June 10, 1992), *reprinted in* 28 Iran-U.S.C.T. R. 176.

72. Iran and United States, Case No. A18, Decision No. DEC 32-A18-FT (Apr. 6, 1984), *reprinted in* 5 Iran-U.S.C.T.R. 251, 265–66.

73. *Riahi v. Iran*, Iran Final Award No. 600–485–1 (Feb. 27, 2003) para. 281.

In April 2003, Riahi filed an application before the Full Tribunal asking them to re-open the Award and to transfer the case either to the Full Tribunal or jointly to Chambers Two and Three for reconsideration. Relying heavily on a dissenting opinion of Chamber One's American member, Charles Brower, Riahi maintained that such reconsideration was justified because the Award "manifestly fails to meet the Tribunal's standards of respect for law, procedural fairness, and impartiality."[74] The President of the Tribunal informed Riahi, by letter, that the Full Tribunal was without jurisdiction to consider the application, stating that any jurisdiction that remains after a Chamber has rendered a final and binding award remains in that Chamber. Riahi proceeded to file her application for reconsideration with Chamber One and included in that application a request that the Chairman of Chamber One, Bengt Broms, recuse himself. The application and the recusal request are currently pending.

The Tribunal held two hearings in inter-governmental cases during the Fall of 2003. In the United States' counterclaim in Case No. B1, the United States asserted that Iran breached confidentiality provisions appearing in certain contracts for the sale of military parts. Iran maintained, *inter alia*, that the Tribunal does not have jurisdiction over counterclaims in inter-government cases involving contracts for the purchase or sale of goods or services.[75] The Tribunal's hearing in Case No. B1 addressed that question of jurisdiction.

The second hearing, Case No. A33, concerned Iran's performance of its obligation to replenish the Tribunal's Security Account. Paragraph 7 of the General Declaration established a $1 billion Security Account to pay claims against Iran, and the paragraph requires Iran to replenish the Security Account when the balance in the account falls below $500 million. Iran stopped replenishing the Security Account in 1992, and the United States thereafter filed a claim, asking the Tribunal, *inter alia*, to order Iran to replenish. In Case No. A28, decided in December 2000, the Tribunal determined that Iran had been in non-compliance with its Paragraph 7 obligations since 1992, but it determined that there was no need to order Iran to replenish the account, stating that the Tribunal expects both parties to comply with their obligations. The Tribunal cannot assume that Iran will remain in non-compliance in the future. Iran has remained in non-compliance since December 2000, however, so the United States filed another claim, Case No. A33, again asking the Tribunal to order Iran to replenish the account and asking the Tribunal to suspend work on Iran's cases before the Tribunal until Iran meets its replenishment obligations. Awards in these cases are expected in 2004.

IV. Claims Resolution Tribunal

On February 5, 2001, a claims process was established to provide Nazi victims or their heirs with an opportunity to make claims to assets deposited in Swiss banks in the period before and during World War II. This process grew out of the settlement of the Holocaust Victim Assets class action litigation (Settlement), brought in the U.S. District Court for the Eastern District of New York (Court) against certain Swiss banks.[76] Under the Set-

74. *Riahi v. Iran*, Application to the Full Tribunal For Relief, Case No. 485 (Apr. 7, 2003) para. 3.

75. Jurisdiction over such cases is delineated in article II, paragraph 2, of the CSD.

76. The suits alleged that the Swiss banks collaborated with and aided the Nazi regime by knowingly retaining and concealing assets of Holocaust victims and by accepting and laundering illegally obtained Nazi loot

tlement, the Swiss banks agreed to pay $1.25 billion, in exchange for the release of the Swiss banks and the Swiss government from, among other things, all claims relating to the Holocaust, World War II, its prelude, and its aftermath. The Settlement was amended later to establish a process to provide compensation for claims concerning World War II-era insurance policies issued to victims or targets of Nazi persecution by certain Swiss insurance companies. The Claims Resolution Tribunal, originally established in 1997 to resolve claims to dormant Swiss bank accounts (CRT I),[77] was designated as the forum for the administration of the claims process for claims to deposited assets and to insurance policies (CRT II).[78] Of the settlement amount, $800 million was set aside for awards to claimants for the deposited assets in Swiss banks. An additional $50 million fund was set aside for the settlement of insurance claims.[79]

A number of claims filed with CRT II involve German account owners whose Swiss bank accounts were closed between 1933 and 1936. Under the Rules Governing the Claims Resolution Process, CRT II presumes in such cases, in the absence of evidence to the contrary, that neither the account owners nor the heirs received the proceeds of the claimed account, if, among other circumstances, the account was closed after the date of occupation of the country of residence of the account owner and before 1945 (or the year in which the freeze of accounts from the country of residence of the account owner was lifted, whichever is later). CRT II delayed ruling on these claims pending the results of a study that analyzed German conduct during these early years of Nazi rule towards owners of foreign capital and the Swiss banks' response to such conduct. The report, released in March 2002, found that Nazi expropriation of the Swiss bank accounts of targets of Nazi persecution began as early as 1933.[80] The report further found that Swiss banking practices enabled the expropriations to occur. Based on the results, the Court, in April 2003, approved an amendment

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and profits of slave labor. The Settlement was for the claims of five represented classes: the deposited asset class; the looted asset class; the refugee class; and two slave labor classes. *See* Claims Resolution Tribunal, Overview, *available at* http://www.crt-ii.org (last visited May 16, 2004); *see also* Holocaust Victim Assets Litigation, *available at* http://www.swissbankclaims.com (last visited May 16, 2004). The U.S. District Court for the Eastern District of New York approved the Settlement in the summer of 2000. *See* In re Holocaust Victim Asset Litigation, 105 F. Supp.2d 139 (E.D.N.Y. 2000). Several organizations are responsible for disbursing the funds for the four other classes of victims. For more information on these organizations and their work, *see* The Conference on Jewish Material Claims Against Germany, *available at* http://www.claimscon.org (last visited May 16, 2004); The International Organization for Migration, *available at* http://www.swissbankclaims.com. In addition, there are various organizations disbursing funds for victims of the Holocaust outside the Settlement. Information on those programs can be found at the web sites noted above. *See also* The International Commission on Holocaust Era Insurance Claims, *available at* http://www.icheic.org (last visited May 16, 2004); The Presidential Advisory Commission on Holocaust Assets in the U.S., *available at* http://www.pcha.gov (last visited May 16, 2004); Austrian Bank Holocaust Settlement, *available at* http://www.austrianbankclaims.com (last visited May 16, 2004).

77. CRT I completed its review of claims to dormant Swiss accounts on September 30, 2001. For a review of the awards, *see* Daryl A. Mundis & Mark B. Rees, *International Court and Tribunals*, 36 INT'L LAW 549, 564 (2002).

78. For a review of CRT II claims procedure, *see* Mundis & Rees, *supra* note 77, at 565–67.

79. One-half of the U.S. $50 million is funded from the Settlement and one-half from participating companies. A complete list of participating companies is provided on the CRT's web site: http://www.crt-ii.org.

80. Independent Commission of Experts Switzerland – Second World War, Switzerland, National Socialism and the Second World War: Final Report (2002). *See Rules Governing the Claims Resolution Process*, at App. C, *available at* http://www.crt-ii.or/governing_rules.phtm (last visited Apr. 6, 2004).

to the Rules to define the "date of occupation" with respect to account owners in Germany as January 30, 1933 (the date of Hitler's accession as Chancellor).

As of January 15, 2004, approximately 33,496 deposited assets claims were filed, with 12,000 found to match a published account holder.[81] Of those claims, CRT II has certified and the Court has approved 1,105 awards totalling $133 million.

81. In addition, the Court decided to treat the 560,000 Initial Questionnaires returned by potential claimants during the class action notification process as deposited assets claims. The Initial Questionnaires are being analyzed to identify those that can be processed as CRT II claims forms.